Options for Differentiating the UK's Immigration System

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Contents

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The Committee commissioned this research following the publication of its report into EU migration and EU citizens' Rights. That report provided strong evidence of the importance of EU migration to Scotland and the contribution that EU citizens have made to the Scottish economy and Scottish society. Moreover, EU migration since 2004 has contributed to reversing the decline in the Scottish population and in increasing the number of people of working age in Scotland.

The evidence that we collected in that report showed that the demographic risks for Scotland of a reduction in the number of EU migrants are more acute than for the UK as a whole. The Committee therefore concluded that there had to be a bespoke – or differentiated – solution for immigration policy in Scotland in the future.

This comprehensive report prepared by Dr Hepburn examines a number of different immigration models in Europe, Canada and Australia. It then draws on the evidence collected to propose a series of ways in which an immigration policy could be developed to respond to Scotland's demographic and employment needs.

I am extremely grateful to Dr Hepburn for the work that she has carried out for the Committee: this report provides a wealth of information in the various case studies that she presents and many lessons that can be drawn about how to attract migrants in the future and support their integration into Scottish society.

Joan McAlpine MSP

Convener
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Dr Eve Hepburn Biography

Dr Eve Hepburn is a policy consultant, academic and social entrepreneur. She is Managing Director of Policy Scribe Ltd, a policy research consultancy focussing on immigration, devolution and European policy. Prior to this, she spent 15 years working in academia. At the University of Edinburgh, she was Senior Lecturer in Politics and International Relations (2012-16), Founding Deputy Director of the Academy of Government, Director of the Master of Public Policy, and Director of the Executive Programme in Public Policy (2010-14), Senior Research Fellow in Politics (2007-10) and Director of the MSc Multi-level and Regional Politics (2008-9). Prior to this she was Research Fellow in Politics and International Relations at the University of Aberdeen (2006-7) and Founding Coordinator of the Scottish Policy Innovation Forum (SPIF) (2006-7). She received her PhD from the European University Institute (EUI) in Florence and MA from McGill University, Quebec.

Dr Hepburn is a leading expert on immigration and migrant integration, European integration and substate policy-making in the UK, Europe and North America. She has authored nine books and over 40 refereed articles in international social science journals on these subjects. She has won research funding from organisations such as the Economic and Social Research Council (ESRC), the Leverhulme Trust, the British Council, the Carnegie Trust, and the Social Sciences and Humanities Research Council for Canada. She has held visiting fellowships at the University of British Columbia, McGill University (Montreal), University of Cagliari (Sardinia), University of Prince Edward Island, Aland Islands Peace Institute (Finland), and the Humboldt University in Berlin (Germany).

Dr Hepburn has provided expert testimony and evidence to the Scottish Parliament's Culture, Tourism, Europe and External Relations on migration and the EU (2015) and Scotland's international strategy (2015), the Scottish Parliament's Devolution (Further Powers) Committee on the permanence of the Scottish Parliament (2015), the House of Commons Political and Constitutional Reform Committee on the draft Scotland Bill (2015), the Scottish Parliament Meeting of European Clerks from devolved legislatures on substate engagement in Europe (2014), the Canadian Privy Council on constitutional implications of the Scottish referendum result (2014), the Sardinian Government on re-drawing its special statute (2014), and the Aland Parliament on devolution lessons from Scotland (2010).

Dr Hepburn is currently Founding Director of Fearless Femme CIC, Co-Director of WomenBeing CIC, Associate at 3rd Horizons, Trustee of the Articulate Hub Cultural Trust, and Associate Editor of *Scottish Affairs*. She was previously Co-Convenor of the European Consortium for Political Research (ECPR) Standing Group on Federalism and Regionalism (2007-13) and Co-Editor of the journal *Regional & Federal Studies* (2007-12).

Executive Summary

This report has been commissioned by the Europe, Culture, Tourism and External Relations Committee of the Scottish Parliament to explore options for differentiating immigration policies for Scotland following the UK's departure from the EU. It follows on from proposals made by the Scottish Government for powers to be devolved over immigration to enable "greater flexibilities on immigration for different parts of the UK."[1]

The aim of this research is to scrutinise proposals for devolving immigration policy in the UK through a deeper exploration of the opportunities, challenges and consequences of pursuing different immigration models in a post-Brexit landscape. The report draws on a wealth of comparative evidence to determine 'what works' elsewhere, before engaging in a lesson-drawing exercise to consider 'what *might* work' for Scotland.

Scotland's Demographic Profile

The first part of this report begins with an exploration of Scotland's demographic and labour-market profile, to determine the extent to which Scotland's immigration needs differ from those of the rest of the UK. This analysis finds that while Scotland's population is growing, this is at a slower rate than the rest of the UK due to low levels of fertility, an ageing population and lower levels of net in-migration. Moreover, in contrast to the rest of the UK, Scotland's recent population growth is largely due to immigration. While natural causes are projected to account for 10% of Scotland's population growth over the next decade, immigration is estimated to account for 90% of this growth.[2]

Scotland's reliance on immigration for population growth has important economic implications. Migrants have become a significant part of the Scottish labour force, meeting demands for low-skilled labour (with particular concentrations in hospitality and catering, agriculture and food processing) as well as addressing sector-specific shortages for highly skilled occupations. Any future decreases in immigration to Scotland would likely create skills shortages and difficulties in recruitment to specific sectors.

There is broad consent across Scottish political parties, businesses, trades unions, employers associations, universities, charities and NGOs that immigrants make an important contribution to Scotland's society and economy, and that future immigration flows should be preserved, if not moderately increased in some sectors.

However, as immigration is reserved to the UK government under the Scotland Act, Scotland currently has no influence over UK decision-making on migration flows. The current Points Based System (PBS) acknowledges the occupational needs of Scotland through a Scottish-only Shortage Occupation List (SOL) for tier 2 migrants. However, while useful, the Scottish SOL has been viewed by the Scottish Government as insufficient in its current form to fully accommodate Scotland's distinct labour-market needs.

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[1] Scottish Government (2016) *Scotland's Place in Europe*, Edinburgh, p36.
[2] In contrast, natural causes are projected to account for 51% of UK population growth in the next decade, compared to 49% of growth due to immigration. National Records of Scotland (2015) *Population Projections Scotland* (2014-based).

International Best Practice

The report draws on comparative evidence to understand how differentiated immigration models work elsewhere. It draws on the experience of other advanced liberal democracies that have accommodated substate needs within their immigration frameworks to gain policy insights for Scotland. But rather than focusing solely on how other advanced multi-level states have sought to introduce differentiation within their systems, this research focuses on the experience of sub-state governments within these larger states, with the main question being: how do differentiated models work for them?

The research develops four country case studies of immigration systems in Australia, Canada, Spain and Switzerland, before moving the focus of analysis to the substate level. Seven further case studies are developed to explore how substate territories have pursued differentiated immigration policies, including the State of South Australia (Australia); the Provinces of Quebec and Prince Edward Island (PEI) (Canada); the Canton of Vaud (Switzerland); the Autonomous Communities of Catalonia and the Basque Country (Spain); with an additional case study on the Åland Islands federacy in Finland.

The case studies reveal that there is no singular model for differentiation, but rather, many. Statewide immigration systems may undergo different *degrees* of differentiation in order to meet the needs of substate territories. These options include:

(1) Soft Levers: Devolved Activities

utilising devolved competences to influence immigration flows and retention (i.e. migrant integration policies and international outreach activities);

(2) Mid-Range Levers: Influence & Coordination

increasing influence over, and administration of, aspects of statewide immigration policy-making (i.e. substate representation in central-state bodies, creating bespoke sectoral agreements, administering work visas).

(3) Hard Levers: Sharing and Devolving Competences

creating concurrent or devolved structures of decision-making on immigration (i.e. statewide regional visa schemes, bilateral agreements for regional migration, devolving exclusive control over selection)

Multi-level states tend to pursue a combination of soft, mid-range and (sometimes) hard levers to acknowledge the local and regionalised nature of immigration flows and needs in different parts of the country. In the cases analysed, the sharing of administrative competences and the development of regional dispersal mechanisms in statewide systems, had the benefits of increasing efficiencies in the system by reducing administrative overload at the centre; granting substate territories more influence to meet their labour-market needs; and creating shared benefits (whereby regional economic growth resulting from targeted regional migration strategies underpins national economic growth).

Options and Lessons for Scotland

The second part of this report explores the possibilities of policy adaptation, to determine whether and how international approaches drawn from the case studies might be adapted to the Scottish/UK context. This analysis reveals that there are at least **20 ways** in which Scotland could be enabled to differentiate its immigration policies in order to meet its demographic and labour needs:

1. Developing Scottish Migrant Integration & Reception policies
    a. Codifying the services and rights of migrants in Scotland
    b. One Scotland, Many Cultures campaign

2. International Outreach Activities in Immigration
    a. Creation of multi-media resources to advertise Scotland abroad
    b. Adding an advisory immigration remit to current Scottish offices abroad
    c. Expanding the number of Scottish offices abroad
    d. Promote immigration to Scotland during trade talks

3. Increasing Scottish influence in UK decision-making
    a. Scottish representation on the Migrant Advisory Committee
    b. Revising and expanding the Scottish Shortage Occupation List
    c. Creation of JMC sub-committee on Immigration
    d. Dissemination of Population Strategy for Scotland

4. Scottish Sectoral Agreements
    a. Creating a new postgraduate work visa for Scotland
    b. Temporary work permits for seasonal migrants in Scotland
    c. Creating 'European Talent: Working in Scotland' schemes

5. Devolving administrative aspects of immigration
    a. Creation of a Scottish Work Permit processing office(s)

6. Scottish Visa Sponsorship Schemes
    a. Create a statewide visa framework that all regions are eligible for
    b. Create a single regional visa framework for Scotland only
    c. Create multiple bilateral programmes for each region
    d. Create a single bilateral programme for Scotland only

7. Devolving Control over Selection to Scotland
    a. Creating a Scottish PBS alongside the UK PBS
    b. Enabling Scotland to create a new immigration system

For each differentiated policy option, this report considers the practicalities of policy implementation in Scotland/the UK. Specifically, it examines: what powers would (or would not) need to be devolved; what institutional structures and capacity would need to be created; how each policy option would be financed; how coordination would be ensured through intergovernmental mechanisms; what the main political and socioeconomic policy consequences of each option might be; and the EU dimension of each option.

The report concludes by reflecting on which conditions would need to be met to ensure the effective implementation of any of these policies options. The international case studies

suggest that the most important conditions are of an intergovernmental (political) nature, and include a shared commitment to achieving policy success, and clarity with regard to the roles, responsibilities, structures and financing of the policy options.

Introduction

1. Immigration was widely considered to have been a driving issue in the UK referendum on EU membership on 23 June 2016. In the UK Government's subsequent White Paper on Brexit (2017), concerns were raised that:

> "in the last decade or so, we have seen record levels of long term net migration in the UK, and that sheer volume has given rise to public concern about pressure on public services […] as well as placing downward pressure on wages for people on the lowest incomes. The public must have confidence in our ability to control migration."[3]

2. A desire to assure voters that migration will be managed in a way that meets the needs, interests and values of communities in Britain therefore appears to be central to the UK Government's objectives for a post-Brexit migration policy.

3. At the same time, several organisations representing communities across Britain have put forward proposals that would alter the UK's current points-based system (PBS) to distribute the concentration of immigrants more evenly across the country. The Scottish Government, All-Party Parliamentary Group on Social Integration, and City of London Corporation have argued that the economic and demographic needs of regions ought to be considered when devising a new migration policy.[4]

4. To date, these positions – of seeking to prioritise the management of migration, and the creation of a degree of differentiation within the system – have sometimes been presented as mutually incompatible. This research will seek to enlarge the evidence base from which to draw these conclusions, by exploring the challenges and opportunities of differentiating the UK's immigration system for Scotland and the UK.

5. The report is based on the premise that there is no singular model for differentiation, but rather, many. If the political will existed, it would be possible for the UK's immigration system to undergo different *degrees* of differentiation (as it has done in the past) in order to meet the needs of different sectors and territories across the UK. This following discussion explores a range of options for differentiating the UK's system of immigration so that the needs of substate regions and nations – including Scotland – would be met. In doing so, this research draws on a range of evidence of immigration systems around the world. In particular, it explores:

    - the experience of other substate governments in influencing immigration flows and residence requirements in their territory (i.e. Catalonia, the Basque

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[3] UK Government (2017) *The United Kingdom's exit from and partnership with the EU*, London. Available at: https://www.gov.uk/government/publications/the-united-kingdoms-exit-from-and-new-partnership-with-the-european-union-white-paper
[4] Scottish Government (2016) *Scotland's Place in Europe*, Edinburgh; APPG (2016) *Interim Report into Integration of Migrants*, London; PwC (2016) *Regional Visas A unique immigration solution?* City of London Corporation.

Country, South Australia, Quebec, Prince Edward Island, Vaud and Åland); and

- at the macro level, the driving factors behind why multi-level states (such as Canada, Australia and Switzerland) have implemented differentiated immigration systems, and the efficiencies that this has created.

6. Taken together, these cases offer a spectrum of different models that offer valuable lessons for Scotland/the UK – ranging from:

- options that require little or no change to current constitutional structures (i.e. the use of soft levers such as paradiplomacy to attract more migrants to the region, and the development of a robust substate migrant integration strategy);

- 'mid-way' solutions that may require modest changes to the devolution settlement (enabling the creation of bespoke substate sectoral agreements, increasing substate influence over central decision-making on migration flows, devolving administrative competences only);

- more comprehensive solutions that require the further devolution of powers (the creation of concurrent/devolved powers over immigration, which would enable greater substate control over selection).

7. Following an analysis of comparative lessons from abroad, the research adopts a 'policy transfer' lens to determine whether such lessons could be adapted to the Scottish/UK context. This section identifies the mechanisms, structures and practices that would have to be put in place to implement these different models; the challenges to differentiating immigration in the UK; and finally, the consequences of differentiating immigration, for both Scotland and the rest of the UK.

Research Design and Methods

A Case Study Approach

8. This research employs a qualitative, case-study approach to the question of differentiated immigration systems in multi-level states. The aim is to compare and contrast the ways in which Canada, Australia, Spain, Switzerland and Finland (Åland) have pursued differentiated immigration solutions, in order to identify mechanisms and structures that may be adapted to the Scottish-UK context.

9. The case rationale has been based on a 'most similar' systems design – whereby Australia, Spain, Canada, Finland and Switzerland have decentralised powers to one or more constitute substate units on matters relating to migration (i.e. selection, citizenship, integration and reception) – but where there are differences in immigration outcomes. There is also variation amongst the cases – especially with regard to the formal powers of the substate units and the constitutional structure of the state - which shapes differences in system design, priorities and outcomes.

10. In order to provide an in-depth analysis of immigration models, and to understand the perspective of substate territories, this study will focus on the strategies of one or more substate cases within each state. These substate cases include the provinces of Quebec and Prince Edward Island (PEI) in Canada, the autonomous communities of Catalonia and the Basque Country in Spain, the state of South Australia in Australia, the province of Åland in Finland, and the canton of Vaud in Switzerland.

11. The substate cases have been chosen for their 'family resemblance' to Scotland with regard to specific political, demographic and socioeconomic dimensions. To exemplify, there is a strong sense of nationhood and national community in Quebec, Catalonia and the Basque Country; there are high levels of outward migration and slower than average demographic growth in South Australia and PEI; there are concerns about an ageing population in Åland and PEI; and there are pro-EU political/public attitudes in Vaud. It is anticipated that these similarities will produce useful cross-national models from which Scotland can learn.

12. The main research questions shaping this case study analysis are: how do these differentiated systems operate? How are these systems financed and enforced (with particular regard to retention)? How are intergovernmental relations conducted on immigration between the state and substate levels? And what have been the main political and economic consequences of creating differentiated immigration solutions for both the substate and state levels? The comparative case analysis will form the basis for the subsequent policy transfer section.

Policy Learning Framework

13. Policy learning is generally acknowledged to be an important source of policy change and innovation. While scholars have traditionally observed learning by concentrating on 'after the fact' explanations of policy transfer, it is also possible to make modest calculations about whether policies in one country could be improved by drawing lessons from another. This project will engage in 'lesson-drawing' in order to explore options for creating a differentiated immigration system in Scotland/UK. It seeks to use knowledge about immigration policy-making in other multi-level states to explore potential models for Scotland-UK. Following Rose's model[5] for lesson-drawing, this analysis will involve the following steps:

    (a) 'Diagnosing the problem' in order to identify *what* to look for, i.e. seeking information about immigration policy processes and strategies.

    (b) Investigating immigration policy processes, through an analysis of primary and secondary sources and interviews with key officials. The aim is to understand the key variables explaining the functioning of immigration systems elsewhere.

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[5] Rose, R. (1993) *Lesson Drawing in Public Policy: A Guide to Learning Across Time and Space*, Chatham.

(c) Designing lessons for translation to Scotland/the UK. This involves developing practical models that spell out the structures and relationships between the various parts in structures of immigration policy-making.

(d) Prospective evaluation of what would happen if Scotland/the UK were to adopt differentiated immigration policy structures from elsewhere.

14. The aim of the policy learning framework is therefore to construct lessons for Scotland/the UK based on the analysis of immigration systems adopted by other multi-level states, by looking at the potential for cross-national policy learning.

Methods and Interviews

15. The principal research methods for this project include:

(a) The collection and analysis of policy reports and analysis relating to the structures, mechanisms and processes of differentiated immigration policy-making at the substate and state-level in Canada, Spain, Finland, Australia and Switzerland. This material has been obtained from online government libraries, parliamentary databases, research institutes and think tank websites.

(b) The analysis of recent academic literature on the subject of differentiated immigration systems, with particular reference to the case studies.

(c) Semi-structured research interviews (conducted by phone, Skype, in face-to-face meetings or in written form) with key policy-makers in each of the substate cases. Interviews are based on a set of pre-prepared questions asked of each case.

(d) Specifically, interviewees include:

    a. Secretary of Equality, Migration and Citizenship, Government of Catalonia (20/3/2017)
    b. Integration Coordinator and Senior Adviser on Citizenship, Government of the Åland Islands (27/3/2017)
    c. Policy Officer, Department of State Development, Government of South Australia (29/3/2017)
    d. Policy Officer, Population Service, Canton of Vaud (28/3/2017)
    e. Policy Officer, Ministry of Employment and Social Policy, Government of the Basque Country (27/3/2017)

The research analysis also draws on interviews undertaken by the author during previous ESRC-funded fieldwork to Prince Edward Island and Åland, which involved exploring immigration policies in island regions, in 2010:

    f. Former Speaker of the House of Assembly, Government of Prince Edward Island (18/5/2010)
    g. Former Director of the Charlottetown Chamber of Commerce (PEI) (25/5/2010)
    h. Director of Statistics and Research Åland (17/6/2010)

PART 1: THE CONTEXT

Scotland's Immigration Needs

16.   In order to determine what kind of immigration system is best suited to Scotland/the UK, it is first necessary to examine Scotland's demographic and labour-market needs. This section provides an overview of Scotland's demographic profile, labour market needs, and attitudes towards immigration. It then examines how these needs are currently taken into account in the UK's points-based system (PBS).

