

Overview: Recent Immigration Policy Changes

The current UK government programme relating to immigration aims at controlling immigration and reducing numbers of non-EU immigrants coming to the UK by the end of the parliamentary term, with the stated objective of reducing net migration to the ‘tens of thousands’ per annum by 2015. Increasingly the focus lies on ‘reducing abuse of the immigration system’ and attracting only ‘the brightest and the best’ migrants to the UK. Since May 2010, the government has made/announced *substantial changes to the Points Based System (PBS) across all immigration routes*. This paper provides an overview of some of the key changes/proposals as well as other relevant developments.

• *Economic Migration from non-EEA countries*

Changed	‘Immigration cap’ (since April 2011) numerical limit on non-EU economic immigration under Tiers 1 and 2 (highly skilled and skilled)	Potential Impact on Scotland: Some key points
	<ul style="list-style-type: none"> • Closure of old Tier 1 (General) which allowed highly skilled migrants to look for work or self-employment opportunities in the UK • Tier 1 redefined as high-value tier: investors, entrepreneurs and those with ‘exceptional talent’ within sciences or arts (capped at 1000 per year and requiring endorsement by designated competent body) 	<ul style="list-style-type: none"> • Potential to damage economic recovery & growth: affecting creative industries, energy, financial and public services, life sciences and tourism¹ • Impede recruitment and retention of world-class talent
	<ul style="list-style-type: none"> • Tier 2 (General): Number of visas available for ‘skilled migrants’ with a job offer limited to 20.700 a year • minimum skills threshold for Tier 2 raised to graduate level (Migration Advisory Committee Report² on what are to be considered graduate-level jobs) • minimum level of English language competency raised from basic to intermediate (B1 Common European Framework of Reference) 	<ul style="list-style-type: none"> • Different labour market challenges and specific economy in Scotland requires flexible approach to immigration that takes Scotland’s needs into account eg health care sector, demographics, geography & rurality
	Tier 2 (Intra company transfer) route: those earning more than £40,000 per year will be allowed to stay up to 5 years; those paid between £24,000 and £40,000 will be able to enter for up to 12 months	<ul style="list-style-type: none"> • Settlement implications for individuals and their employers may mean other countries with less restrictions will gain advantage

¹ Letter by External Affairs Minister Fiona Hyslop to Damian Green, signed by Scottish Chambers of Commerce, IoD in Scotland, FSB, Universities Scotland, NHS Scotland, COSLA, STUC, Scottish Social Services Council, http://www.scotsman.com/news/immigration_policy_must_reflect_scottish_needs_minister_told_1_837173, (5 Dec 2010).

² Migration Advisory Committee Report (Feb 2011), “List of Occupations skilled to NVQ level 4 and above for Tier 2”, <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/aboutus/workingwithus/mac/analysis-of-the-pbs>.

Changed	Requirements for settlement (since April 2011) of non-EEA migrants under Tier 1 and Tier 2	Potential Impact on Scotland: Some key points
	<p>Skilled and highly skilled migrants</p> <ul style="list-style-type: none"> • need to meet the income criteria that applied when they last extended their permission to stay (pay ‘at or above’ the ‘correct’ rate as set out in the UKBA Standard occupational classification codes of practice) • required to pass the ‘Life in the UK’ test prior to gaining settlement • New criminality threshold, requiring all settlement applicants to be clear of unspent convictions 	<ul style="list-style-type: none"> • Changing criteria over recent years add extra burden on migrants and their employers, with some success (at appeals) against retrospective changes³ • High and increasing range of fees disadvantages persons on lower incomes • National income threshold does not take into account regional variations in wage levels
Proposed changes	<p>Settlement consultation⁴ (closed Sept 2011)</p> <p>Key proposals include:</p> <ul style="list-style-type: none"> • to redefine Tier 1 as a ‘permanent’ route: Tier 1 migrants continue to be able to move towards settlement in the UK, fast-track to settlement after 2-3 years for major investors and entrepreneurs making large contribution to UK economy • to redefine Tier 2 as a ‘temporary’ route: vast majority of Tier 2 migrants would not be allowed to settle; their stay in the UK would be limited to a max. of 5 years • Only a small minority of Tier 2 migrants might be allowed to move into the ‘permanent’ route after three years.* • to abolish or severely limit the overseas domestic worker visa, affecting domestic workers and private servants in diplomatic households • to restrict the rights of people coming here under Tier 5 (temporary workers) of the PBS. <p>*Migration Advisory Committee (MAC) recommendations⁵:</p>	<ul style="list-style-type: none"> • Some short and larger long-term economic effects of restricting or removing rights to settle in UK beyond 5 years on trade and investment • Some Tier 1 and 2 migrants help to alleviate skill shortages in key public service areas, e.g. health and education, tourism and the private sector. Extent of removing settlement rights in the long/term contingent on level of appropriate and successful training within resident population⁶ • Differentiating between ‘permanent route’ for the very wealthy few (Tier 1) while ruling out settlement for vast majority of migrants (Tier 2) result in overall weakening of migrant workers’ position, with