Demographic Profile

17.   Scotland's demographic profile has been the subject of extensive attention since the turn of the 21st century, when concerns were expressed about Scotland's population decline. In 2004, the Labour-Liberal Democrat Scottish Executive announced that "the single biggest challenge facing Scotland as we move further into the 21st century is our falling population".[6] Scotland has historically experienced high levels of out-migration, which has been compounded by a steady decline in birth rates and an increasingly ageing population.

18.   In 2003, the General Register Office for Scotland predicted a fall in the total population of Scotland to 4.84 million by the year 2027.[7] This was due to a combination of below-replacement fertility rates and emigration. Concerns about Scotland's population dipping below the 5 million mark motivated the Scottish Executive in the early years of devolution to launch a 'Fresh Talent initiative' to encourage in-migration to Scotland to help grow Scotland's population.[8]

19.   In mid-2015, Scotland's population was estimated to be 5.37 million – the highest level recorded. Scotland is currently on target to meet its EU15 population growth targets.[9] Scotland's recent population growth has been largely attributed to immigration.[10] Although Scotland's levels of net-migration

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[6] Scottish Executive (2004) *New Scots, attracting Fresh Talents to meet the Challenge of Growth*, Edinburgh.

[7] Tindal, S, McCollum D and Bell, D (2014) Immigration policy and constitutional change: the perspectives of Scottish employers and industry representatives, Centre for Population Change, Working paper 44.

[8] Scottish Executive (2004) *New Scots, attracting Fresh Talents to meet the Challenge of Growth*, Edinburgh.

[9] Written evidence submitted by the National Records of Scotland to the Scottish Affairs Committee, 2016. The Scottish Government currently has a goal to grow Scotland's population to match average European growth (EU-15) over the period 2007 to 2017, where migration is viewed as an integral part of meeting this objective.

[10] Population Matters submission to Scottish Affairs Committee, 2016.

are lower than the UK average[11], immigration has become important for growing Scotland's population.

20. National Records of Scotland (NRS) has shown how the population of Scotland increased in 2014-15 because in-migration exceeded out-migration by approximately 28,000 people.[12] Moreover, if current trends continue, NRS has predicted that 90% of the projected increase in Scotland's population between 2014-2039 will be attributed to inward net migration (57% from international migration and 32% from intra-UK migration), while only 10% of the increase will be due to natural causes (births minus deaths). This contrasts with UK trends, whereby 51% of the projected population increase is due to natural change and 49% due to migration.[13] The overall population increases predicted are 7% for Scotland and 15% for the UK.

21. In 2015, the ONS estimated that 7.4% (393,000) of the resident population of Scotland were born outside of the UK, which compares to 13.5% foreign-born population in the UK as a whole.[14] The five most common countries of birth were Poland (76,000), India (26,000), Republic of Ireland (20,000), USA (18,000) and Pakistan (18,000). Aside from Poland and Ireland, the largest groups of EU nationals by country in Scotland come from Spain (9000) and Italy (7000).[15]

22. In terms of population change, Scotland's experience has therefore differed from other parts of the UK.[16] Not only does Scotland rely more heavily on net in-migration (and in particular, EU/international migration) to grow its population, Scotland's fertility rates and age structure also differ from the UK as a whole. The average number of children born to women in Scotland is lower than in the rest of the UK, while Scotland's population is ageing more quickly than the rest of the UK.[17]

23. Scotland's population growth has thus been overwhelmingly driven by an increase in net in-migration (with 50% of net population growth being accounted for by EU-born individuals[18]). If Scotland is unable to attract comparable levels of future immigration, then it will likely be difficult to sustain population growth. For instance, the NRS estimates that if Scotland were to have zero net migration, the population would decrease by 0.13 million between 2014 and 2039. This compares to an estimated increase of 3.1 million people in the UK

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[11] Scottish Affairs Committee (2016) *Demography of Scotland and the implications for Devolution,* London.

[12] Written evidence submitted by the National Records of Scotland to the Scottish Affairs Committee, 2016.

[13] Ibid.

[14] See http://www.migrationobservatory.ox.ac.uk/resources/briefings/migrants-in-the-uk-an-overview/ and https://www.nrscotland.gov.uk/statistics-and-data/statistics/statistics-by-theme/population/population-estimates/estimates-of-special-populations/population-by-country-of-birth-and-nationality

[15] Scottish Government (2016) *The impact of migrants and migration into Scotland,* Edinburgh, p15.

[16] Tindal, S, McCollum D and Bell, D (2014) op cit, p1.

[17] Written evidence submitted by the National Records of Scotland to the Scottish Affairs Committee, 2016.

[18] EU nationals living in Scotland, SPICe report based on ONS data.

with zero net migration in the same period.[19] These figures show how reliant Scotland is on migration for population growth.

24.   These potential challenges are made more acute by the possibility of declining numbers of EU nationals moving to Scotland following the UK's exit from the European Union. NRS data reveals that Scotland is disproportionately reliant on EU migration for population growth. In the (unlikely) event of zero future EU migration, the working age population of Scotland is estimated to fall by 3% by 2024.[20]

25.   Any significant decrease in immigration would have an impact on Scotland's working population, which already has a disproportionally high dependency ratio (of dependents to worker), which has resulted from Scotland's low fertility rates, lower-than-average levels of net in-migration, and increasingly aging population. Scotland's dependency ratio is expected to increase from 58 dependents per 100 working population in 2014, to 67 dependents per 100 workers in 2039. This ratio is much higher than the UK's dependency ratio as a whole, which is predicted to modestly increase from 31 to 100 working population in 2014 to 27 per 100 in 2039.[21]

Scotland's Labour-Market Needs

26.   The Scottish Government has explicitly linked population growth to the growth of the economy.[22] It argues that businesses in Scotland should be able to attract and retain migrants in order to operate effectively, and that migration is important in filling gaps in key sectors of the Scottish economy. In particular, international students and highly skilled migrants are seen as especially beneficial to economic growth.[23]

27.   An estimated 288,000 non-UK born people of working age lived in Scotland during 2012. Of these numbers, 86% were employees and 14% were self-employed. Worker Registration Scheme data from 2004-7 revealed concentrations of migrant workers in particular sectors in Scotland: hospitality and catering (25%); agriculture (19%); administration, business and management Services (19%); food, fish and meat processing (12%); manufacturing (7%); construction and land services (7%); health and medical services (4%).[24]

28.   Focussing specifically on EU nationals, recent estimates put the number of EU nationals currently in employment in Scotland at 115,000.[25] This constitutes 4% of the total Scottish workforce. EU nationals are concentrated in the following industries in Scotland (in descending order): distribution, hotels and restaurants

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[19] Written evidence submitted by the National Records of Scotland to the Scottish Affairs Committee, 2016.
[20] Cited in Scottish Parliament (2016) *EU Migration and EU Citizens* Rights, Edinburgh, p24.
[21] Population Matters submission to Scottish Affairs Committee, 2016.
[22] Scottish Government (2013) *Scotland's economy: they case for independence*, Edinburgh.
[23] Ibid.
[24] Migrant Rights Network:
http://www.migrantsrights.org.uk/files/MRN_Migration_and_Employment_Scotland.pdf
[25] Scottish Parliament (2016) *EU Migration and EU Citizens* Rights, Edinburgh, p19.

(33,000); public administration, education and health (19,000); banking and finance (18,000); manufacturing (16,000) and transport and communication (8,000).[26]

29. Although migrants tend to be concentrated in low-skilled or semi-skilled jobs, research has found that the majority of migrants in Scotland are well-educated and economically active. For instance, analysis of 2011 Census data by Scottish Government analysts indicates that "almost half (48 per cent) of people who migrated to Scotland from EEA countries in the ten years prior to the Census have degree-level qualifications, as do 60 per cent of recent migrants from non-EEA countries."[27] However, the qualifications of migrants are often not recognised by employers, which has created difficulties in retaining migrants in lower-skilled jobs.

30. With regard to whether migrant workers compete with UK-born workers, a Scottish Government report found that "Migration does not appear to have had statistically significant impacts on the average wages and employment opportunities of the UK-born population in periods when the economy is strong, although there is some evidence of labour market displacement when the economy is in recession. The available evidence indicates that any adverse wage effects of migration are likely to be greatest for resident workers who are themselves migrants."

31. Research on the attitudes of Scottish employers and industry representatives towards migration reveals that they would like to see a more "positive case for greater immigration to Scotland."[28] It was found that employers view "EU migration as of great benefit to their companies, but the restrictions on non-EU migration have caused concern for many of them, and in some instances have been blamed for restricting growth. Employers claim that UK immigration policy is disproportionately focused on the needs and interests of London and South-East England." [29] This corresponds with the view of the Scottish government presented above, as well as that of Universities Scotland, which perceives the UK's student immigration policy as being "to the detriment of Scotland's universities and to Scotland's economy."[30]

32. A report by the CTEER Committee of the Scottish Parliament reflected on the impact of Brexit on future EU nationals working in Scotland: "The zero net migration projections starkly demonstrate the positive net impact that EU migration has made to Scotland's population profile, both in terms of boosting the working age population and the birth rate."[31] The report summarised evidence submitted by employer and industry representatives, where there were concerns about the negative impact that UK withdrawal from the EU – and

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[26] ONS data cited in Scottish Parliament (2016) *EU Migration and EU Citizens* Rights, Edinburgh, p19.
[27] Scottish Government (2016) *The impact of migrants and migration into Scotland,* Edinburgh, p23, available at: http://www.gov.scot/Resource/0050/00508814.pdf
[28] Tindal, S, McCollum D and Bell, D (2014) op cit, p12.
[29] Ibid, p1.
[30] http://www.universities-scotland.ac.uk/campaigns/post-study-work-for-international-students/
[31] Ibid, p25.

restrictions on freedom of movement - would have on Scottish employers' ability to recruit EU workers to fill shortages.[32]

Public, Political and Civic Attitudes to Migration

Scottish Public Opinion on Migration

33. Research by the Oxford Migration Observatory in 2014 revealed that Scots are less likely to see immigration as a problem than people in England, though not radically so. A recent survey by the Observatory found that the majority of Scots support reduced immigration (58%), though this is lower than in England and Wales (75%). The Observatory found that more Scots thought immigration was good for Scotland (41%) than bad for Scotland (31%), while 20% of Scots would support the number of immigrants being increased by "a lot", which compared with only 2% in favour of increased flows in the south of England. The Observatory put the more positive Scottish attitudes down to Scotland's more 'tolerant political culture'.[33]

34. A poll in 2015, which was conducted by YouGov/BBC revealed that the percentage of Scots wishing to reduce migration had fallen to 49%, with 25% of Scots wishing to maintain current levels (from a sample size of 1100 people).[34]

35. While these studies show that a modest majority of Scots wish to decrease levels of immigration, other surveys have revealed that Scots welcome the diversity that immigration brings. The Scottish Social Attitudes Survey asks questions pertaining to discrimination and positive action (with regard to religion and ethnicity in particular). Over the years, there has been an increasing number of respondents who are happy living in an area 'with lots of different kinds of people' (47% agreed in 2015; which is an increase from 37% in 2010 and 34% in 2006).[35]

36. Moreover, a recent report from the National Centre for Social Research (NatCen) in March 2017 revealed that there is support for continuing the free movement of EU nationals in Scotland. Voters in Scotland are more likely than voters in the whole of the UK to accept that people from the EU should be allowed to come to the UK to live and work in return for British companies being able to trade freely in the EU. As many as 61% of Scots say that Britain should 'definitely' or 'probably' allow free movement of people in return for free trade with the EU, compared with 54% across the UK that say this.[36]

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[32] Ibid, p28.
[33] Migration Observatory (2014) *Immigration and Independence: Public Opinion on Immigration in Scotland in the Context of the Referendum Debate.* Oxford: Migration Observatory.
[34] Scottish Government (2016) *The impact of migrants and migration into Scotland,* Edinburgh, p73.
[35] Scottish Social Attitudes Survey 2015: Attitudes to discrimination and positive action (Scottish Government, 2016).
[36] http://natcen.ac.uk/news-media/press-releases/2017/march/i%E2%80%99ll-have-what-she%E2%80%99s-having-scots-share-pm%E2%80%99s-vision-for-brexit-deal/

Scottish Party Positions on Migration

37. Scottish political parties have promoted a positive position on the contributions of immigrants and ethnic minorities to Scottish society.[37] Most Scottish parties have subscribed to a pluralistic vision of Scotland that celebrates cultural diversity as an asset to be enjoyed rather than a problem to be managed, and many have also sought to modestly increase levels of immigration to counteract demographic concerns.[38] This approach was adopted in the early years of devolution, when there were concerns of population decline and a need to fill key gaps in the labour market. In response, Scottish parties have carefully crafted an "elite discourse that portrays immigrants as key players in an open, inclusive and multicultural Scotland."[39] This discourse contrasts with that of UK political parties, which have moved away from a multicultural discourse to focus on 'community cohesion', and whereby mainstream UK parties have sought to achieve overall reductions in net in-migration.[40]

Scottish Civic and Business Attitudes to Migration

38. The aims of moderately increasing immigration to meet labour market needs and of welcoming migrants in an open and multicultural Scotland have received broad support amongst Scottish trades unions, universities, businesses and civil society in general. In particular, Scottish Government plans to increase immigration have been welcomed by the business community in Scotland, which is keen to fill key gaps in the labour market.[41] A more liberal immigration policy is also supported by Scottish universities, which seek to attract the highest calibre international students, researchers and staff.[42] And civil society organisations in Scotland has supported efforts to protect the human rights of refugees and asylum seekers and provide supportive structures for migrant integration.[43]

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[37] Hepburn, E. (2015) 'Scotland's hidden policy competence: immigrant integration and policy-making in Scotland since devolution'. Paper presented at the PSA annual conference, University of Sheffield; see also Belanger, E., R. Nadeau, A. Henderson and E. Hepburn (2017—forthcoming) *The National Question: Parties and Voters in Quebec and Scotland*, McGill-Queen's University Press.

[38] Hepburn, E. (2015) 'New Scots and Migration in the Scottish Independence Referendum' *Scottish Affairs* 24(4).

[39] Hepburn, E. and M. Rosie (2014) 'Immigration, Nationalism and Political Parties in Scotland' in Hepburn, E. and R. Zapata-Barrero (eds) *The Politics of Immigration in Multilevel States: Governance and Political Parties*, Basingstoke: Palgrave Macmillan.

[40] See Lewis H. and C. Craig (2014) '"Multiculturalism is never talked about': community cohesion and local policy contradictions in England', *Policy & Politics* 42(1): 21-38; Hepburn, E. (2015) 'Scotland's hidden policy competence: immigrant integration and policy-making in Scotland since devolution'. PSA annual conference, University of Sheffield.

[41] Tindal, S, McCollum D and Bell, D (2014) Immigration policy and constitutional change: the perspectives of Scottish employers and industry representatives, Centre for Population Change, Working paper 44.

[42] Universities Scotland (2016) Scotland's place in Europe: Submission to the Scottish Affairs Committee from Universities Scotland.

[43] See 'Key Stakeholders' section, Migrant Rights Network report on Migration and Employment in Scotland: http://www.migrantsrights.org.uk/files/MRN_Migration_and_Employment_Scotland.pdf

The UK's Points-based System

39. In 2008, the UK government created a new Points Based System (PBS) for non-European migrants wishing to come to the UK to work, study and train, whereby applicants are allotted points for possessing characteristics that make them more employable, such as education, technical skills, and work experience. The PBS is based on 5 tiers, each of which has different conditions, entitlements and entry requirements. Tier 1 applies to business migrants; Tier 2 is for skilled migrants; Tier 3 is for unskilled migrants (which has not been used); Tier 4 is for students; and Tier 5 is for temporary workers. Application through any Tier (other than Tier 1) requires sponsorship from an employer or educational institution.

40. In 2010, the UK government introduced an annual cap on the number of non-EU migrants entering the UK through the PBS; with a limit on net migration of 100,000 per annum. These restrictions were introduced "in light of increasing public hostility towards migration … the UK government reaffirmed its intention to restrict immigration, arguing that migrants adversely affect social cohesion, create pressure on infrastructure, public services, jobs and wages."[44]

41. The UK government has sought to account for Scotland's particular needs for skilled labour through a Scotland-specific Shortage Occupation List (SOL) under Tier 2 of the PBS. This allows the Migration Advisory Committee (MAC) – which advises on the PBS – to recommend a different set of shortage occupations for Scotland.

42. However, according to the Migrant Rights Network, "the variations in the Scotland-specific shortage list have been limited to date." In 2010, the "additional shortage occupation list for Scotland was restricted to 'Consultant Radiologists' only. There is a discrepancy between the claims of Scottish employers and others who claim the Scottish labour market is distinct from the rest of the UK with more shortages and the limited range of occupations the MAC has to date included in its Scotland specific shortage list. One factor influencing this is that the MAC has found it difficult to get evidence about shortages in Scotland in the format it requires."[45]

43. The Scottish Government has also expressed concerns that the Scottish SOL has been restricted to only a few specialist occupations. For instance, Minister for International Development and Europe, Dr Alasdair Allan, has argued that there has been "a great deal of disappointment" amongst Scottish business stakeholders, who have "put forward very good cases to the Migration Advisory Committee as to why more jobs should be on the shortage occupation list in Scotland and that that evidence has not been used to put those vacancies on."[46]

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[44] Tindal, S, McCollum D and Bell, D (2014), op cit, p2 (see footnote 38 for full reference).
[45] Migrant Rights Network
http://www.migrantsrights.org.uk/files/MRN_Migration_and_Employment_Scotland.pdf
[46] Oral evidence to Scottish Affairs Committee on Demography, 2016.

44. Other than the Scottish-only SOL, there are no mechanisms in the current PBS framework for taking Scotland's immigration needs into account. This has led to the Scottish Government to request that the UK government consider differentiating the immigration system to accommodate Scotland's labour-market needs.

The Scottish Government's position: *Scotland's Place in Europe*

45. Currently, the Scottish Government plays no significant role in determining immigration flows to Scotland. In legal terms, immigration and asylum - which covers selection and admission – are reserved to the UK government under the Scotland Act (schedule 5). As such, decisions about the levels and composition of migration are managed by the Home Office with the advice of the MAC).

46. However, the Scottish government has taken a very different approach to immigration compared to the UK government. While the UK has adopted increasingly restrictive immigration policies in order to reduce net migration, the Scottish Government seeks to moderately increase levels of immigration to Scotland, as part of its aim of raising the demographic growth rate to the EU average.[47] This is part of the Scottish Government's perception that attracting and retaining migrants is a key driver of population and economic growth in Scotland.

47. The Scottish government has also expressed its support for the creation of a differentiated system of immigration for Scotland, which is seen to be more pressing in light of the UK's imminent departure from the European Union. Whereas the UK government has committed itself to leaving the single market – and thereby releasing the UK from the 'freedom of movement' rights of EU nationals – the Scottish government seeks to maintain both single market access and freedom of movement. As such, First Minister Nicola Sturgeon has recommended that powers over immigration should be among those devolved to the Scottish Parliament.[48]

48. Specifically, the Scottish government has committed itself to "protecting the rights of EU citizens to settle in Scotland and continue to contribute to the development of our economic prosperity and diverse communities with reciprocal arrangements for our citizens living, working and studying in other EU countries."[49] The Scottish government seeks a 'differentiated' immigration system for Scotland, which would maintain EU freedom of movement: "there is a strong and increasingly urgent case for greater flexibilities on immigration for different parts of the UK. It is increasingly clear that a one-size fits-all approach is not in the best interests of Scotland. For these reasons, Scotland needs to

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[47] Scottish Government (2013), *Scotland's Future. Your Guide to an Independent Scotland*, Edinburgh.
[48] Scottish Government (2016) *Scotland's Place in Europe*, Edinburgh, Forward by the First Minister.
[49] Scottish Government (2016) *Scotland's Place in Europe*, Edinburgh, p3.

explore a distinctive approach, whatever its future relationship with the single market turns out to be."[50]

49. What might a distinctive immigration approach for Scotland involve? The Scottish Government has suggested:

    a. the "re-introduction of a post study work route";

    b. "the possibility of a system of 'regional visas' for non-UK nationals";

    c. considering "successful examples of differentiated immigration systems [that] allow Provinces in Canada and Territories and States in Australia to identify and address their own specific population challenges"; and

    d. "different immigration arrangements in different parts of the UK, while ensuring free movement within the UK."[51]

50. Our next question is: how might these schemes work? And what are the practicalities and consequences of implementing differentiated systems? To put the Scottish government's proposals into context, the next section explores how other multi-level states have created new structures and policies that enable substate territories to influence aspects of immigration, before considering what the opportunities and challenges of implementing these systems in Scotland/UK might be.

Comparative Best Practice – Lessons from Abroad

51. A number of advanced liberal democracies have implemented differentiated immigration systems to meet the sectoral and demographic needs of different regions. This section will explore the operation of several immigration systems around the world, which will be structured on a case-by-case basis (see Table 1). A key aim of this research is to adopt a multi-level perspective on differentiating immigration, by exploring how immigration is governed at both the substate and state levels, and how intergovernmental relations (IGR) are conducted.

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[50] Ibid.
[51] Ibid, p36-37

Table 1: Substate Immigration Case Studies

Nation-State	Sub-state Case	Constitutional System	Regional Immigration Policies
Australia	South Australia	Federal	State-Specific and Regional Migration Schemes (SSRM)
Canada	Quebec	Federal	Canada-Quebec Accord (CQA) on Immigration
	Prince Edward Island	Federal	Provincial and Territorial Nominee Program (PTNP)
Finland	Åland Islands	Federacy	Åland Citizenship (Domicile Law|) & Integration Policy
Spain	Catalonia	Regionalised	Bilateral agreement on work permits & Catalan Citizenship and Integration Policy
	Basque Country	Regionalised	Basque Citizenship and Integration Policy
Switzerland	Vaud	Confederal	Cantonal citizenship laws & Integration Policy

52. As we can see from Table 1, the cases include a spectrum of immigration policy options, including models that focus on substate citizenship and residence (Vaud, Åland and the Basque Country), the administration of work permits (Catalonia) and the creation of regional visas (South Australia, PEI and Quebec). In each case, the same questions will be asked. Namely, how does this system operate? How is the system structured, financed and enforced? How are IGR conducted? And what are the main socioeconomic and political consequences of each system? Each case study will begin with an overview of the statewide arrangements for the immigration system before exploring substate policies and programmes.

Australia

53. When the federation of Australia was created in 1901, immigration powers were ceded from the colonies (now the subnational States) to the Commonwealth (federal) government. Since then, immigration policy has been the preserve of the federal government, which was deemed to be a "unifying migration and settlement force".[52] However, since the mid-1990s, it has also sought to take

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[52] Section 5.51 of the Australian Constitution grants the Commonwealth Government the powers to legislate on immigration and naturalisation. For more information on the role played by the colonies

subnational interests into account. Australia now operates a migration programme that has a regional dispersal mechanism, whereby States and Territories can attract skilled and business migrants through their participation in a regional migration visa scheme.

54. The growing regionalisation of Australia's immigration regime can be considered as part of a broader strategy to distribute the population of Australia more evenly across the territory. Like most large industrialised nation-states, people (native-born and newcomers) tend to settle in urban/metropolitan areas with ample job prospects. In Australia, this has meant that the cities of Sydney and Melbourne have attracted the greatest number of newcomers, leading to perceived pressures on service provision, infrastructure, housing and congestion/pollution.[53] But while some regions have experienced a high intake of immigrants, others have been suffering from demographic decline, labour-market shortages and under-utilised infrastructure, which have negatively affected their economic development.[54]

55. In response to growing demands from State governments to influence skilled migration flows, the federal government has developed a system that encourages migrants to settle in low-density and economically-lagging regions. In the 1990s, the federal government made population distribution a key feature of its population policy, with the goal of encouraging the settlement of immigrants away from Australia's major metropolitan areas.[55] In 1996, the Commonwealth, State and Territory Ministers for Immigration and Cultural Affairs explored ways to attract newcomers to areas that had low immigrant intakes. The result of these discussions was the creation of a suite of 'State-Specific and Regional Migration' (SSRM) visa categories, which have been modified over the years.

56. The SSRM schemes enable State and Territory governments that qualify as "regional, remote or low-population growth" to have greater influence over migration flows, and to set quotas and criteria for selecting migrants. The ability of regions to vary their criteria for selecting migrants complements the Australian Points Based Scheme (PBS), which was introduced in 1973 to encourage skilled migration, as immigrants receive a points bonus for settling in low-population areas.

57. SSRM mechanisms offer greater flexibility in terms of which migrants are selected and where they are encouraged to settle. Regional schemes tend to have lower thresholds to enable governments and employers from lagging regions to sponsor migrants who narrowly miss reaching the high-pass

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(now states) in settlement and assistance for immigrants, see J. Jupp (2002). *From white Australia to woomera: The story of Australian immigration*, Cambridge University Press.

[53] See Withers, G. and M. Powell (2003) *Immigration and the Regions: Taking Regional Australia Seriously. A Report on Options for enhancing Immigration's Contribution to Regional Australia,* Chifley Research Centre; Hugo, G. (1999) 'Regional Development Through Immigration? The Reality Behind the Rhetoric', Department of the Parliamentary Library, Commonwealth of Australia, Research Paper No. 9 1999–2000.

[54] Withers and Powell (2003), op cit (see footnote 49).

[55] Hugo, G. (1999) 'Regional Development Through Immigration? The Reality Behind the Rhetoric', Department of the Parliamentary Library, Commonwealth of Australia, Research Paper No. 9 1999–2000, p2.

threshold of the PBS. At the same time, SSRM applicants must meet certain basic requirements such as level of qualifications, functional English, and an occupation recognised on the Skilled Occupations List (SOL). If these requirements are met, migrants seeking to settle in Australia's low-population designated areas receive a points bonus, with the proviso that they must stay in that region for a stated period of time (i.e. 2 years).

58. Today, Australia's regional migration schemes include[56]:

Regional Sponsored Migration Scheme (RSMS) (subclass 187)

This scheme is designed to help employers operating businesses in regions experiencing low population growth, with the aim of filling skilled vacancies in the local labour market. Employers may nominate overseas personnel for a full-time vacancy (available for at least 2 years) that they have not been able to fill through the local labour market. In order to determine that the position cannot be filled locally, and that the salary is at prevailing market rate, the employer must seek the advice from a regional certifying body (RCB).[57] Applicants must be aged less than 45, speak English, and have a recognised qualification. RSMS operates in all of Australia with the exception of Sydney, Melbourne, Brisbane, Gold Coast, Newcastle and Wollongong (which all experience high population growth). Of the total number of visas granted, the majority have gone to South Australia.[58] Unlike the Skilled Nominated Visa, this scheme is not points-tested.

Skilled Nominated Visa (subclass 190)

This points-based visa scheme[59] enables States and Territories to nominate skilled applicants who are willing to settle in areas where their skills are in demand. This means that individuals can apply without having an offer of employment/sponsoring employer. States and Territories can sponsor a certain number of skills migrants and their families, and must carry out an audit to determine which skills are in short supply before selecting applicants. Applicants must submit an Expression of Interest (EOI) through an online skilled migration programme[60], identifying which region(s) they wish to move to. EOIs are then viewed by State and Territory agencies, which then decide who to nominate for a visa. Applicants who pass EOI requirements are invited to submit a visa application.

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[56] For specific details on each of the schemes, please visit the following Australian government website: https://www.border.gov.au/about/corporate/information/fact-sheets/26state
[57] RCBs comprise local chambers of commerce, regional development bodies and state and territory agencies.
[58] Withers and Powell (2003) op cit (see footnote 49), p20.
[59] The Skilled Nominated Visa (subclass 190) is the result of several revisions, having grown out of the original State Territory Nominated Independent visa (subclass 137) and the Skilled Sponsored Visa (subclass 176).
[60] SkillSelect is an online service which helps Australia manage its skilled migration programme. https://www.border.gov.au/Busi/Empl/skillselect

Skilled – Regional (Provisional) Visa (subclass 489)

This scheme[61] allows skilled workers to temporarily live, work and study in a designated territory for up to four years. Applicants may be sponsored by a State/Territory government agency, or they may be sponsored by a family member living in Australia. Individuals must have basic English-language competency, have an occupation that appears on the Skilled Occupations List, and be under the age of 50. Before applying for this visa, individuals must submit an Expression of Interest on the online SkillSelect portal, in similarity to the Skilled Nominated Visa scheme (see above). Successful visa-holders have the option of preparing to meet the employment and residence requirements for a permanent visa during their four-year stay, for instance through a Skilled Regional Visa (permanent) (subclass 887).[62] Applicants must live, study or work in a designated region for at least two years.

State/Territory Sponsored Business Owner Visa (subclass 892)

This scheme enables business owners who hold a qualifying provisional visa to obtain permanent residence in Australia. Individuals must own a new or existing business and are sponsored by a State or Territory government agency. The business must have an annual turnover of at least AU$300,000 and applicants must be aged 55 or less.

Working Holiday Visa (subclass 417)

This is a tourism and cultural exchange-based visa that allows young adults, aged 18-30, from eligible partner countries to stay for 12 months in Australia. During this period, individuals can engage in short-term work and study. If individuals engage in at least three-months of 'specified work' in the agriculture, mining or construction industries of designated regions, they may apply for a second working holiday visa. Applicants can generally work no longer than 6 months with one employer, and study for 4 months.

59. The SSRM visa categories therefore offer a range of tools for States and Territories to shape migration flows to their territories. At the same time, these visas operate within the regulatory framework of the Australian Migration Programme, which determines the maximum number of visas that can be granted in each category each year.[63]

60. The SSRM scheme has been used to pursue a range of State and Territory objectives, including countering population decline, meeting skills and labour-market shortages, fostering entrepreneurship and encouraging a balanced settlement of migrants across the country. The regional visa schemes are based on a set of key principles, including being non-discriminatory, grounded

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[61] This scheme replaces the Skilled - Designated Area Sponsored (SDAS) visa scheme (subclass 496).

[62] https://www.border.gov.au/Trav/Visa-1/887-

[63] The total planning level for the State, Territory and Regional Nominated category was 28,850 visa places for the 2015-16 programme year. https://www.border.gov.au/Trav/Work/processing-of-state-territory-and-regional-nominated

in the findings of research, and not impacting negatively on employment and training opportunities for existing residents.[64]

61. While the SSRM scheme has been judged to have been highly successful in attracting skilled migrants to settle in low-population regions of Australia, the scheme is not without its challenges. There have been longstanding concerns about 'leakage' of migrants from one state to another. Once a migrant has fulfilled their residency requirements (which are usually between 2-4 years), and obtains permanent residency, they may move to any part of Australia. Some studies have indicated that there is a general flow of settlers out of remote and regional areas towards metropolitan centres.[65] However, other studies have revealed that "the general pessimism and frustration in relation to retaining skilled workers as residents of regional areas may need reviewing". A survey by Taylor and Bell found that:

> "delivering positive labour market outcomes and relatively high residential retention rates amongst the migrant cohort to the Northern Territory. Moreover, skills and labour shortages are being addressed by the primary applicants and also by their (employed) partners. […] The results are encouraging in terms of migrant's intentions to permanently settle in the NT, with 89% of respondents still resident after settling here initially, and 80% of all remaining respondents stating an intention to remain. For these migrants job opportunities were the prime motivator."[66]

62. The federal Department of Immigration and Border Protection (DIBP) has acknowledged that the evidence on retention rates is mixed, but at the same time is sufficient to warrant concern and policy strategies to reduce the number of interstate transfers: "While some studies have found no clear evidence that migrants leave regional communities once their visa mandated settlement periods expire, the concern remains that many migrants relocate to metropolitan areas 'once freed from [their] visa requirements'.[67]

63. Similarly, a report by Griffiths et al found that: "The majority of skilled migrants locating in regional Australia have positive settlement experiences. Most skilled migrants state their intention to plan to remain in regional areas after being granted permanent residency. However, despite positive experiences, some observers fear that there is likely to be significant leakage out of regional areas, once migrants' designated time in a regional area has elapsed".[68]

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[64] These principles were decided in March 1997 by Commonwealth, state and territory ministers for immigration and multicultural affairs. See Hugo, G. (1999) 'Regional Development Through Immigration? The Reality Behind the Rhetoric', Department of the Parliamentary Library, Commonwealth of Australia, Research Paper No. 9, p32.

[65] Hugo, G., K. Harris, M. Bell, J. Spoehr and N. Coffee (2000) 'Bringing them Back Home: Factors influencing interstate migration to and from South Australia', Report Prepared for Office of the Premier of South Australia by The National Key Centre for Social Applications of Geographical Information Systems University of Adelaide.

[66] Taylor, A. and L. Bell (2012) *Assessing the Effectiveness of Skilled Migrant Programs for the Northern Territory*, The Northern Institute, Charles Darwin University, Research Brief 201208.

[67] DIBP (2014) *Regional retention of migrants: critical success factors*, Canberra.

[68] Griffiths, J., Laffan. W. and Jones, A. (2010) *Factors that influence skilled migrants locating in regional areas*, Canberra: Department on Immigration and Citizenship, p7.

64. It is therefore important to distinguish between two aspects of retention:

- The first challenge is to ensure that immigrants meet the requirements stipulated in their visa contracts, namely, that they settle in a specified area of regional Australia (where they've been sponsored) for a specified period of time (and in some cases, to ensure that they fulfil employment contract conditions).

- The second challenge is that most visa categories require immigrants to live in a designated region for only a limited period of time (2-4 years). Upon obtaining permanent residence, people are free to move to other parts of the country.

65. With regard to the first issue of meeting visa requirements, the terms and conditions of State nomination require prospective migrants to remain in designated regions for two years from the date of their arrival. State and Territory governments oblige applicants for particular visa categories, who accept a nomination, to inform the authorities of their address after they arrive in Australia. Some State governments have also taken the precaution of requiring written evidence of the migrants' intentions to settle in the State. If it is found that the migrant has left the State before the residence requirements have expired, their visa is cancelled.

66. With regard to the second issue of long-term retention, it is anticipated that newcomers will settle their families in the designated region and choose to continue living there following the expiry of the residence requirements. To encourage this, federal, State and Territorial governments have all acknowledged the need to focus on migrant integration. For instance, the federal Department of Immigration and Border Protection (DIBP) found that:

> "while visa incentives and settlement services may assist in drawing people to regional communities and in supporting them in their early settlement stages, they may be insufficient in encouraging migrant retention over longer periods of time […] greater attention may therefore need to be placed not only on attracting migrants to regional areas, but also on facilitating their retention in those areas over the long-term."[69]

67. Research has revealed that the general factors that encourage long-term migrant retention include employment prospects, family networks, services and infrastructure, social connections and welcoming communities.[70] In another survey, this time of migrants to South Australia, it was found that the two most-mentioned reasons for staying in SA were lifestyle and education of children, while community safety, work and employment also ranked highly.[71] States and Territories have sought to improve migrant integration strategies to attract and retain immigrants.

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[69] DIBP (2014) *Regional retention of migrants: critical success factors*, Canberra, p5.
[70] Ibid.
[71] Hugo, G. (2008) 'Australia's State-Specific and Regional Migration Scheme: An Assessment of its Impacts in South Australia,' International Migration & Integration 9:125–145.

68. States and territories in Australia therefore exercise administrative powers to determine their own sponsorship programmes, set their own criteria and thresholds to select immigrants to ensure a skilled intake, and formulate reception and integration programmes to encourage immigrant retention. However, unlike Canada, these powers are not fully concurrent (as the federal government still controls overall immigration), nor are they guaranteed. Every year states must negotiate a migration plan with the federal Department of Immigration and Citizenship, which sets out quotas and occupations eligible for sponsorship. As a result, the Australian government has a much stronger centralised coordinating role in the immigration system than the Canadian federal government. This is eased by the fact that intergovernmental relations on immigration appear to be relatively smooth. While some State governments have strongly advocated increased regional control over migration, these have been met with relative sympathy in Canberra.

69. The federal government has acknowledged the distinct immigration needs of States and Territories in creating a regional migration scheme that helps to boost the economic development of lagging and low-population regions by stabilising population growth and filling labour-market shortages, which in turn boosts the economy of Australia overall. Furthermore, regional migration schemes are seen to reduce pressures on overpopulated metropolitan areas.

South Australia

70. South Australia (SA) has been one of the greatest advocates of the regional migration schemes examined above, and also the most active user.[72] Furthermore, SA shares some of the economic and demographic characteristics of Scotland, in that it suffers from low fertility levels, an ageing population, and low intakes of migrants relative to the rest of Australia. To that end, it is anticipated that SA may present some useful lessons for Scotland.

71. SA's demographic challenges have been acknowledged by the Government of South Australia, which has identified slow population growth as a significant constraint on the economic development of the region. Put into a national context, SA has the lowest level of demographic growth of Australia's mainland states, and its population has aged more than any other State.[73] SA also has the slowest rate of economic growth, whereby the income levels of SA have long been below national levels, while unemployment has been higher than the Australian average. SA also has one of the lowest migrant intakes in Australia. For instance, at the turn of the 21st century, "South Australia with over 8 per

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[72] Much of the analysis of the SA case study draws on the academic and policy work of Graeme Hugo, a leading expert on South Australian immigration. See in particular: Hugo, G. (1999) 'Regional Development Through Immigration? The Reality Behind the Rhetoric', Department of the Parliamentary Library, Commonwealth of Australia, Research Paper No. 9 1999–2000; Hugo, G. (2008) 'Australia's State-Specific and Regional Migration Scheme: An Assessment of its Impacts in South Australia,' International Migration & Integration 9:125–145.
[73] Hugo, G. (2005) "Population" in J. Spoehr (ed) *State of South Australia: Trends and issues*, Adelaide: Wakefield Press.

cent of the population attracts between 4 and 5 per cent of the nation's migrant intake".[74]

72. Concerns about demographic growth led SA to become the first Australian State to create a population policy,[75] which contained a number of targets:

- Counteracting population decline (which had then been projected by the Australian Bureau of Statistics) and increase the State's population from 1.58 million in 2006 to 2 million by 2050;[76]

- Reduce net interstate migration loss to zero by 2008 and reverse it to a positive net gain from 2009;

- Increase South Australia's share of the national immigration intake to its share of the national population by 2014 (around 7.5%);

- Maintain and develop viable populations for sustainable regional communities.