³ See, e.g., „Senior Carers win stage in fight for right to settle“, <http://jcw.wordpress.com/2011/12/14/senior-carers-win-stage-in-fight-for-right-to-settle/>.

⁴ UKBA, “Employment-related settlement, Tier 5 and overseas domestic workers: a consultation” (June 2011), <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/consultations/employment-related-settlement/employment-related-consultation?view=Binary>

⁵ Migration Advisory Committee report “Settlement rights of migrants in Tier 1 and Tier 2” (Nov 2011), <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/aboutus/workingwithus/mac/settlement-restrictions-workers/analysis-settlement.pdf?view=Binary>

⁶ Migration Advisory Committee report “Settlement rights of migrants in Tier 1 and Tier 2” (Nov 2011), <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/aboutus/workingwithus/mac/settlement-restrictions-workers/analysis-settlement.pdf?view=Binary>

	<ul style="list-style-type: none"> • simple pay threshold, set at time of entry into Tier 2, should be used to decide eligibility for permanent settlement of Tier 2 (general and sportspersons) migrants • Migrants entering through the Tier 1 (exceptional talent) route should be allowed to proceed to settlement after 5 years if continuing to meet the initial criteria for that route <p><i>Government announcement on changed policy regarding settlement rights expected this week, first changes expected to come into effect in April 2012</i></p>	<p>negative effects on community cohesion & integration⁷</p> <ul style="list-style-type: none"> • Damaging international competitiveness, productivity of sectors vital to Scottish economy and public such as Universities, health services; radical shift to temporary migration may lead to Scotland losing existing skilled migrants or being unable to attract those people who are making valuable contributions⁸ • Potential increase in numbers of migrants overstaying as undesired consequence of capping stay at 5 years, with irregular status making them more vulnerable to exploitation⁹
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• **International students (from outside the EU)**

Changed	Changes to Tier 4 and Tier 1 (Post-study work) affecting non-EU students and educational bodies sponsoring international students	Potential Impact on Scotland: Some key points
	<p>Since April 2011:</p> <ul style="list-style-type: none"> • New education accreditation criteria for new sponsors not already on the Tier 4 register in order to obtain sponsorship licence • Existing sponsors subject to an interim limit on the number of students they can sponsor unless they hold Highly Trusted Sponsor status and meet the new accreditation criteria • Higher English language requirement for Tier 4 (general) applicants: a student may be refused a visa or entry to the UK if she cannot speak English without assistance <p>Since July 2011:</p>	<p>Disproportionate impact of student immigration system changes to international students, Scottish higher education providers, and Scottish economy¹⁰:</p> <ul style="list-style-type: none"> • intl. students vital for financial sustainability of universities, e.g. they contribute more than 16% of universities’ total teaching income and a further £321m to the Scottish economy in other expenditure • university sector contributes

⁷ IPPR (Oct 2011), „Guest workers: Settlement, Temporary economic migration and a critique of the Government’s plans“, http://www.ippr.org/images/media/files/publication/2011/10/guest-workers_Oct2011_8109.pdf.