73. In order to deliver these population targets, the Government of SA initiated a number of activities to attract immigrants to the region, which included:

- establishing a government agency "Immigration SA" within its Department of Trade and Economic Development to achieve immigration objectives. Until 2015 the activities of Immigration SA were wholly funded by the SA Government, at which point application fees for State nomination were introduced;

- creating an agency "Education Adelaide" to increase SA's share of foreign students

- setting up offices in key origin countries of immigrants to facilitate the recruitment and emigration of settlers for SA (in particular, the presence of SA government immigration recruiters in London has succeeded in attracting UK immigrants);

- appointing Migration Officers to be affiliated with Regional Development Boards in SA to assist local governments and employers settle migrants.

74. However, despite these activities, "immigration has been a federal responsibility since Federation and for South Australia to increase its immigration intake it had to work within the structure of Australia's Migration Program".[77] SA has

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[74] Hugo, G., K. Harris, M. Bell, J. Spoehr and N. Coffee (2000) 'Bringing them Back Home: Factors influencing interstate migration to and from South Australia', Report Prepared for Office of the Premier of South Australia by The National Key Centre for Social Applications of Geographical Information Systems University of Adelaide.
[75] Government of South Australia (2004). *Prosperity through people: A population policy for South Australia*. Adelaide.
[76] Hugo, G. (2005) "Population" in J. Spoehr (ed) *State of South Australia: Trends and issues*, Adelaide: Wakefield Press.
[77] Hugo, G. (2008) 'Australia's State Specific and Regional Migration Scheme', *International Migration and Integration*, Vol. 9, pp125-145.

been one of the strongest advocates of a regional migration scheme, and has worked with the federal government to secure higher immigrant intakes. SA has since "led the nation in trialing the state/territory initiatives".[78] Unlike other designated states, SA is eligible for *all* of the SSRM categories (including the settlement of immigrants in the SA capital city of Adelaide). As a result, more than three quarters of settlers to SA entered through SSRM visas.[79] Furthermore, SA has been able to boost its population by accepting a disproportionate number of refugee-humanitarian settlers:

> "This has been a deliberate strategy of the South Australian government that has been active in providing support for refugee-humanitarian migrants …This group is injecting a new element of ethnic diversity into the South Australian population. They also have become important in some areas of demand for unskilled workers in Adelaide and regional areas."[80]

75. How successful has the State-Specific Regional Migration Scheme been in reversing SA's lagging population growth? According to research by Hugo, "the impact of the SSRM on South Australia's population has been considerable".[81] The State's annual rate of population growth more than doubled between 2000-2001 and 2005-2006. SA increased its share of skilled migrant arrivals in Australia from 3.7% to 9.7% and business migrants from 1.7% to 14.3%. In total, SSRM visa categories have succeeded in trebling SA's immigrant intake as part of its economic development strategy.[82] According to the South Australian Government:

> "Since its proactive use of the SSRMS, South Australia has experienced a turnaround in its population trajectory, in part due to the success of the Australian Government's regional population dispersal programs… The SSRMS has been a very powerful policy tool for South Australia. We are celebrating 20 years of our participation in the Scheme and have welcomed almost 100,000 skilled and business migrants over this time. They are an important part of South Australia.[83]

Retention

76. A key issue relating to the SSRM program is the extent to which immigrants are stay in the designated regions in which they initially settle. Reducing outward interstate migration (native-born *and* immigrants) is an important target of the State's population policy.[84] However, this is less of an issue of enforcing visa residence requirements, and more of an issue of encouraging migrants to stay

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[78] Hugo, G. (1999) 'Regional Development Through Immigration? The Reality Behind the Rhetoric', Department of the Parliamentary Library, Commonwealth of Australia, Research Paper No. 9 1999–2000, p37.
[79] Hugo (2008), op cit.
[80] Hugo, G. (2008), op cit, p136, p140.
[81] Ibid, p129.
[82] Hugo, G. (2008), op cit, p125, p139.
[83] Interview with Policy Official from the South Australian Department of State (29/3/2017).
[84] Government of South Australia (2004) *Prosperity through people: A population policy for South Australia*, Adelaide.

once their compulsory settlement requirements have expired. As the SA Government states:

> "Setting State nomination requirements so migrants are more likely to have settlement success is the best method to reduce onwards migration. Providing early arrival services is also designed to encourage good settlement outcomes. All migrants are reminded of the moral obligation they made to the South Australian Government for their nomination."[85]

77. SA has a long history of outward migration from native-born inhabitants throughout the twentieth century.[86] For instance, in the period before the regional visas were introduced (1991-1996), SA experienced a net loss of 17,800 people to interstate destinations.[87] So the problem of native-born interstate transfers from SA is of a long-standing nature. At the same time, migrants have accounted for a large part of the State's interstate net migration loss (approximately 30-40% during 1997-2001). These numbers are "indicative of a longstanding pattern in South Australia of immigrants settling initially in the State but subsequently moving to another State."[88]

78. To examine the mobility intentions of immigrants of SA, Hugo undertook a large survey of the settlement intentions of immigrants in SA. The results revealed that "There is a high degree of satisfaction with lifestyle in South Australia... However, the situation is not as favorable when work-related elements of settlement are considered… only a little over a third of respondents are satisfied with the employment opportunities available." Hugo went on to ask survey respondents if they intended to move in the next 3 years. Here, 55% indicated that they had plans to move. However, only 11.3% indicated they had an intention to move interstate (8.9%) or to a foreign country (2.4%). Thus, the bulk of people who planned to move intended to do so **within South Australia**. Many of these moves related to housing adjustment (60% of movers) or to seek alternative job opportunities (19.2%). Hence, "the study indicates that there is likely to be a leakage of SSRM migrants out of South Australia, but that it is at a moderate level."[89]

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[85] Interview with Policy Official from the South Australian Department of State (29/3/2017).
[86] Hugo, G., K. Harris, M. Bell, J. Spoehr and N. Coffee (2000) 'Bringing them Back Home: Factors influencing interstate migration to and from South Australia', Report Prepared for Office of the Premier of South Australia by The National Key Centre for Social Applications of Geographical Information Systems University of Adelaide.
[87] Ibid, p60.
[88] Hugo, G. (2008) 'Australia's State-Specific and Regional Migration Scheme: An Assessment of its Impacts in South Australia,' International Migration & Integration 9:125–145, p141.
[89] Ibid.

Canada

79. Canada has the most decentralised immigration system of any federation among advanced liberal democracies.[90] The Canadian Constitution[91] grants concurrent powers to the federal and provincial governments to make laws on immigration. At the same time, the federal government enjoys paramountcy on matters related to migration (with the exception of Quebec paramountcy – see below) and it has exclusive control over the terms of citizenship. In the post-war period from the 1950s to the 1970s, this meant that the federal government tended to assume responsibility for recruitment, selection, admissions and settlement, reflecting a strong degree of central control over immigration policy.

80. However, since the 1990s in particular, the provinces have assumed greater control over selection and reception policies, thus making greater use of their constitutional powers in this area. The decentralisation of immigration policy has taken two forms.

   - The first is the *Canada-Quebec Accord Relating to Immigration and the Temporary Admission of Aliens* (1991), which grants the Quebec government (which has been involved in immigration since the 1960s) exclusive responsibility for selection, and which seeks to respects the 'distinct identity' of Quebec.

   - The second is the Provincial and Territorial Nominee Progam (PTNP) – a patchwork of bilateral agreements signed between the federal government and individual provinces (other than Quebec) to decentralise aspects of selection to the provinces. Of note, the PTNP allows provinces to nominate a number of immigrants for admission through their own selection criteria.

81. As a result of the creation of these agreements, Canada has seen the development of a two-tier federal/provincial system for the selection of economic migrants, which has been motivated by a desire to reflect regionally distinctive economic – and in Quebec's case, cultural-linguistic – needs and demands. In line with Canada's points-based system (which was introduced in 1967), the regional migration programmes allocate a certain number of points for applicants settling in a particular province through the PTNP programme. Provinces have their own criteria for selection, thereby reflecting the different "visions of what kind of skills and qualifications would make one worthy of admission."[92] These provincial programmes:

> "can be seen as a response primarily to the ineffectiveness of federal programs in satisfying peculiar local social/demographic/economic needs and/or achieving a more even distribution of newcomers across Canada."[93]

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[90] Banting, K. (2012) "Canada." In *Immigrant Integration in Federal Countries*, edited by Christian Joppke and F. Leslie Seidle, 79-112. Montreal and Kingston: McGill-Queen's University Press.
[91] Section 95 of the Constitution Act, 1867.
[92] Baglay, S. and D. Nakache (eds) (2014) *Immigration Regulation in Federal States: Challenges and Responses in Comparative Perspective*. London: Springer, 179-198, p7.
[93] Baglay (2014), op cit, p11.

82. In particular, the introduction of the PTNP model was intended to counter the tendency of migrants to settle in Toronto, Montreal and Vancouver, which is comparable to the pull of Sydney and Melbourne in Australia and the South-east of England in the UK. The PTNP is predicated on the belief that migrants are more likely to remain in a region after they have lived there for an initial period of time.

83. The PTNP programmes were introduced in 1995, with the objective of allowing provinces to identify and select a limited number of economic migrants to meet regional labour-market needs. The Department of Citizenship and Immigration Act (1994) allows the federal Minister of Citizenship and Immigration Canada (CIC) to enter into individual bilateral agreements with the provinces and territories (hereafter PTs) to nominate potential immigrants whom they believe would meet particular PT needs.[94] The main objectives of the PTNP scheme are:"[95]

   - To increase the economic benefits of immigration to PTs, based on their economic priorities and labour market conditions;

   - To distribute the benefits of immigration across all PTs;

   - To enhance Federal-Provincial/Territorial collaboration;

   - To encourage development of official language minority communities.

84. Furthermore, the PTNP model is not exclusively restricted to economic migrants. While initial programmes were focussed on attracting skilled workers to contribute to economic growth, many PTs have since incorporated additional objectives into their programs, such as regional development and population growth.[96]

85. There are now 11 PTNPs in place[97], with each PT determining its skills shortages and criteria for prospective immigrants (within the general criteria established by the federal authorities). Applicants must meet the criteria set by the individual PTNP programmes, before being nominated by the PTs, at which point the federal government carries out health and security checks and issues the visas.[98] If successful, immigrants are then required to reside within the nominating PT until they become eligible to apply for Canadian citizenship, at which points they can reside anywhere in Canada.

86. In similarity to the Australia regional visa categories, the Canada PTNP model seeks to meet the need for strategic skill shortages in particular regions, and to

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[94] Citizenship and Immigration Canada (2011) *Evaluation of the Provincial Nominee Program*, Ottawa. Available at: http://www.cic.gc.ca/English/resources/evaluation/pnp/index.asp
[95] Citizenship and Immigration Canada (2011) *Evaluation of the Provincial Nominee Program*, Ottawa, piii.
[96] Ibid, piii.
[97] All ten of Canada's provinces and one of its three territories have PTNPs with the federal government.
[98] Withers, G. and M. Powell (2003) *Immigration and the Regions: Taking Regional Australia Seriously. A Report on Options for enhancing Immigration's Contribution to Regional Australia,* Chifley Research Centre, p36.

fulfil specific regional economic development goals. Applicants with certain skills face a lower immigration threshold if they agree to live, work and stay in a particular region for a minimum period of time, but can reside anywhere once citizenship is obtained.

87.   However, unlike Australia, the system of immigration federalism in Canada is asymmetrical, whereby Quebec exercises paramountcy over selection, and other provinces have (lesser and) varying powers in accordance with their individual bilateral agreements with the federal government. For instance, within the overall PTNP, "Manitoba, Ontario, and British Columbia (BC) select a portion of their economic immigrants, but only Manitoba and BC took over control of settlement services, whereas the 2005 Canada-Ontario Immigration Agreement (COIA) established a working relationship between three levels of government—federal, provincial, and municipal—in settlement and language training."[99]

88.   Within the Canadian PNP scheme, provinces can therefore decide whether to pursue a higher degree of competency over immigration. They can also tailor admissions, through their international outreach activites, to suit their particular labour market needs. For instance, Manitoba developed an initiative to recruit Filipino nurses, with provincial government staff travelling to the Philippines to interview and test candidates. British Columbia established a recruitment program to address a shortage of doctors and nurses in rural areas, which was largely promoted to the USA, UK, Australia, New Zealand and South Africa. And the Saskatchewan Nominee Immigration Program has run a scheme for farm owners and operators, aimed at people with experience in farming, who plan to purchase land for farming in Saskatchewan.[100] Individual provinces and territories therefore pro-actively market themselves to prospective migrants in source countries.

89.   Given that the PTNP is administered jointly by the federal and the PT governments, each level of government allocates resources separately. On the part of the PT governments, most programmes have a separate budget line and resources are allocated to the administration, operation and management of the programme. The annual operating costs for individual PTNP programmes range from CAD$540,000 to $4,300,000, and are supported by program staff ranging from 3.5 staff (in the Yukon Territory) to 43 (in Manitoba). On the part of the federal government, PTNP resources are managed by 'Immigration, Refugees and Citizenship Canada' (IRCC) - formerly known as Citizenship Immigration Canada. In 2011/12, there were 4.5 FTE staff working on the PTNP scheme. Also, in the Canadian Visa Offices Abroad (CVOA), there was an average of 2.7 visa officers per CVAO processing PTNP applications (for a total of 48 offices processing PTNPs worldwide).[101]

90.   One of the concerns about the Canadian PTNP scheme relates to retention. Do immigrants settling in Canada under the PTNP scheme remain in their

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[99] Jeram, S. and E. Nicolaides (2018—forthcoming) 'Intergovernmental Relations on Immigrant Integration in Canada' in E. Hepburn and I. Adam (eds) *Intergovernmental Relations on Immigrant Integration in Multi-level States*, Regional & Federal Studies.
[100] Withers and Powell (2003), op cit, pp36-37.
[101] CIC (2011), op cit, p65.

nominating province, or move elsewhere? The Canadian government undertook an evaluation of the PTNP scheme in 2011, including rates of inter-provincial migration. It found that:

> "The majority of PNs (82%) who became permanent residents between 2000 and 2008 and who filed an income tax return in 2008 were residing in their province of nomination. Retention rates vary by PT, with the lowest rates in the Atlantic region (56%) and the highest in Alberta and BC (above 95%)."[102]

91.   The report also found that provincial nominees, who leave their nominating PT, tend to do so within the first five years after landing. "In particular, one year after landing, 17.9% of PNs [provincial nominees] resided outside their PT of nomination. This proportion increases to 26.6% after 3 years of landing and to 30.5% after 5 years. After 5 years, the proportion of PNs leaving their nominating PTs stabilizes with few departures over the next three years."[103] PNs who leave tend to move to Ontario, British Columbia and Alberta, with out-migration most prevalent in the Atlantic provinces. Two of the key factors cited by PNs for choosing to leave the PT of nomination were "the existence of a job offer in another PT/more opportunities elsewhere and the desire to join family or friends in another PT".[104]

92.   Despite the higher levels of inter-provincial transfers from the Atlantic provinces, the federal government concluded that: "The rate of retention by nominating provinces is high, which, when taken in the context of the finding about the successful regionalization of immigration, demonstrates the distribution of economic benefits of immigration throughout the PTs."[105]

93.   Other academic studies have revealed that inter-provincial migration levels of foreign-born Canadians is extremely similar to that of native-born Canadians.[106] A study conducted by Mosca and Wright[107] revealed that there were no major differences in inter-provincial migration rates *before* and *after* the introduction of the PTNP scheme and Canada-Quebec Accord. They emphasised the success of the PTNP programme in bringing about "a more equal distribution of immigrants across the provinces and territories… there has been a reduction in the gap between provinces with respect to their share of the total population and their share of total number of immigrants entering Canada."[108]

94.   With regard to intergovernmental relations (IGR), "although some collaboration between the province and federal governments is institutionalized, the predominant form of IGR on immigrant issues has been informal and vertical. In other words, informal negotiations between individual provinces and the federal

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[102] CIC (2011), op cit, piii.
[103] Ibid, p54.
[104] Ibid, p68
[105] Ibid, p68.
[106] See Wright, R. (2013) *Sub-National Immigration Policy: Can it Work in the UK?,* Migration Observatory, University of Oxford, p4.
[107] Mosca, I. and R.E. Wright, "Devolved Immigration Policy: Will It Work in Scotland?" Economic Commentary vol. 33, no. 2 (2009): 55-60.
[108] Wright, R. (2013) *Sub-National Immigration Policy: Can it Work in the UK?,* Migration Observatory, University of Oxford, p4.

government have dominated IGR."[109] During the 1970s and 1980s all of the provinces established consultative bilateral committees with Ottawa, aimed at determining the appropriate volume of immigration to their regions. At the time, the federal government offered to sign agreements with the provinces, but many did not have the institutional infrastructure to cope with the nominee program.[110] During the 1980s, federal-provincial agreements related mainly to information exchange, policy consultation and targeting immigrants in short supply. It was not until the Canada-Quebec Accord that other provinces sought to have greater control over selection through PTNPs.

95.   In order to make the PTNP programmes as responsive as possible to the needs of the PTs, the federal Minister of Immigration, Refugees and Citizenship consults the PT governments on an annual basis through a Federal-Provincial Territorial Forum of Ministers responsible for Immigration. Here, the number of immigrants who will become permanent residents is determined, as well as their distribution in Canada. In order to aid the smooth-running of IGR, the responsibilities of both the federal government and PT governments are spelled out in detail:

- PTs are responsible for: (a) the design of their own programs and the establishment of requirements for such programs; (b) the nomination of immigrants destined to their jurisdiction; (c) the promotion and recruitment of PNs; and (d) monitoring, evaluation, and reporting on PNPs.

- CIC is responsible for: (a) admissibility screening (medical, criminality and security), based on federal standards; and (b) the final selection of PNs.[111]

96.   Iacovino argues that "the 'logic' driving federal-provincial arrangements outside of Quebec is more closely aligned with the sort of multilevel governance that takes it cues from functional considerations such as efficiency, coordination, non-duplication, flexibility and so on. The primacy of the federal government as a steering agent for national integration is not a salience source of political conflict and therefore does not significantly impact negotiated outcomes."[112] The logic driving immigration decentralisation in the case of Quebec, however, is rather different.

Quebec

97.   Quebec's interest in immigration began in the 1960s during the 'Quiet Revolution' – a period of profound social, economic and cultural transformation in Quebec. Immigration was seen as important for two main reasons: first, there were concerns about Quebec's declining declining population, resulting from low fertility rates and problems of outward migration. Second, Quebec nationalists were worried about the tendency of migrants to integrate into the

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[109] Jeram, S. and E. Nicolaides (2018—forthcoming) 'Intergovernmental Relations on Immigrant Integration in Canada' in E. Hepburn and I. Adam (eds) *Intergovernmental Relations on Immigrant Integration in Multi-level States*, Regional & Federal Studies.
[110] Iacovino (2014), op cit, p96.
[111] Citizenship and Immigration Canada (2011) *Evaluation of the Provincial Nominee Program*, Ottawa, p2.
[112] Iacovino (2014), op cit, pp101-102.

Anglophone (English-speaking) community in Quebec.[113] It was feared that both factors would lead to a declining number of Francophones (French-speakers) in Quebec. In response, the Quebec Liberal Government established a Ministry of Immigration in 1968, "and throughout the following two decades, engaged in a determined campaign to claim management and planning powers in various areas of immigration."[114]

98. The first accord between Quebec and Canada on immigration was the Lang-Cloutier agreement in 1971. This accord allowed Quebec officials to be stationed in Canadian embassies, where they would advise Canadian immigration officers about Quebec's distinct sociocultural (and especially, linguistic) immigration needs.[115] A second accord in 1975, the Andras-Bienvenue agreement, expanded the role of Quebec immigration agents, allowing them to interview potential candidates in Canadian embassies abroad, and enabling them to make advisory recommendations for selection. In 1979, a third accord - the Cullen-Couture agreement[116] - further enhanced Quebec's role, giving Quebec officials more influence over selection according to their own criteria, and granting the province shared control over temporary immigration for workers and students.

99. Finally, in 1991, *the Canada-Quebec Accord Relating to Immigration and Temporary Admission of Aliens* (Canada-Quebec Accord--CQA) was signed, which remains the principal framework governing immigration in Quebec. The CQA confirmed the constitutional paramountcy of Quebec's selection powers, and "permitted the province to supplant the federal government in designing and implementing all settlement services."[117] Quebec received exclusive competency in three areas of permanent immigration: total volume of immigrants for Quebec, the selection of candidates that seek settlement in Quebec (except refugees and family reunification) and the management of sponsorship arrangements."[118] Quebec also received exclusive powers over authorising work permits for permanent migrants, and enhanced shared powers over temporary immigration, where Quebec must consent before international students and temporary workers can come to the province.

100. Potential immigrants apply directly to the Province of Quebec, which chooses the immigrants it wishes to accept. The Quebec Immigration Department maintains a website that provides information for prospective and new migrants, including an online application facility. Quebec also conducts information sessions for prospective migrants in potential source countries including France, Belgium, Argentina, Mexico, Peru, Colombia and Venezuela.[119] While in the past Quebec officials were posted to Canadian

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[113] Hepburn, E. (2014) ''Citizens of the Region': party conceptions of regional citizenship', *European Journal of Political Research* 50: 504–529.
[114] Iacovino (2014), op cit, p91.
[115] Ibid.
[116] Also known as the Quebec-Canada Accord in Matters of Immigration and Selection of Foreigners.
[117] Jeram, S. and E. Nicolaides (2018—forthcoming) 'Intergovernmental Relations on Immigrant Integration in Canada' in E. Hepburn and I. Adam (eds) *Intergovernmental Relations on Immigrant Integration in Multi-level States.*
[118] Iacovino (2014), op cit, p92.
[119] Withers & Powell (2003), op cit, p36.

embassies abroad in order to review applications, interview candidates and grant approvals for entrance, this facility is no longer used. Quebec conducts its own international recruitment activities (e.g. Journées Québec in Europe), relying on Quebec Government offices across the world to help promote immigration. Quebec has no obligation to provide immigrants with information about Canada as a whole through its programmes, unlike the PNTP schemes in other provinces. Quebec also receives a percentage of immigrants equal to its population size in Canada, with a clause allowing it to receive an additional 5% more. [120]

101. Furthermore, the points weighting under the Quebec immigration system are different to those of the Canadian system. Generally, more points are awarded for language (knowledge of the French language[121]) and there is less weighting on employability, education and qualifications. Quebec aims to attract francophone immigrants, but they also seek to encourage applications from francophile persons with a profile of interest, whereby Quebec's Immigration Department orients these applicants to a series of partners abroad (with which Quebec has agreements) that can teach them French before coming to Quebec.[122] With regard to refugees, Quebec has agreed to receive a proportion of refugees equal to its population size in Canada and "while Canada accords refugee status, Quebec has a say in selecting those candidates that are more suitable to meeting Quebec's criteria."[123]

102. Quebec has also assumed extensive powers over integration, by facilitating immigrant access to French-language courses and fostering a sense of belonging among immigrant groups. "The aim was to settle immigrants and their families, so that they could become integrated as quickly as possible into Quebec society." [124] The Quebec Government funds over one hundred community organizations across Quebec to assist newcomers in their integration process, with a focus on welcoming new immigrants, easing them into their new neighbourhoods, and familiarising them with government and educational services available in their communities.[125]

103. The funding for Quebec's settlement services comes directly from the Canada-Quebec Accord. While the federal government has withdrawn from settlement services to enable Quebec to have full responsibility, Ottawa still finances these services on the condition that they are equivalent to the services the federal government provides elsewhere in Canada. The sum is then accorded to different Quebec departments that provide settlement services directly to newcomers (in particular, the departments of labour and health). In 2008-2012

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[120] Ibid, p92

[121] Granting the Quebec government control over selection, through its own points system, was seen as a tool to revitalize Quebec's population generally, and in particular, to boost the number of French-speakers in the province.

[122] For more information about promoting Quebec and the information sessions abroad, see http://unbelavenir.gouv.qc.ca/en/

[123] Iacovino (2014), op cit, p92.

[124] Labelle, M. (2003). The Politics of Managing Diversity: What is at Stake in Quebec? Paper presented at the Conference 'Quebec and Canada in the New Century: New Dynamics, New Opportunities', Queen's University, Kingston, 31 October–1 November, p16.

[125] For more information about Quebec's integration services, see https://services.immigration-quebec.gouv.qc.ca/en/partners/services-offered.php.

CAD$66 million was invested per year in promoting the integration of immigrants.[126]

104. The nature of intergovernmental relations between Quebec and Canada have been very different to those of other provinces. While the PTNPs were based on functional concerns about efficiency, fairness and coordination, IGR between Quebec and Canada have been motivated by a need to protect their competing nation-building projects – the Canadian nation-building project on one side, and the Quebec nation-building project on the other. In particular, Quebec has sought to focus on recruiting more French-speaking immigrants to the province. IGR are also tainted by the fact that the CQA does not contain any conflict management clauses, not does it have a specific end-date. From an administrative point of view, it is in Quebec and Canada's best interest to come to a mutual agreement when any problems arise. Thus, the use of immigration as a tool of nation-building in Quebec has not meant that IGR on immigration have always been combative. Iacovino notes that the CQA "has resulted in a very stable and relatively uncontested consensus regarding an acceptable degree of special status for the province."[127]

Prince Edward Island (PEI)

105. Prince Edward Island (PEI) is the smallest of Canada's ten provinces, with a population of only 145,855 people as of 2011.[128] The economy of PEI is resource-based and highly seasonal, with agriculture, tourism and fishing constituting the main industries. The Island has long struggled with population growth, owing to a combination of high levels of out-migration (especially of young educated people), an ageing population and a declining birth-rate. Furthermore, while Canada as a whole is a highly attractive destination for immigrants, less than 2% of these choose to settle in the Maritimes or specifically to PEI.[129] These factors have presented obstacles to economic growth, whereby there are significant skills shortages in the province's labour market and many inhabitants are attracted to the employment prospects of larger metropolitan areas in Canada (i.e.Toronto and Vancouver). To address these issues, attracting and retaining immigrants on the Island is a key component of PEI's economic development and population strategies.

106. The government of PEI signed a Provincial Nominee Program (PNP) agreement with the federal government in 2001 for a 5-year term (which was made open-ended in 2008).[130] The overriding goal of the PEI PNP is to attract immigrants with the skills, experience and economic means to successfully establish themselves on PEI. The main aims are to:

- Expedite the Canadian immigration process for nominees to PEI;

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[126] Jeram, S. and E. Nicolaides (2018—forthcoming), op cit.
[127] Iacovino (2014), op cit, p101.
[128] Grant Thornton LLP (2012) Prince Edward Island Provincial Nominee Program Evaluation Results, Charlottetown.
[129] Canada attracts approximately 250,000 immigrants each year. See Fall, 2008, p55.
[130] Grant Thornton (2012) Prince Edward Island Provincial Nominee Program Evaluation Results, Charlottetown, p12. Available at:
https://www.princeedwardisland.ca/sites/default/files/publications/pnpeval2012.pdf

- Respond to the labour market needs of business;
- Increase investment and performance in targeted sectors;
- Establish new or enhance existing businesses;
- Retain newcomers and build stronger immigrant communities; and
- Contribute to population growth targets.[131]

107. The PEI PNP allows applicants to apply directly to the Province of PEI[132], which reviews the application and accompanying documents. According to the PEI Immigration website, "Individuals are chosen based on their ability to economically establish and their intent to live and work in PEI. Current key needs that are being met by the PEI PNP are filling gaps in our labour market and attracting entrepreneurs".[133] If the individual meets these criteria and their application is approved, the Province of PEI nominates the candidate for permanent residency by submitting the paperwork to the federal government for final approval. Processing times for PNP applications tend to be 8 months, compared to 3 years for general applications.[134] The PNP scheme requires applicants to live and work on PEI for at least one year, after which time they have the right to move elsewhere in Canada.

108. The PEI PNP currently accepts applications under three categories[135]:

- PEI PNP Express Entry. This stream is for applicants with skills matching current identified labour market needs who wish to live and work on PEI. Applicants benefit from processing times of six months of less.

- Labour Impact Category. This category comprises three streams: (1) the Skilled Worker Stream, for workers who have been identified or hired by a PEI employer with relevant experience and qualifications; (2) the Critical Worker Stream, for workers in a semi-skilled/unskilled profession, whose PEI-based employer wants to sponsor them for permanent residency; and (3) International Graduate Stream, for recent graduates from PEI universities and colleges who have already been hired by a PEI employer and who work in a skilled profession.

- Business Impact Category. This category has three streams: (1) 100% Ownership Stream, for individuals assuming full ownership of their PEI business; (2) Partial Ownership Stream, for individuals who will obtain in at least one-third of a PEI business; (3) Work Stream Permit, for individuals

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[131] Grant Thornton (2012), op cit, p8. See Annexe A: the Canada – Prince Edward Island Agreement on Immigration.

[132] The PEI PNP programme is managed by the Island Investment Development Inc., a crown corporation established to the explicit goal of managing and delivering the PEI PNP.

[133] https://www.princeedwardisland.ca/en/topic/office-immigration

[134] Fall, C. (2008) 'Immigration, Repatriation and Retention: Population Strategies on Prince Edward Island and Comparable Jurisdictions', in G. Baldacchino & K. Stuart (eds) *Pulling Strings. Policy Insights for Prince Edward Island from other Sub-National Island Jurisdictions*, Charlottetown: Island Studies Press, p58.

[135] These categories were introduced following a revision to the programme in 2008. Changes to the program, which included ways in which immigrant monies could be invested, were made following an inquiry into allegations of fraud regarding the Investor Stream of the PNP program, with the investigation being closed in 2005. See http://www.theguardian.pe.ca/news/local/2015/1/6/rcmp-probe-of-pnp-file-ends-quietly-3997296.html

who wish to invest in a PEI business prior to receiving provincial nomination.[136]

109. In order to support the PNP programme, the Province of PEI has created a number of measures to attract and retain immigrants.

- The Population Secretariat, which was established by the provincial government in 2004 to develop promotional strategies to attract potential immigrants to PEI, to support research on immigration to PEI, to consider population challenges and to propose demographic solutions to gaps in the labour market. For instance, the Secretariat set the goal of increasing the Island's population by 1.5% annually.

- A support network for immigrants, which was created in 1993, was also strengthened during this period – the PEI Association for Newcomers to Canada (PEI-ANC) aids the short-term settlement and long-term social inclusion and integration of immigrants.

- Finally, the PEI Population Network was also created in 2006, which disseminates information about initiatives that deal with immigration, repatriation and retention in the province in order to support population growth.[137]

110. In 2012, the government of PEI commissioned an independent evaluation of the PNP scheme. The report found that the PNP had been highly successful:

> "the PNP has fundamentally transformed immigration as a tool to achieve provincial objectives. Prior to its introduction, the majority of newcomers settling on the Island gained entry into Canada through family or refugee classes, and immigration volumes were very low. The PNP has provided the Province with the flexibility and capacity to develop program offerings with a strong economic focus, and this has increased the Island's profile and attractiveness to potential immigrants. The result, in the broadest view, has allowed the Province to make a fundamental shift in how immigration is employed to support the economic and population goals of the province… The benefits of the PNP have been substantial. Succeeding in attracting immigrants in numbers that are unprecedented historically, the PNP continues to account for the vast majority of all immigration into PEI."[138]

111. Specifically, the report found that 1,151 applicants made PEI their home from 2001-2010, which, including family members, accounts for 3,662 newcomers settling on the Island. Overall, the PNP accounts for 94% of all immigration to PEI, where the percentage of economic migrants to the Province increased from 37% in 2001 to 96% in 2006 – a massive increase during a 5-year period. The report also found that, in the absence of immigration, PEI's population is expected to decline.[139] The benefits of the PNP have been acknowledged by

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[136] http://www.canadavisa.com/prince-edward-island-provincial-nominee-program.html
[137] Fall (2008), op cit, p57.
[138] Grant Thornton (2012) Prince Edward Island Provincial Nominee Program Evaluation Results, Charlottetown, p4.
[139] Ibid, p11.

PEI's political parties. For instance, according to the former Speaker of the House: "It really has rescued our small business people on the island, especially in our tourism industry. It has been a wonderful programme for small business."[140]

112. Despite these successes, there have also been challenges with the PEI PNP – especially in the area of immigrant retention. Under PNP rules, immigrants are not required to stay longer than a year in the province that nominated them; after this time period has elapsed, they can move to any other part of Canada. And while the PEI PNP has increased the numbers of settlers arriving on the Island, not all immigrants who come decide to stay. National data suggests that PEI has one of the lowest retention rates in Canada. According to IMDB data, of the provincial nominees who landed in PEI between 2000 and 2008, only a minority (37%) were still residing in the province in 2008.[141]

113. A survey of employers conducted on PEI in 2011 presents a more positive picture. According to the PEI PNP evaluation report: "Employers responding to the survey indicated a high level of satisfaction with nominees and reported that 82 per cent of those hired through the PEI PNP were still working with their initial employer. Similarly, follow-up surveys with the Skilled Worker component of the Program found that retention rates were about 86 per cent within the first year of landing. In relation to entrepreneurs nominated through the business impact component of the Program, a short-term retention rate of 64% was found."

114. However, in a recent survey by the Atlantic Provinces Economic Council, it was found that immigrant retention rates on PEI continued to be low. Using tax filings, the Council found that only 41% of immigrants who landed in PEI in 2012 remained on the Island in 2017, and that 34% of newcomers leave PEI within the first year.[142] Some commentators attribute the low levels of retention on PEI to the limited employment opportunities on the Island and the lack of a metropolitan centre, which continues to draw residents – native-born and foreign-born alike – towards the cities of mainland Canada.[143] However, other stakeholders believe that low immigrant retention rates are partly due to the lack of migrant integration strategies for newcomers in the early days of the PNP programme:

> "the [PNP] programme has been successful in the sense that it's been very good for the investment in island business. It's been fantastic. There are some people who've come and who have stayed and that certainly has enriched our community. But not as many as we would hope. And I think the province is still struggling with a focused population strategy. [There's been] no long-term planning for the integration or for the appropriate attraction of

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[140] Interview with Speaker of the PEI House of Assembly, 18 May 2010

[141] Citizenship and Immigration Canada (2011) *Evaluation of the Provincial Nominee Program*, Ottawa, p52.

[142] http://www.theguardian.pe.ca/news/local/2017/1/30/p-e-i--pockets--5-million-from-failed-pnp-deposits-.html

[143] Baldacchino, G., L. Chilton, S. Youn Chung, B. Mathiang (2009) *The Host Program and Immigrant Retention on Prince Edward Island*, University of Prince Edward Island, pp7-8. Available at: http://www.peianc.com/sitefiles/File/reports/Host-Program-Study-Report-October-8-2009.pdf

the immigrants to fit a need that's here. We didn't have the systems in place in healthcare, in education, in any way, to really be able to cope with the numbers that were coming. [But] I think there is a possibility that that model could work if we're giving some serious thought to 'how are these people going to be accommodated when they get here? And what is it that we are doing as a community to make sure that they find a home here?'"[144]

115. As one academic notes, "in order for it to retain its immigrants, PEI must be able to facilitate better the integration of islanders with newcomers, and vice versa. The long-term residents of PEI need to be more welcoming to immigrants on a regular and comprehensive basis, in all aspects of island life; otherwise, retention of newcomers will remain problematic."[145] This need to invest in immigrant integration, to aid retention, has been recognised by the provincial government, whose Standing Committee on Community Affairs and Economic Development stated that: "It is not enough to open the door and let immigrants into our house; we have to invite them to sit down at the table."[146] Initiatives to welcome and integrate immigrants into life on PEI, such as the federally sponsored Host Program run by the PEI-ANC mentioned earlier, will be key in increasing future retention rates.

Finland/Åland

116. Although Finland is a unitary state, it has also granted a substantial degree of autonomy to the Swedish-speaking Åland Islands. Åland is an archipelago located in the northern Baltic Sea close to the Swedish coast, which is the smallest and wealthiest province in Finland.[147] The Åland Islands are the only substate region in Finland that has been granted significant legislative power in a 'federacy' form of constitutional decentralisation, where Åland enjoys a constitutionally entrenched form of self-determination.[148] Despite having a population of only 29,214 people[149], Åland enjoys many of the trappings of sovereign statehood, including its own national flag, anthem, and postage stamps. Thanks to a decree by the League of Nations in 1920, Åland's Home Rule is guaranteed by Finnish and international law.

117. As part of its federacy arrangements, which were revised in the 1951 Autonomy Act, Åland was granted its own form of regional citizenship that is separate from Finland and guaranteed by the EU. This was created primarily to protect the local culture and Swedish language. This form of regional citizenship is also highly unusual in the world, with few counterparts elsewhere – with perhaps the exception of the Swiss cantons, which have their own individual citizenship laws (which include civic and political rights, as we shall see below).