⁸ Scottish Government response to Settlement consultation (Oct 2011), <http://www.scotland.gov.uk/Resource/Doc/49296/0123420.pdf>.

⁹ Migrants’ Rights Scotland response to Settlement consultation (Sept 2011), http://migrantsrightsscotland.org.uk/wp-content/uploads/2011/05/Settlement-Consultation-Response_Migrants-Rights-Scotland_2011.pdf.

¹⁰ House of Commons Scottish Affairs Committee Report on Inquiry into The Student Immigration System in Scotland (July 2011), <http://www.publications.parliament.uk/pa/cm201012/cmselect/cm Scotaf/912/912.pdf>.

	<ul style="list-style-type: none"> • Sponsors have to vouch for academic progression for students changing course • Students required to declare at visa application stage that they hold required maintenance funds to support themselves and fund their course (exceptions for students from ‘designated low-risk nationalities’ attending courses at Highly Trusted Sponsors) • New students’ right to work restricted; only students at HEI and publicly funded further education colleges retain their current work entitlements • Only new students studying at HEI on a course on NQF 7 / QCF 7 / SQCF 11 or above lasting 12 months or more are allowed to sponsor their dependants 	<p>6% of Scotland’s GVA, support 150,000 Scottish jobs</p> <ul style="list-style-type: none"> • potential to damage partnership working between universities and industry, Scotland’s attractiveness to multinational corporations • disproportionate impact on college students from poorer countries who need to earn next to their studies to contribute to sustain themselves
Upcoming changes	<p>From April 2012¹¹:</p> <ul style="list-style-type: none"> • Interim limits on sponsorship of students to be imposed on educational establishments not passing the new inspection requirement • A new maximum time of 5 years to be imposed for completion of a degree level course (6 years in specific circumstances) • Work placement for non-degree level courses to be limited to one-third of study time (rules for part-time and vacation working for students to remain unchanged) • Closure of Tier 1 (Post-study work) route; only some graduates with offer of a skilled job under Tier 2 will be able to stay and work in the UK • new ‘graduate entrepreneur scheme’ to be introduced to retain promising ‘entrepreneurs’ • Maintenance requirements for students and workers prior to obtaining a visa will increase in line with inflation 	<ul style="list-style-type: none"> • Closure of post-study work route impedes retainment of skilled graduates in Scotland and puts trade/export links at risk • Increased maintenance requirements disadvantage students from poorer countries

¹¹ Home Office (Feb 2012), “Changes affecting study, post-study work and maintenance requirements for students and workers – Statement of Intent”, <http://www.homeoffice.gov.uk/publications/agencies-public-bodies/changes-study-visa-soi?view=Binary>.

• **Family migration**

Changed	Additional requirements¹² for spouses/ fiancées/ unmarried/civil partners of British citizens and non-EEA nationals with settled status in the UK who want to join their partner/extend their leave in the UK	Potential Impact on Scotland: Some key points
	Since Nov 2010: Introduction of pre-entry English language test with an ‘approved provider’ ¹³	<ul style="list-style-type: none"> • Potential to break up genuine families • Disproportionately affecting applicants from predominantly non-white, non-English speaking parts of the world¹⁴ • Unfairly disadvantages those with little or no access or availability of approved test centres, e.g. in rural areas in developing countries or in some parts of the world where no classes/test centres exist
Proposed changes	Family migration consultation¹⁵ (closed Oct 2011)	
	Key proposals include: <ul style="list-style-type: none"> • To introduce a new definition of what a ‘genuine and continuing relationship’ is: This will likely introduce new testing for couples, and could include a new ‘attachment requirement’, requiring couples to show that their combined attachment to the UK is greater than to any other country, before being granted a visa or leave to remain based on their relationship • To extend the time before spouses and partners and PBS dependents can apply for settlement from 2 to 5 years, effectively postponing their access to non-contributory benefits • new tougher national minimum income threshold for sponsors of spouses/partners* 	<ul style="list-style-type: none"> • Serious impact on British citizen’s and settled non-EEA nationals human right to family life by keeping families apart or forcing them to live outside the UK • Raised income threshold disadvantages genuine couples who are young or disabled who are often on the lower end of income; differential impact on main nationalities of family migration applications

¹² Applicants have to show, inter alia, that they can financially support and house themselves without assistance from the welfare state, and that their relationship is ongoing.