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[144] Interview with former Director of the Greater Charlottetown Chamber of Commerce, 25 May 2010.
[145] Fall (2008) op cit.
[146] Cited in Fall (2008), op cit, p65.
[147] Hepburn, E. (2014) 'Forging Autonomy in a Unitary State: The Aland Islands in Finland', *Comparative European* Politics, Vol. 12, 4/5, 468–487. Åland enjoys a distinct cultural identity in Finland, as the island is 95% Swedish-speaking.
[148] A federacy is a political-administrative unit in a unitary state with exclusive power in certain areas, including some legislative powers that are constitutionally embedded, that cannot be changed unilaterally. See Hepburn (2014), ibid.
[149] As of 31 December 2016.

118. While immigration selection fall under the control of the Finnish government, a person may obtain Åland citizenship, otherwise known as a right of domicile (*hembygdsrätt*), if they meet certain requirements. These include: possessing Finnish citizenship, having an adequate knowledge of the Swedish language, and having lived in Åland for at least 5 years.[150] People born in the Islands receive the right of domicile if it is possessed by either parent. Those who have lived outside of Åland for more than five years, or lose their Finnish citizenship, lose their right of domicile. The Ålandic right of domicile confers the following rights:

- the right to acquire and possess real estate within the region;
- the right to vote or stand as a candidate in parliamentary and municipal elections;
- the right to be exempt from military duty; and
- the right to operate a business (commerce and industry) within the region.

119. While the Åland police authority was until recently involved in processing residence permits,[151] since 1 January 2017 residence permits for migrants to Åland are handled directly by the Finnish Immigration Service. However, applications for Åland citizenship are addressed to the Åland Government. The Åland Government has discretionary powers over applications in relation to both denying them for "persuasive reasons" and also granting applications "for special reasons".[152]

120. Some aspects of Ålandic citizenship changed during Finnish accession to the EU, when the right to vote in municipalities was extended to all Nordic citizens and EU citizens, who had been living in the Islands for the three preceding years.[153] This length of time has since been reduced to one year's residence for EU nationals to be able to vote in municipal elections, and the franchise for municipal elections has also been extended to include third-country nationals.[154] For Åland parliament elections, however, this is still restricted to people holding the right of domicile.

121. Finnish membership of the EU has also catalysed discussions on other aspects of the right to domicile, including the proposal to remove the condition of Finnish citizenship. In 2009, a cross-party parliamentary committee recommended that the right to domicile should be freed from the requirement of Finnish citizenship:[155] "since the Åland Islands are part of the European Union (with some exceptions) voices have been given for demands that it would be

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[150] These conditions apply to Finns and non-Finns alike.
[151] Wisthaler, V. and H. Öst (2014) Minorities and immigration − frameworks of exclusion and inclusion in Åland and South Tyrol compared, Report from the Åland Islands Peace Institute No. 2/2014, p9.
[152] Ibid, p12.
[153] Ackren, M. and Lindström, B. (2012) Autonomy development, irredentism and secessionism in a nordic context. Commonwealth & Comparative Politics 50(4): 494–511.
[154] Wisthaler and Öst (2014), op cit, p12.
[155] Ibid.

enough with a citizenship according to the EU standards."[156] This debate remains ongoing.

122. Yet despite the more stringent requirements for acquiring citizenship in Åland, this has not deterred immigrants from moving to the islands. Immigration levels to Åland have grown above that of the Finnish average.[157] Latest figures reveal that 35% of Åland's population is born elsewhere: 19% from Finland; 9% from Sweden; and 7% from outside the Nordic countries – which represent 99 countries of origin and 64 languages.[158] While Åland has historically attracted immigrants from Sweden and (Swedish-speakers from) Finland, which remain the largest immigrant groups in the region, recent immigration to Åland has reflected the recent enlargements of the EU. Åland has attracted high numbers of newcomers from the Baltic states of Estonia, Latvia and Lithuania (which lie in close geographic proximity) as well as Romania, Russia, Iran, Thailand and the Philippines.[159] A key factor behind increased immigration is Åland's strong economy and low unemployment levels. In particular, immigrants tend to be attracted to jobs in the tourism and agricultural sectors. As the Director of the Statistics Office of Åland observes: "they come here and then they move here. There are almost no immigrants in the rest of Finland. They tend to concentrate here."[160]

123. With an increase in immigration, Åland has focussed on the need to provide better reception and integration services for newcomers. The Åland Parliament passed its own Integration Act, which came into force in January 2013. As part of this law, the government created the post of an Integration Coordinator, who organises training, research and data on integration, coordinates the activities of government departments, and published information directed towards immigrants. In particular, the Åland Government designed a multi-lingual brochure for newcomers which contains information about residence permits, social security, schools and language courses. There is also a small Information Office for immigrants that is funded by the Åland Government, and a website was created that provides general information about life on the Åland Islands in seven languages.

124. In order to attract skilled workers to the Åland Islands (including former Åland residents), the Åland Government has engaged in a range of international outreach activities. For example, an initiative of the Åland Office for Employment was a campaign called 'Come Home Now', which sought to attract people to move back to the Islands.[161] There is also a paid internship programme that aims to encourage students to return to Åland. Furthermore, the Office for Employment attends numerous international job fairs, especially

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[156] Ackren, M. (2010) Regional Citizenship Applied in Autonomous Islands in Europe, Unpublished paper. The right of domicile has been granted through the Protocol for the Åland Islands related to the Finnish Act on EU membership in 1995, and is therefore included in EU's primary legislation.
[157] Helsingin Sanomat (2005) Sharp increase in non-Nordic immigration to Åland. First published in print 20.3.2005. http://www.hs.fi/english/article/Sharp+increase+in+non-nordic+immigration+to+%C3%85land/1135256338739
[158] http://www.asub.ax/sites/www.asub.ax/files/statistics/befolkning2015.pdf
[159] Wisthaler and Öst (2014), op cit, p7.
[160] Interview with Director of Aland Statistics Office, 17 June 2010.
[161] Interview with Integration Officer and Senior Adviser on Citizenship, Government of Åland (27/3/2017). *This campaign has been rebranded www.Ålandliving.ax/en.*

in Sweden and the Netherlands, in order to attract highly skilled workers to fill certain positions in Åland (especially in health care, IT-sector, banking, engineering).

125. Finally, although there are no formal structures to coordinate joint discussions on immigration, good relations go a long way to ensure close coordination in IGR: "We have good relations with civil servants in the relevant ministries and Migration Board. The attitude from the government colleagues have so far been amenable when we have raised issues relating to changes in law to enable our municipalities to take part of state funding scheme for receiving refugees."

Spain

126. Spain has undergone an extraordinary transformation from being a country of emigration to a country of immigration in the last two decades. In the 1990s, the majority of immigrants were either Spanish nationals returning from abroad, pensioners from western Europe or highly skilled workers. However, since 2000 there has been a dramatic change in the volume and composition of immigration. The largest number of immigrants now come from Africa, Latin America and Eastern Europe, with concentrations in low-skilled, temporary or seasonal work. Between 2001-8, immigration accounted for 81% of population growth in Spain.[162]

127. Spain enacted a comprehensive Immigration Law in 2000[163], which created a quota regime for the visa system.[164] Visas were to be issued based on the functional evaluation of needs, and were classified as: transit; short-stay; residence; residence and work; seasonal residence and work; and study and research. Initial temporary residence permits last for three months, and can be extended to two years. Long-term residence is available for those who have legally resided in the country for five years. And individuals can apply for citizenship if they have more than ten years of residence. Spain has also sought to tackle the issue of large-scale undocumented immigrants, either through collective amnesties or administrative arrangements, to legally regularise the status of irregular immigrant workers.[165]

128. With regard to the legal framework for immigration, the Spanish Constitution (1978) states that immigration, emigration, citizenship, alien status and the right to asylum are exclusive competences of the central government.[166] This gives the central government full jurisdiction over migratory flows, border control, residence requirements and work permits. However, since 2006, the Spanish state has decentralised the administration of work permits (to Catalonia, as we shall see below). In addition, ACs have assumed responsibility over the reception, integration and settlement of immigrants, which are not reserved to the Spanish government.

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[162] Arrighi de Casanova, J.-T. (2012) Those who came and those who left: The Territorial Politics of Migration in Scotland and Catalonia, PhD Thesis, European University Institute, p204.
[163] This law has since been amended several times.
[164] Exceptions to this system are cases of immigrants coming from countries with which Spain has bilateral agreements or from European Union Member States.
[165] Arrighi de Casanova (2012), p161.
[166] Article 149.1.2 of the Spanish Constitution.

129. Intergovernmental relations (IGR) in Spain are generally of an informal, bilateral and hierarchical nature. As there is no provision for intergovernmental structures in the Spanish constitution, IGR are reliant on the goodwill of the Spanish government to involve ACs in decision-making. There are three institutions through which the central government and the ACs coordinate policies on immigration:

- The Sectoral Conference on Immigration was created in 2008. This is a multilateral body aimed at coordinating and deciding on the distribution of resources on immigrant integration policies among the different ACs, as well as establishing common objectives. It is comprised of representatives of the central government and the ACs, and municipalities (as observers). The Conference relies on the support of the *Sectoral Commission on Immigration*, which is composed by the central government and the directors-general of AC immigration departments. Although rules specify that the Conference should meet twice a year, meetings tend to be held less frequently.

- The Forum for the Social Integration of Immigrants was created in 2008. This is comprised of two representatives from each AC, which aims to analyse integration policies and formulate policy recommendations. The Forum is not a decision-making body, but rather has a consultative role on reporting on the situation of immigrants and sharing information.

- The Bilateral Commission Generalitat-State, which was established in 2006, is a permanent framework of relations between the central government and the Government of Catalonia (Generalitat).[167] The objective is to foster cooperation and participation of the Catalan government in those State competencies affecting Catalan autonomy. The sub-commission on immigration is one of the five sub-commissions/workgroups included in the Bilateral Commission State-Generalitat. This sub-commission has been in charge of making bilateral (financial) agreements between the two governments, and coordinating the transfer of the competency on initial work permits for immigrants to Catalonia (see below). Although the sub-commission is meant to meet regularly, there is no effective mechanism to ensure that this happens.

130. On the issue of finance, the Sectoral Conference on Immigration distributed a *Fund for the support of immigrant integration and their educational reinforcement* between 2005-2011. The Conference decided on the allocation of money between the ACs, with population numbers being the main criterion for distribution. The Ministry then signed a 'collaboration framework' with each AC to transfer the funds, by means of an annual bilateral agreement. Funding was made conditional on the AC's presentation of an action plan that met the priorities and principles of the Spanish government. Once the funding was released, the Spanish government received regular monitoring reports from the

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[167] The Spanish Government also has a Bilateral Commission with the Canary Islands.

ACs.[168] However, in recent years, the Fund has been discontinued and immigrant integration programmes have been funded by Autonomous Community governments.

Catalonia

131. Catalonia is one of the wealthiest regions in Spain and has had an open immigration policy since its economic expansion in the 1960s, attracting at first southern Spaniards and later North Africans, South Americans and East Europeans.[169] Catalonia attracts a large number of immigrants relative to the rest of Spain,[170] accounting for approximately 16% of Catalonia's total population (as of 2010). Successive Catalan governments have welcomed immigration as beneficial to the nation, defining Catalonia as a land of hospitality "whose culture has been enriched by a constant influx of people throughout its history."[171]

132. In 2006, Catalonia was granted a new Statute of Autonomy (CSA) which delineated specific powers over immigration, including the reception and social integration of immigrants, and the administration of work permits.[172] The specific details of Catalonia's immigration competences are listed below:

Catalan Statute of Autonomy, Article 138: Immigration

1. In matters concerning immigration, the Generalitat has:

a) Exclusive power regarding the initial reception of immigrants, which includes social health attention and guidance.

b) Development of the integration policy for immigrants in the framework of its powers.

c) Establishment and regulation of the required measures for social and economic integration of immigrants and for their social participation.

d) Establishment by law of a referential framework for the reception and integration of immigrants.

e) Promotion and integration of returning immigrants and their assistance, and facilitation of their return to Catalonia through the pertinent policies and measures.

2. The Generalitat has executive power in authorising work to foreigners whose employment is in Catalonia. This power, which shall be coordinated with that of the State regarding the entry and residence of foreigners, includes:

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[168] Franco-Guillén, N. (2018—forthcoming) 'Intergovernmental relations on immigrant integration in Spain: the case of Catalonia' in E. Hepburn and I. Adam (eds) *Intergovernmental Relations on Immigrant Integration in Multi-level States*, Regional & Federal Studies.
[169] The majority of immigrants come from Morocco, Romania, Ecuador, Bolivia and Colombia.
[170] For instance, by 1995, 30% of all foreign nationals in Spain were settled in Catalonia.
[171] Arrighi de Casanova, J.-T. (2012) Those who came and those who left: The Territorial Politics of Migration in Scotland and Catalonia, PhD Thesis, European University Institute, p231.
[172] Catalan Statute of Autonomy, Article 138.

a) Processing and assignation of initial work authorisations for employed and self-employed workers.

b) Processing and resolution of appeals presented with regard to cases arising from paragraph a) above and application of the inspection and sanction system.

3. The Generalitat participates in State decisions concerning immigration which are especially important for Catalonia and, in particular, shall have preceptive participation in determining the contingent of foreign workers by means of the mechanisms established by Title V.[173]

133. In legal terms, therefore, Catalonia has exclusive competences over the reception and socioeconomic integration of immigrants; and shared powers with the central government over work permits.[174] Let us examine these areas in detail.

Migrant Integration

134. Immigrant integration has been a long-standing priority of the Catalan government. In the 1980s, the Generalitat enacted a language 'normalisation' law to accomplish 'full integration of the non-Catalan population into the Catalan culture, so as not to create cultural ghettos'.[175] Furthermore, Catalonia's first immigration plan (Interdepartmental Immigration Plan) in 1993 was approved one year before the first Spanish Immigration plan. An Interdepartmental Immigration Committee was set up to coordinate the IIP, followed by the creation of a Secretariat for Immigration in 2000 to manage immigration matters.

135. The revised Statute of Autonomy paved the way for a National Agreement on Immigration (2008), which made a commitment to respecting and enhancing diversity while promoting integration into a common public culture[176]. An immigrant reception law was approved by the Catalan Parliament in 2010, which created a toolkit to promote the integration and social mobility of newcomers. This law aimed to promote the equal opportunities of immigrants by removing obstacles to their integration, identified as "the lack of linguistic

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[173] Cited in Generalitat de Catalunya (2009) Citizenship and Immigration Plan, Barcelona, p50. Available at: http://www.gencat.cat/dasc/pni 2009—2012
[174] The third area, of granting Catalonia a say over 'state decisions in matters of immigration with a special interest for Catalonia' was contested by the AC of Madrid, which brought the case to the Constitutional Court on the premise that visa holders in Catalonia may eventually end up working in Madrid. This right of participation remains to be formalised.
[175] MacInnes, J. (2006) 'Castells' Catalan routes: Nationalism and the sociology of identity', *British Journal of Sociology* 57(4): 677–698, p680.
[176] According to the Government of Catalonia, the National Agreement on Immigration "is a consensual agreement that provides policy guidelines for managing immigration over the coming twenty years after a process in which nearly 2,000 people took part. It proposes managing migration flows and access to the labour market, adapting public services to a diverse society and achieving integration into a shared public culture." Generalitat de Catalunya (2009), op cit, p74.

competencies and the lack of knowledge of the host society and its administrative organization."[177]

136. As a result of these various policies and laws, immigrants in Catalonia are currently offered a range of free services and resources to aid their integration in Catalonia's society and economy. Catalonia has sought to "provide newcomers with information, detect the risks they face and help to ensure they have adequate knowledge of the host society with respect to the rights and duties of citizenship, thus promoting the empowerment of people."[178] Reception policies are organised through the Comprehensive Reception Programme, which is structured into six programmes (health, education, employment, institutional, housing and children).[179] Reception and integration services include:

- 90 hours of free Catalan language immersion courses;
- 90 hours of Spanish language lessons (upon completion of Catalan courses);
- 15 hours of training about the Catalan labour market;
- 15 hours of training about Catalan society, public services and the law.[180]

In addition, immigrants (with regular or irregular status) are entitled to:

- access basic social services;
- the right to assemble, demonstrate and join a trade union;
- compulsory education and health care;
- free legal assistance;
- registration in the Municipal Register of Inhabitants.[181]

Immigrants holding a residence permit are, in addition, entitled to:

- public housing assistance;
- post-compulsory education;
- employment and social security;
- family reunification;
- the right to vote and stand in municipal elections.[182]

137. In order to obtain these rights, immigrants are expected to meet certain conditions to demonstrate their commitment to integrating into Catalan life. In 2010, the Law on Reception of Immigrants and Returnees to Catalonia linked the approval and renewal of residency permits to the successful completion of

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[177] Arrighi de Casanova, J.-T. (2012), op cit, p212.

[178] Generalitat de Catalunya (2009) Citizenship and Immigration Plan, Barcelona.

[179] Ibid, pp66-67.

[180] Interview with Catalan Secretary of Equality, Migration and Citizenship (20/3/2017).

[181] See Generalitat de Catalunya (2016) Ideas we can share about the case of Catalonia in integration policies, Barcelona. Available at:
http://cor.europa.eu/en/events/Documents/integrationforum/IntegrationPolicies-Catalonia-O.Amoros.pdf

[182] Ibid.

cultural, linguistic and work-related courses.[183] The Generalitat issues reports accrediting applicants' "integration efforts" before issuing or renewing a residency permit. Conditions relate to the length of residence, labour-related and/or family considerations, and the applicant's completion of "work-related and cultural training programmes."

138. The Catalan government has emphasised the goal of citizenship for everyone who lives in Catalonia, seeking to 'promote the extension of full rights and duties to everyone who lives in Catalonia. The rationale behind focussing on citizenship rather than short-term residency is to "stress right from the outset equal rights and duties and foster engagement with and participation in the host society."[184] The Citizenship and Immigration Plan 2005-2008 first began referring to immigrants as 'New Catalans', and thus "established the concept of resident citizenship for all immigrant people and their descendants, with the idea that they would be considered, and would feel themselves to be, citizens of Catalonia."[185]

Work Permits

139. As part of the revised Statute of Autonomy, the Spanish and Catalan governments reached an agreement to enable Catalonia to authorise work permits for immigrants working in Catalonia.[186] The Employment Services of Catalonia was granted the authority to process, issue and renew working visas for wage-earners and self-employed workers. However, this competence is strictly administrative, whereby the final decision on the granting of permits remains the exclusive competence of the Spanish government.[187] The Generalitat's competence is thus limited to being able to accelerate the application process for work permits in Catalonia.[188] At the same time, the Generalitat now has "more room for evaluation and application of the rules that enable it to defend its own policy in ordinary work permits for the self-employed and/or wage earners."[189]

140. The transfer agreement for issuing work permits in Catalonia was made in the Bilateral Generalitat-State sub-commission on immigration. Since then, administrative competencies on employment for immigrants are shared between the central government and Catalonia. In a recent study of IGR on immigration in Catalonia-Spain, it was found that policy officials perceived IGR as 'cooperative instead of conflictive' and 'no problems have emerged'.[190]

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[183] Jeram, S. (2013) 'Sub-state Nationalism and Immigration in Spain: Diversity and Identity in Catalonia and the Basque Country', *Ethnopolitics,* p11. DOI: 10.1080/17449057.2013.853998
[184] Generalitat de Catalunya (2016) Ideas we can share about the case of Catalonia in integration policies, Barcelona, p8.
[185] Generalitat de Catalunya (2009) Citizenship and Immigration Plan, Barcelona.
[186] Catalonia is the only AC to exercise this competence.
[187] Generalitat de Catalunya (2009) Citizenship and Immigration Plan, Barcelona, p53,
[188] Arrighi de Casanova, J.-T. (2012), op cit, p167.
[189] Generalitat de Catalunya (2009) Citizenship and Immigration Plan, Barcelona, p53.
[190] Franco-Guillén, N. (2018—forthcoming) 'Intergovernmental relations on immigrant integration in Spain: the case of Catalonia' in E. Hepburn and I. Adam (eds) *Intergovernmental Relations on Immigrant Integration in Multi-level States*, Regional & Federal Studies.

International Outreach

141. In addition to reception/integration policies and administering work permits, the Catalan government has made efforts to gain more influence over immigration flows to Catalonia. In particular, it has been active in paradiplomacy (external relations of substate governments) to shape the flow of migrants from immigration-sending countries. The Generalitat has developed "training courses in the source countries and projects that trained workers in Catalan language and culture before being hired in the place of origin (the Bolivia Project), [and] there is the Service for Labour Mediation in Places of Origin (SILO) that facilitates the recruitment of foreign workers in the place of origin. This service has helped to regulate migration flows and draw up a reasonable quota of workers which enables orderly immigration."[191]

142. In the past, the Catalan government has sought to emulate Quebec's immigration policy officers abroad. After a government delegation was sent to Montréal in 2001 to sign the *Québec-Catalonia Agreement on Immigration*, the Catalan government, lobbied the Spanish government to introduce shared competences over immigration selection. However, these proposals were not successful and the Generalitat instead opened immigration offices in Poland, Morocco, and Colombia.[192] These unofficial 'Catalan embassies' sought to link Catalan employers with foreign candidates and to familiarise prospective immigrants with the 'cultural specificities' of Catalan society. However, "the Spanish consulates in charge of delivering visas were unwilling to cooperate" and the Catalan initiative was partially struck down by the Constitutional Court in 2003 on the grounds that it constituted an invasion of state competencies.[193] The Catalan government closed the offices and focussed on developing the outreach activities described above.

Finance and Intergovernmental Relations

143. A national fund for financing migrant integration policies was set up by the Spanish Ministry of Employment and Social Affairs in 1995, with shares proportional to the scale of immigration in each of the ACs. The level of funding was determined in meetings of the Sectoral Conference on Immigration and followed-up through bilateral agreements between the Spanish government and AC governments, AC actions plans and evaluation/monitoring reports. In the case of Catalonia, the Secretariat for Immigration in Catalonia drew up the annual action plans, and on receipt of the funds from the Spanish Secretary of State for Immigration and Emigration, distributed the funds to local councils, organisations supporting integration and research projects.[194]

144. However, the amount of support available for integration programmes was reduced during the economic crisis, and the Catalan government – and other ACs - have since assumed greater responsibility for financing their immigrant

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[191] Generalitat de Catalunya (2009), op cit, p66.
[192] Arrighi de Casanova, J.-T. (2012) Those who came and those who left: The Territorial Politics of Migration in Scotland and Catalonia, PhD Thesis, European University Institute.
[193] Ibid, p164.
[194] Generalitat de Catalunya (2009) Citizenship and Immigration Plan, Barcelona, p62.

integration and reception programmes.[195] In the year 2009, the various departments of the Catalan government made a budget contribution of €212 million towards the Catalan Citizenship and Immigration Plan.[196]

145. The IGR institutions that were established to aid coordination and cooperation on immigration – including the Sectoral Conference on Immigration and the Bilateral Commission Generalitat-State sub-commission on immigration – have been seen to work smoothly by participants, when meetings have been convened. However, the major challenge is establishing a regular schedule of meetings, whereby the Catalan and Spanish governments have not met to discuss immigration matters for some years, despite Catalan requests to do so.[197]

Basque Country

146. The Basque Country (Euskadi) is one of the wealthiest regions in Spain, with low unemployment and high GDP per capita. Basque also enjoys a significant degree of autonomy through its Statute of Autonomy, created in 1979. While immigrants comprised only a small part of the population when the Statute was created (less than 1%), this number increased at the turn of the century, reaching 8% in 2008.[198] The growth rate of the immigrant population in the Basque Country has been among the highest in Spain.[199] As in Catalonia, most immigrants come from Latin America, North Africa and Eastern Europe.

147. While the Basque Country was able to negotiate a high level of autonomy following Spain's democratic transition, immigration – at 1% of the population – was not given much consideration. Article 17 of the Basque Statute of Autonomy "gives the Spanish state full responsibility for immigration, but does not elaborate which precise competencies (e.g. admissions, reception policy, etc.) are included."[200]

148. However, when immigration rates increased in the 2000s, the Basque government began to commit more time, structures and resources to managing immigration. This period coincided with the development of the Spanish Immigration Law (Law 8/2000) by the ruling Partido Popular government, which restricted the rights of irregular immigrants in Spain and introduced new deportation measures. The Spanish law was opposed by the Basque Nationalist Party-led government, which instead sought to develop its own immigration strategy that "centred on a distinct Basque citizenship aimed at

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[195] Franco-Guillén, N. (2018—forthcoming), op cit.

[196] The budget contribution for the Citizenship and Immigration Plan 2009-2012 in the year 2009 was €212,480,642.80. See Generalitat de Catalunya (2009) Citizenship and Immigration Plan, Barcelona, p157.

[197] Interview with Catalan Secretary of Equality, Migration and Citizenship (20/3/2017).

[198] Jeram, S. (2013) 'Immigrants and the Basque nation: diversity as a new marker of identity', *Ethnic and Racial Studies*, 36:11, 1770-1788, DOI: 10.1080/01419870.2012.664281.

[199] Jeram, S. & I. Adam (2014) 'Diversity and nationalism in the Basque Country and Flanders: understanding immigrants as fellow minorities', *National Identities*, p6. DOI: 10.1080/14608944.2014.951611.

[200] Jeram, S. (2013) 'Sub-state Nationalism and Immigration in Spain: Diversity and Identity in Catalonia and the Basque Country', *Ethnopolitics*, p13. DOI: 10.1080/17449057.2013.853998.13.

helping immigrants overcome the obstacles created by the Spanish immigration law". [201]

> "In the absence of competences to manage migration flows, and the issuing and renewal of residence and work permits etc., the Autonomous Community of the Basque Country has no tools to selectively manage the arrival or settlement of migrants on its territory... [and with regard to regional shortage occupation lists] … except for elite athletes and super-specialized positions, has also not served to attract qualified immigration"[202]

149. But although the Spanish state retains formal control over entry and naturalization, the Basque Country – like Catalonia and other ACs – has assumed competence for the reception and integration of immigrants.

Basque Immigration Plan

150. The first institutional recognition of the importance of immigration to the Basque Country was the creation of a Basque Directorate of Immigration within the newly formed Ministry of Housing and Social Affairs in 2001. The directorate was tasked with leading the implementation of a new Basque Immigration Plan (PVI), which was approved by the Basque parliament in 2004.

151. The first Basque Immigration Plan (PVI) 2003-2005 articulated a new form of Basque citizenship based on universal human rights, whereby "citizenship was not only dissociated from nationality, but also from "any other identity considerations and exclusively acquired on the basis of residence."[203] In contrast to Spanish citizenship, which may be obtained after a number of years of residence (depending on Spanish ancestry), Basque citizenship is based on the 'jus domicili' model "whereby anyone living in the Basque Country and inscribed in their municipal register is recognized as a Basque 'citizen'.[204] The PVI also contained a commitment to multiculturalism, which includes the promotion of other cultures and foreign languages, combined with programmes to help immigrants learn the Basque (Euskara) and Spanish languages.[205] And although the Basque County has no control over the selection of immigrants, one of the aims of the PVI was to implement policies that offer "socio-economic and legal incentives to foreigners to immigrate there, either from their country of origin or other regions of Spain."[206] The rights that immigrants may enjoy in Basque Country are similar to those of Catalonia, and include:

- free access to language courses (Basque and Spanish);

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[201] Ibid, p2.

[202] Interview with Policy Officer, Ministry of Employment and Social Policy, Basque Government (27/3/2017).

[203] Arrighi de Casanova, J.-T. (2012) Those who came and those who left: The Territorial Politics of Migration in Scotland and Catalonia, PhD Thesis, European University Institute, p209.

[204] Jeram, S. & I. Adam (2014) 'Diversity and nationalism in the Basque Country and Flanders: understanding immigrants as fellow minorities', *National Identities*, p7. DOI: 10.1080/14608944.2014.951611.

[205] Ibid, p2.

[206] http://www.euskadi.eus/contenidos/informacion/planes_estrategicos_inmigracio/es_planes/adjuntos/III%20Plan%20Inmigracion%20Ciudadania%20Convivencia%20Intercultural.pdf

- free access to educational programmes;
- registration on the municipal register (which enables access to basic social rights);
- and compulsory education and healthcare. [207]

For those possessing residence permits, the rights are extended to:

- voting rights in municipal elections
- freedom of association and demonstration,
- right to education, to work and social security,
- freedom to join a union and to go on strike,
- healthcare, housing aid, right to Social Security and the social services

152. There are a number of organisations that have been established in the Basque Country to support immigrants in exercising these rights. In addition to the Immigration Directorate, which has an active policy of tackling poverty and social exclusion, several other institutions have been created to support the Basque government's immigration objectives:

- The Forum for the integration and social participation of immigrant citizens in the Basque Country was created in 2002

- Ikuspegi, the Basque Immigration Observatory, was established in 2004 as the result of a collaboration agreement signed by the Basque Government and the University of the Basque Country, with the aim of learning more about migratory movements in the Basque Country through research and statistical data.[208]

- A Centre for the coordination of community initiatives in mediation and intercultural education, BILTZEN, was created in 2003.

- In 2007, the Basque Ministry of Housing and Social Affairs established a programme to fund multicultural events and immigrant organisations. Funds are awarded to non-profit organisations representing ethnic and immigrant groups.[209]

- Norabide, a service centre for immigrants, was opened in 2004 in the city of Vitoria (funded by the Basque government and the Association of Basque Municipalities). The aim of Norabide is to coordinate and implement municipal actions in the areas of settlement and multiculturalism – including the provision of free legal advice, language classes, counselling and translation services.[210]

- The programme HELDU (Legal Service and Social Care for Immigrants) was created in 2003 to provide immigrants with specialist legal advice on procedures relating to the documentation required to obtain employment,

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[207] http://www.idees.net/files/941-18-document/Euskadi.eng.pdf
[208] http://test.ikuspegi-inmigracion.net/es/index_english.php
[209] Jeram and Adam (2014), op cit, p8.
[210] Jeram, S. (2013) 'Immigrants and the Basque nation: diversity as a new marker of identity', *Ethnic and Racial Studies*, 36:11, 1770-1788, DOI: 10.1080/01419870.2012.664281.

social assistance and housing. However, the Basque government closed HELDU in 2010.[211]

153. While the Basque Country does not exercise any administrative competences in authorising work permits (unlike Catalonia, whose Statute of Autonomy was renewed to include this power in 2006), the Basque Country has developed strategies to address the issue of seasonal work in order to regulate and institutionalise the sector. These strategies are contained in two Plans of Attention to Seasonal Work (2004-2007 and 2008-2012), which were created following an intervention by the Ombudsman to the Basque Parliament to draw attention to problems in the area of seasonal migration.[212] The Basque government responded by forming a Committee on Seasonal Work which sought to improve conditions in the sector by focussing on four areas:

- Conditions of contracting;
- Accommodation;
- Care for minors linked to the seasonal worker population; and
- social consciousness-raising and integration in the community.[213]

154. Research on seasonal migration has been undertaken in the Rioja (wine-making) region of the Basque Country, where "vine-growing production is sustained to a significant degree by immigrant seasonal labour power.[214] A study found that seasonal immigrants tend to be treated differently from settled immigrants, in that they experience higher levels of discrimination and difficulties accessing public services, such as housing, education and healthcare. In response, the UAGA (Union of Agricultural and Livestock Farmers of Álava) sought to draw attention to several areas that required intervention and regulation: administering the contracts of the seasonal workers; obtaining a commitment from the farmers to establish suitable working conditions; and guaranteeing accommodation "so as to avoid them wandering about and spending the night outdoors."[215]

155. The actions of the UAGA received broad support by the Department of Employment the Basque Government and the Basque Police Service, and funding from the European Social Fund. The UAGA also "carried out mediation between farmers and seasonal workers, endeavouring to solve the conflicts of a relationship that exceeds strictly labour terms and is situated on the more tricky terrain of cultural differences".[216] The Basque Country is one of few substate governments that have developed explicit strategies to improve the status of seasonal migrant workers.

Switzerland

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[211] Jeram, S. (2013) 'Sub-state Nationalism and Immigration in Spain: Diversity and Identity in Catalonia and the Basque Country', *Ethnopolitics*, p14. DOI: 10.1080/17449057.2013.85399814
[212] Irazuzta, I., D. Muriel & E. Santamaría (2014) 'Immigration, Labour and Management of Otherness: Inclusion Policies in a Rural Area of the Basque Country'*, Journal of Contemporary European Studies*, p4. DOI: 10.1080/14782804.2014.923753
[213] Ibid, p6.
[214] Ibid.
[215] Ibid, p9.
[216] Ibid.

156. Switzerland has one of the highest levels of resident immigrants in the world, whereby approximately a quarter of the total population (of 8 million) is foreign-born. Switzerland operates a dual-admissions system, which distinguishes between people originating from European countries who benefit from the 'freedom of movement' agreement between Switzerland and the EU, and people from non-EU countries (third-country nationals), which focuses on skilled workers but where numbers are restricted. In order to apply for citizenship, foreigners must live in Switzerland for at least 12 years (which is set to be reduced to 10 years in 2018).

157. Although "immigrant scepticism in Switzerland is, if at all, below European average"[217], a populist movement spearheaded by the Swiss People's Party (SVP) has instigated a number of controversial initiatives to restrict the rights of immigrants, including popular plebiscites on the 'automatic deportation' of criminal foreigners, a ban on the construction of minarets and an end to 'mass immigration'. Scholars have suggested that immigrant scepticism is more visible in Switzerland due to structures of direct democracy and popular votes on these topics.[218] However, immigrant scepticism also varies across the country, with pro-immigrant and pro-EU attitudes being more prevalent in the French-speaking cantons, and less prevalent in the German-speaking cantons.

158. Regional variation in attitudes towards immigrants also correlate with cantonal variation in policies on integration and citizenship. Most notably, scholars have detected a strong divide between French and German-speaking cantons, where the former have adopted more expansive portfolios of immigrant rights, and the latter have adopted more restrictive criteria. This variation is possible because of the highly decentralised system of federalism in Switzerland, where the 26 cantons have high levels of autonomy over policy-making. Thus, whereas in the Australian and Canadian federations, we have seen the move from a centralised to a more decentralised immigration regime in the 1990s, in Switzerland the cantons have historically wielded a large degree of autonomy over migration policy:[219]

- Firstly, cantons are responsible for implementing immigration policy, and they have considerable scope over the interpretation of federal immigration law.[220]

- Second, cantons have significant influence over the development of national legislation on migration, through

  - their representation in the second parliamentary chamber (the Ständerat),

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[217] Manatschal, A. (2015) 'Switzerland – Really Europe's Heart of Darkness?', Swiss Political Science Review 21(1):23-35, p31.
[218] Ibid, p31.
[219] Manatschal, A. (2014) 'Swiss Immigration Federalism' in Baglay, S. and D. Nakache (eds.) *Immigration Regulation in Federal States: Challenges and Responses in Comparative Perspective.* London: Springer, 179-198, p180.
[220] Ibid.

o their ability to introduce cantonal legislative initiatives into parliament; and

o through cantonal referendums.

- Third, cantons are the main regulatory units in the field of immigrant integration, and each canton has developed its own citizenship law. All applications for naturalisation must be approved by the local, cantonal and federal governments.[221]

- Fourth, under the Federal Act on Foreigners, cantons issues residence permits to migrants.

159. While the Swiss cantons do not exert direct control over the selection of immigrants for their territories they do have considerable input and influence over immigration and integration policy due to the highly devolved structure of government. This has led to the highest levels of substate variation in immigrant rights in all of the cases analysed.

160. The federal government has sought to centralise immigrant integration policy by introducing an Integration Agreement (where immigrants are required to fulfil certain criteria, such as learning the local language, in order to obtain a residence permit). However, this has not undermined cantonal autonomy in this matter.[222] Instead, cantons have been able to pick and choose which requirements they set for meeting residence permits. In particular, studies have shown that: "while French-speaking cantons are influenced by France's more inclusive and liberal *jus soli* citizenship conception, integration policies of German-speaking cantons correspond more closely to Germany's exclusive and restrictive *jus sanguinis* citizenship tradition."[223] To give some examples:

- On political rights, immigrants (non-nationals) are able to vote in five out of six French-speaking cantons at the municipal level, and in two French speaking cantons at the cantonal level. In contrast, in most (16 out of 19) German-speaking cantons, Valais and (Italian-speaking) Ticino, immigrants have no rights to vote in elections."[224]

- On civic rights, French-speaking cantons have less demanding requirements to fulfil residence criteria in their citizenship laws than German-speaking cantons. For example, in (French-speaking) Jura, applicants must prove that they have lived in the canton for 2 years (as part of the 12-year residence

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[221] Ibid. Federal laws impose formal naturalization requirements, but an immigrant cannot obtain a Swiss passport without acquiring citizenship of a municipality, and municipalities enact the naturalization procedures and ultimately decide on the applications. See also Hainmueller, J. and D. Hangart (2013) 'Who Gets a Swiss Passport? A Natural Experiment in Immigrant Discrimination', American Political Science Review, p4. doi:10.1017/S0003055412000494.

[222] The Integration Article in the old Alien Law, passed in 1999 has been superseded by a new immigration law in 2006 (and came into operation 2008), that requires immigrants to meet criteria to facilitate their integration. Those who fail can be deported home. But these considerations are only related to low-qualified third country nationals.

[223] Manatschal (2014), op cit, pp180-181.