¹³ Exempt from language testing: nationals from majority-English speaking countries, those with specified academic qualifications deemed by NARIC to meet the standard of a Bachelor’s degree in the UK, those aged 65 and over, those with „physical and mental conditions that the Secretary of State thinks would prevent them meeting the requirement”, and those cases in which the Secretary of States thinks „there are exceptional and compassionate circumstances which would prevent an applicant meeting the requirement.”

¹⁴ See e.g. <http://www.liberty-human-rights.org.uk/human-rights/asylum/pre-entry-language-req-matrix-legal-advice-sept-2010.pdf>.

¹⁵ UKBA, “Family migration – a consultation”, <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/consultations/family-migration/consultation.pdf?view=Binary>.

	<ul style="list-style-type: none"> • raise language requirement to B1 level for spouses and adult dependents under the PBS at the point of settlement application • new minimum income threshold for sponsors of dependent children; Indefinite leave to enter for adult dependents and those aged 65 or over may be replaced by a new 5 year probationary period after which dependents would be required to meet a B1 language threshold in order to apply for settlement • to review family reunification rights of refugees • to ‘open debate’ on Art. 8, in particular how to manage ‘the balance between the individual’s right to respect for private and family life and the wider public interest in protecting the public and controlling immigration’ <p>*Migration Advisory Committee (MAC) recommendations¹⁶:</p> <ul style="list-style-type: none"> • Amongst various methods to calculate annual income threshold for sponsor of spouse/partner, preferred options are using the ‘benefits approach’ based on family of 2 adults with no dependents or using the ‘net fiscal approach’ • On this basis, threshold range between £18,6000 pa (based on benefits approach) and £25,700 pa (using net fiscal approach) <p><i>Government report on family migration consultation and MAC report expected in the next couple of weeks, first changes expected to come into effect in April 2012</i></p>	<ul style="list-style-type: none"> • National minimum income threshold unfairly benefits those living in London and the South East due to higher income levels¹⁷ • Probationary period of 5 years negatively affects integration and full participation of migrants in communities (‘integration from day one’) • Opens up key challenges to sense of belonging or being part of the nation, with potential impact to increase isolation and reduce community life and social cohesion. • Impact of applying income threshold at certain level on family migration applicants : At lower bound (£18,600), 45 per cent of applicants would not meet this level of income threshold, while 64 per cent would not be able to meet upper bound (£25,700)¹⁸
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¹⁶ Migration Advisory Committee report, “Review of the minimum income requirement for sponsorship under the family migration route” (Nov 2011), <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/aboutus/workingwithus/mac/family-migration-route/family-migration-route.pdf?view=Binary>.

¹⁷ Scottish Government response to Settlement consultation (Oct 2011), <http://www.scotland.gov.uk/Resource/Doc/49296/0123420.pdf>

¹⁸ Migration Advisory Committee report, “Review of the minimum income requirement for sponsorship under the family migration route” (Nov 2011), <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/aboutus/workingwithus/mac/family-migration-route/family-migration-route.pdf?view=Binary>.

• **Other relevant changes**

Changed	Immigration/Asylum Appeals Fees	Potential impact
	<p>Since Oct 2011:</p> <ul style="list-style-type: none"> • Introduction of fees for immigration/asylum appeals¹⁹: new fee applies to appeals before the First Tier Tribunal arising from cases in which leave to enter/remain, or variation of leave is refused; fees payable for each dependent including children • Certain exceptions apply, e.g. no fee in cases relating to deportation, revocation of leave, deprivation of citizenship, proceedings before the Upper Tribunal; as well as exemptions, e.g. for asylum applicants in receipt of section 4 or 98 support 	<ul style="list-style-type: none"> • Impeding migrants’ access to justice, especially where their appeals concern matters of life and death and other fundamental rights • Penalisation of asylum seekers and migrants while cost of appeals system also a product of poor quality of decision making by the UKBA²⁰
	Rollout of further enforcement and control mechanisms	
	<p>Proposals regarding Biometric Registration laid before Parliament on 6 Dec 2011,²¹ if agreed these changes will come into effect on 29 Feb 2012:</p> <ul style="list-style-type: none"> • Biometric Residence Permits issued to more categories of foreign nationals, including refugees and those granted permission to settle in the UK; all in-country categories of non-EEA nationals with permission to remain in the UK for more than 6 months • New online checking service for employers to verify details contained on a non-EEA national’s Biometric Residence Permit (individual’s identity and right to work) in order to prevent illegal work 	<ul style="list-style-type: none"> • Issues around data protection and costs involved
	Refusal of entry to persons subject to immigration control based on outstanding NHS charges²²	
	<p>Phased in from Nov 2011:</p> <ul style="list-style-type: none"> • New power for immigration officers to refuse re-entry or extension of stay in the UK to a person if she/he has outstanding NHS charges of £1,000 or more • NHS expected to share information with the UKBA about ‘relevant non-payers’ so that they can be ‘identified for action when they come into contact with the immigration system’ 	<ul style="list-style-type: none"> • Negative effect on public health in the UK when using immigration controls as form of punishment for people with NHS debts
Proposed	Rise in Visa & Citizenship application fees²³	

¹⁹ For more information see: <http://www.justice.gov.uk/downloads/guidance/courts-and-tribunals/immigration-and-asylum/first/online-fees-guidance.pdf>.

²⁰ See e.g.

<http://www.icwi.org.uk/Resources/JCWI/PDF%20Documents/appeal%20fees%20charging%20consultationforwebsite.pdf>.

²¹ For more information see: <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/news/brp-commons.pdf>

²² For more information: <http://www.ind.homeoffice.gov.uk/sitecontent/newsarticles/2011/october/19health-tourists-nhs> and: <http://www.ind.homeoffice.gov.uk/sitecontent/documents/news/wms-ir-oct-2011.pdf>.

²³ Written ministerial statement “Charging for Immigration and Nationality Services 2012-13 (Feb 2012), <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/news/wms-fees-feb-2012.pdf>. Full details of the new charges can be found here: <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/aboutus/fees-spring-2012.pdf>

changes	<p>Proposals laid before Parliament on 9 Feb 2012; if agreed these changes will come into effect in April 2012</p> <ul style="list-style-type: none"> • <i>Increased fees for visa and naturalisation applications:</i> most increases are in the region of 2% above the level currently charged. E.g., the fee for a single visit visa will rise by £2 to £78, the settlement visa fee will rise by £16 to £826. • For the first time, fees will be introduced for settlement of <i>dependents of a person granted refugee status</i>; currently these are issued free of charge to eligible family members 	<ul style="list-style-type: none"> • Disadvantages applicants on lower incomes and families with children • In a number of categories, the fees charged are well over the cost per unit for the UKBA for processing the application (E.g., the cost of processing a settlement visa is £391, as compared to the £826 which will be charged from April. The unit cost for a family dependent visa is £458 as compared to the new charge to the applicant of £1,850
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- **EU migration**

Changed	Extension of labour market restrictions for A2 nationals²⁴	Potential impact
	<ul style="list-style-type: none"> • In November 2011, the Government announced it will be extending until the end of 2013 restrictions on access to the UK labour market for Bulgarian and Romanian nationals: These nationals seeking to work in the UK will continue to require permission from the UKBA before they can work in the UK 	<ul style="list-style-type: none"> • Potential to keep greater number of Bulgarian and Romanian nationals on the illegal labour market, rather than restrict their migration to the UK²⁵

²⁴ For more information see:

<http://www.ukba.homeoffice.gov.uk/sitecontent/newsarticles/2011/november/44-labour-restrictions>

²⁵ European Commission, “Report on the Functioning of the Transitional Arrangements on Free Movement of Workers from Bulgaria and Romania” (Nov 2011),

<http://ec.europa.eu/social/BlobServlet?docId=7204&langId=en> .