[224] Ibid, p193. In general, cantons hold a referendum on the topic and let the cantonal population decide whether immigrants should have voting-rights at the cantonal or local level or not.

requirement set by the federal government for naturalisation[225]). However, in the German-speaking canton of Nidwald, applicants must prove they've lived in the canton for 12 years.[226]

- On cultural rights, cantons have different requirements in order to obtain citizenship. For instance, applicants in (French-speaking) Neuchatel are only required to have knowledge of the local language (French). In the German-speaking canton of Uri, "besides knowledge of the local language (German), an applicant must be integrated in the Swiss context, be familiar with the Swiss way of life, know the rights and duties related to Swiss citizenship and live in "ordered financial circumstances".[227]

161. In relation to the federal Integration Agreement, only German-speaking cantons and the bilingual canton of Valais have applied this policy "systematically, which ties the allocation of residence permits to language proficiency…By contrast, Latin cantons applied integration agreement only selectively…or refrained completely from applying this restrictive policy instrument."[228]

162. The federal government has made a large investment in immigrant integration. Between 2001 and 2010, the government spent between €6-7 million per year to support integration projects, including language and integration courses and training. The federal government also spends US$28-37 million in lump-sum payments to cantons for the integration of refugees and individuals with temporary residency permits.[229] Cantons also have their own integration and intercultural cooperation budgets, committees and offices, and they may vary the amount that they wish to spend on language and integration courses, intercultural programmes for children with a migrant background, and team-teaching resources in schools.[230]

163. The strongly federal structure of power-sharing in Switzerland facilitates a high degree of cooperation between cantons and between the cantons and the federal government,[231] and immigration is no exception. However, there have been an increasing number of conflicts between the cantons and the federal government on the free movement of people agreement with the EU. In a referendum against 'mass immigration' in February 2014, Swiss voters backed limits on EU immigration from European neighbours, which represented a

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[225] A new law reducing the number of years of residence from 12 to 10 was passed by Parliament in June 2014 and is expected to go into effect from January 1, 2018. See http://www.swissinfo.ch/eng/becoming-a-citizen/29288376
[226] Communities and cantons approve individual citizenship applicants either by means of a public assembly or a special panel decision..
[227] Article 5 of Uri cantonal citizenship law.
[228] Manatschal (2014), op cit, p182.
[229] http://www.migrationpolicy.org/article/switzerlands-non-eu-immigrants-their-integration-and-swiss-attitudes
[230] D'Amato, G. (2010) 'Switzerland: A Multicultural Country without Multicultural Policies?' in S. Vertovec and S. Wessendorf (eds) *The Multiculturalism Backlash European Discourses, Policies and Practices*, Routledge.
[231] The principle of cooperation is laid out in the Federal Constitution. Article 44 states that cantons and the Confederation must support each other in the fulfilment of their tasks, and generally cooperate with each other.

violation of the Swiss-EU agreement on the free movement of people. Among the cantons, the strongest vote for limiting EU immigration was in Ticino, where 68.2 per cent of voters were in favour. However, the French-speaking cantons of Switzerland rejected the proposals, with only 41.5% in favour.[232]

164. The Canton of Ticino held another referendum in 2016, to limit EU free movement, which won 58% of the votes.[233] Although the canton lacks the powers to implement this proposal, and such referendums are not binding, this puts the Swiss federal government in a difficult position with the EU, which has insisted that Switzerland abide by its bilateral agreements. The Swiss government has since watered down the 2014 anti-immigration initiative, so that it does not introduce quotas on the number of EU workers permitted, but instead gives Swiss workers preferential treatment in the labour market.[234] However, some cantons in Switzerland – especially French-speaking Vaud – have positively welcomed EU migrants as part of their multicultural vision of Switzerland.

Vaud

165. Vaud is the third largest canton in western Switzerland, and one of the most heavily populated with more than 746,300 inhabitants (9.2% of the Swiss population). French is the main language, but English is spoken fluently by a large number of people (17%), while German is obligatory at school. The proportion of immigrants in the Canton of Vaud is one of the highest in Switzerland, and indeed in Europe (33.1% of the population),[235] representing over 175 different nationalities. The Canton of Vaud is proud of portraying itself as a 'Multicultural, Multilingual Region', whereby "human diversity represents a crucial element in the region's economic success and its cultural wealth.[236] Indeed, the canton's positive commitment to immigration is enshrined in its Constitution, whereby it is stated:

    1) The State welcomes all foreigners.

    2) The State and the municipalities encourage their integration in conditions of mutual respect of identities and the values which underlie the rule of law. [237]

166. Vaud's commitment to multiculturalism and welcoming foreigners from different backgrounds lies in sharp contrast with the anti-immigrant populist sentiment of the SVP, which mobilised the recent referenda against EU immigration. However, it is also reflective of the pro-EU and pro-immigration politics of the French-speaking cantons in Switzerland, which tend to lean towards the Social Democratic Party and interpret citizenship in the French *jus soli* fashion.

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[232] The national average across Switzerland was 50.3%, resulting in the vote succeeding.
[233] https://www.ft.com/content/abb3de84-832c-11e6-8897-2359a58ac7a5
[234] https://www.thelocal.ch/20170125/campaigners-demand-referendum-on-swiss-governments-immigration-decision
[235] https://www.urbistat.it/AdminStat/en/ch/demografia/dati-sintesi/vaud/22/2
[236] http://www.vaud.ch/en/canton-of-vaud/population-social-life/
[237] Art.68, Canton of Vaud Constitution from April 14th 2003. See Canton of Vaud (2016) *Welcome to the Canton of Vaud*, Lausanne, p3.

167. Given that the Swiss structure of federalism endows significant autonomy over citizenship and immigrant integration to the cantons, Vaud is able to shape its immigration policies to reflect public and political attitudes in the canton. For instance, whereas some German-speaking cantons require 12 years of residence in their region to obtain citizenship (as part of the 12 years mandated by the federal government), the canton of Vaud only requires 3 years of residence in the region in order to access the rights of citizenship. And while some other cantons impose extensive additional requirements to meet citizenship criteria, the canton of Vaud's requirements are more liberal, and include:

- to be ready to undertake civic duties: pay taxes and military or community service

- to respect Swiss law: no criminal record

- to have a sound moral and financial reputation

- to not compromise Switzerland's internal or external security

- to be well-integrated in the Swiss and Vaud community, in particular through knowledge of French, integration in professional and social life

- to demonstrate loyalty to Switzerland and its institutions.[238]

168. Vaud also grants immigrants the right to participate in municipal elections. Foreign nationals can vote or stand for election at the municipal level, as well as sign an initiative or a communal referendum, if they meet eligibility requirements (aged over 18, hold a residence permit for ten years, and have lived in the Canton for at least three years).[239]

169. Vaud also has one of the fastest-growing populations in Switzerland, which is expected to grow by more than 20% by 2035 (compared to an average of 12.5% in Switzerland). [240] The Vaud Statistics Office partially puts this down to the end to quotas on new EU countries, which make it easier for EU nationals to come to Switzerland, in addition to the canton's strong economic growth. Vaud politicians have "welcomed the fact that immigrants, who make up around 30 per cent of the population, have made it a "younger" canton."[241]

170. The canton is also keen to support the integration of immigrants, for which it receives federal subsidies from the Swiss Confederation in four-year installments.[242] Vaud has created several initiatives to help newcomers settle in the region and to foster good relations between foreign- and native-born populations. This includes:

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[238] Canton of Vaud (2016) Welcome to the Canton of Vaud, Lausanne, p11.
[239] Ibid, p82.
[240] http://www.swissinfo.ch/eng/business/demography_number-of-retired-people-expected-to-rise-sharply/42150668
[241] Ibid.
[242] Interview with Policy Officer, Population Service, Canton of Vaud (28/3/2017).

- Cantonal Office for the Integration of Foreigners and Prevention of Racism (BCI), which implements "concrete actions aiming to improve the coexistence of the foreign and Swiss populations, based on shared values as well as on mutual respect and tolerance. The BCI offers personalised advice, runs integration programs for the canton and manages the federal financing for integration."[243]

- Consultative Chamber of Immigrants for the Canton (CCCI), "whose members, who are mainly well-known figures of foreign origin of associations in Vaud, are appointed by the State Council. The CCCI has an essential role in implementing the cantonal integration law of Vaud.[244]

- The creation of a booklet, disseminated to newcomers, called 'Welcome to the Canton of Vaud' which "has been created to provide you with useful information and addresses in various areas to help you in your daily life (residence, health care, schooling, work, accommodation, language courses, meeting spaces…)."[245]

- Swiss-Foreigners Town Committees, which are active in several communes, which are supported by the BCI to "act as areas for exchange, dialogue and information between foreign and Swiss people and the authorities."

- The development of integration courses for newcomers, including language and intercultural programmes, which are subsidised by the canton and/or communes.[246] These include mother and child language classes, language courses designed for people working in certain sectors, and from specific countries (i.e. Somalia, Tibet), and the provision of childcare during the classes.

- The Appartenances Association provides the services of trained interpreters in over 50 languages, for medical, social or school-related appointments.

171. The Canton of Vaud has identified the integration of foreigners as a key goal in its immigration strategy: "The integration of foreigners and the prevention of racism is an important political and social challenge for the future. Vaud owes its diversified population to the many different countries of origin of its citizens, the range of languages spoken, the migratory paths followed and the number of religious affiliations. This diversity represents both a treasure and a challenge. Integration is the concern of the entire population, both Swiss and foreign, and is covered by the two fundamental principles listed in the Constitution: mutual respect of identities and respect for the rule of law."[247]

172. Vaud's liberal attitude towards migration sets it apart from many other cantons in Switzerland. For instance, "the Canton of Vaud is sometimes criticized by the Confederation, which accuses it of not returning quickly enough those who have not obtained asylum. Part of the Vaud population regularly expresses

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[243] Canton of Vaud (2016), op cit, p83.
[244] Ibid, p3.
[245] www.vd.ch/vivre-vaud
[246] Costs vary from CHF10-50 per month per course.
[247] Canton of Vaud (2016), op cit, p3.

some concern for the migrants and regularly puts pressure on the authorities against expulsions. This type of mobilization is not widespread in the other cantons."[248]

173. Finally, with regard to intergovernmental relations, Vaud – along with the other Swiss cantons – is regularly consulted by the Swiss Confederation on legislative changes to immigration laws through the second chamber as described above. In addition, the cantons organise themselves into thematic forums (inter-cantonal conferences) in order to voice their collective opinions on national decision-making. According to a policy official in the Vaud government, "overall this organization [of IGR] works properly."

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[248] Interview with Policy Officer, Population Service, Canton of Vaud (28/3/2017).

PART 2: OPTIONS AND LESSONS FOR SCOTLAND

What immigration options are available to substate units?

174. The case study analysis has revealed that immigration has become a key concern of substate governments, presenting both challenges and opportunities for substate economies and societies. However, the cases show that there is no single strategy for managing immigration, and indeed, no single model for differentiating immigration powers across states. Rather, that there are myriad ways in which substate governments in multi-level states may seek more influence over the selection, reception, accommodation and integration of immigrants.

175. This section of the report will begin a lesson-drawing exercise, by identifying the main options available to substate administrations for differentiating immigration, drawing from case studies and supplementing information where relevant. Following a 'continuum' of differentiated immigration policy options, the analysis begins with 'soft levers' that usually fall within the ambit of decentralised powers, moving on to 'mid-range' solutions that require greater coordination with central governments, before concluding with models that require a significant transfer of powers.

Category 1: Soft Levers: devolved activities

176. The cases demonstrate that substate administrations tend to exercise a baseline competences in the field of immigration where it affects their devolved powers: i.e. where it concerns the integration of immigrants into the substate territory (affecting health, education, housing policies, economic development). These powers include: (a) the development of migrant reception and integration policies at the substate level in order to attract, welcome and importantly, retain migrants in the substate territory; and (b) using international outreach activities to advertise the territory as an attractive country of destination. The utilisation of these 'soft levers' tend to fall under the competences allocated to substate administrations, and thus substate governments can exert a limited degree of influence over immigration flows without requiring control over selection and admissions.

Migrant Reception & Integration Policies

177. A first lever to attract and retain immigrants is the creation of substate migrant reception and integration policies, which are generally a devolved regional competence. To provide some definitions, reception policies are targeted at newly arrived immigrants and their families, and focused on their particular

language and orientation needs. Meanwhile, integration policies are complementary, and intended towards the long-term inclusion of immigrants – including second, third generations and more –to ensure the equality of opportunity for all individuals in society. The latter policies have been associated with a trend towards 'mainstreaming' migrant integration across policy sectors that target the general population, in addition to a focus on strengthening ethnic, community and race relations.

178. All of the substate cases examined have explicitly pursued integration and reception policies, with some cases going further to develop a framework of substate citizenship which is based on residence alone (rather than nationality or legal status). Substate governments have emphasised the importance of investing in the integration of immigrants to encourage long-term settlement.

179. Migrant integration is a multi-faceted concept, but essentially refers to the process of mutual adaptation between the host society and immigrants.[249] While some definitions of integration emphasise 'the process of becoming an accepted part of society'[250], most of the substate cases analysed have gone further, to encompass a broader understanding of integration as involving the active participation of migrants in all aspects of social, economic and political life in the substate territory. Thus, migrant integration encompasses economic, political and social integration:

- **Economic integration** involves migrant access to, and accommodation within, the labour market. Here, substate governments have been active in providing specialist training programmes for migrants about entering the substate labour market (Catalonia, Åland), schemes that partner migrants with business mentors (PEI), the creation of migrant-oriented websites listing employment opportunities (Vaud), and efforts to recognise foreign qualifications to ensure that migrants are not pushed into lower-skilled jobs and that their skills are matched with relevant opportunities (Canadian provinces).

- **Political integration** involves migrant participation in the exercise of political power, through voting and standing in elections, and the right to political organisation. Substate governments have been active in seeking to extend the political rights of migrants to vote in municipal (and sometimes, substate) elections (Vaud, Catalonia), efforts to encourage political participation and increased representation of migrants (Basque Country, Quebec, Åland), and funding for migrant organisations (Catalonia, Quebec).

- **Social integration** involves migrant access to the social rights guaranteed by the welfare state, such as health, education and housing. Substate governments have been active in creating equal opportunities for migrants by establishing language classes to improve fluency in the local language (all of the cases analysed), settlement programmes to educate migrants

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[249] International Organisation for Migration. https://www.iom.int/migrant-integration
[250] Penninx, R. (2005) 'Integration of Migrants' in M. Macura (ed) *The New Demographic Regime.* Geneva: United Nations, p142.

about public services and employment (all of the cases analysed) and intercultural dialogue programmes (Quebec, Catalonia, Basque Country).

180. In addition to the benefits of fully incorporating newcomers into a more welcoming and adaptive host society, integration strategies offer strategic advantages for substate governments wishing to retain migrants. Substate governments have perceived migrant integration and immigration control as equally important, and interdependent, strategies; where the latter allows migrants to settle in a given territory, and the former encourages them to stay. And one way of advertising the efforts of substate governments to welcome and integrate migrants is through international outreach activities.

Paradiplomacy and International Outreach

181. A second 'soft lever' to attract migrants to a substate territory is 'paradiplomacy' – a broad term that essentially refers to the external engagement of substate actors. Studies have shown that substate nations and regions have increased the scope and extent of their external relations in order to meet certain functional, economic and political objectives.[251] The area of immigration is no exception. The case study analysis revealed that a number of substate actors have sought to strengthen their international presence in order to attract migrants from certain sectors and backgrounds. South Australia (from the 1950s), Quebec (from the 1970s), Catalonia (in the 1980s and since 2006), and other Canadian provinces (from the 1990s) provide examples of international outreach activities on migration.

182. For example, Quebec lobbied the federal government to install its policy officers in a number of Canadian embassies in the 1960s, which became part of Lang-Cloutier Accord in 1971. Quebec's immigration officers received greater powers over the subsequent decade, with the signing of new accords on immigration. Canada's other provinces have also created strong international portfolios of activities as part of their PTNP immigration strategies.

183. In Australia, State governments have forged international immigration strategies to attract migrants to their territories. For instance, SA has been active in attracting migrants from the United Kingdom to settle in the state through their representatives in the Australian Embassy in London. Tasmania has also forged an international presence to market business opportunities to potential migrants from South Africa and South Korea. Tasmania's international outreach activities include "a dedicated migration website, and a series of State Government missions to South Africa and Korea, providing information and direct contacts for business migrants."[252]

184. However, the cases also show us that paradiplomacy works best when the cooperation of central-state authorities is obtained, as the case of Catalonia

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[251] See Aldecoa, F. and Keating, M. (1999), Paradiplomacy in Action: The Foreign Relations of Subnational Governments. London: Frank Cass; Cornago N (2010) On the Normalization of Sub-State Diplomacy. *The Hague Journal of Diplomacy 5*(1-2): 11-36.
[252] Withers, G. and M. Powell (2003) *Immigration and the Regions: Taking Regional Australia Seriously. A Report on Options for enhancing Immigration's Contribution to Regional Australia.* Paper prepared for the Chifley Research Centre, p25.

reveals. Where the external activities of substate governments are seen to contravene central-state competences, central governments may seek to restrict activities. Paradiplomacy is, as the name suggests 'parallel' to state diplomacy, and works best when substate activities complement and reinforce state diplomacy.[253]

Category 2: Mid-range levers: influence and cooperation

185. Moving on to 'mid-range powers' that substate governments enjoy in relation to immigration policy, it is possible to identify three models that fall within this category: (1) increasing substate influence in central decision-making on immigration; (2) the agreement of bespoke sectoral agreements on immigration for the territory; and (3) granting administrative competences in certain areas of immigration, such as work permits. These models require greater coordination as they involve higher levels of interaction between substate and state administrations. However, rather than seeking autonomy over immigration (as will be explored in the next section), these mid-range strategies are more concerned with gaining greater substate influence over (aspects of) the central state's immigration policy.

Substate influence over central decision-making

186. One way to give substate governments more influence over immigration (without devolving legislative powers) is to ensure their formal input into central-state decision-making. This could be done in a number of ways, including:

- Regular advisory meetings between state and substate immigration officials
- Substate representation on central-state immigration committees and forums
- Substate input into central-state immigration quotas and occupation lists
- Substate voting on central-state immigration policies (second chamber)

187. Canada's provinces offer an exemplary model for intergovernmental meetings on immigration and provincial input into central-state immigration policies. There are regular meetings of federal, provincial and territorial ministers responsible for immigration to discuss how the immigration system is working in each part of the country, and to propose action plans for improvement. According to the Manitoba Minister for Immigration, "Provinces and territories continue to work with the federal government on the objectives of Canada's Vision Action Plan for Immigration. We are encouraged by the collaborative approach taken to developing the immigration levels plan, as predictability and flexibility are key to achieving our shared immigration objectives."[254]

188. A number of cases operated Shortage Occupation Lists (or their equivalent), where substate labour-market needs were taken into account. For instance, Australia has a Skilled Occupations List (SOL), which is used when processing applications for the regional visa migration schemes. Spain also operates a 'quota regime' with a list of hard-to-fill occupations that were issued by

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[253] Tatham, M. (2017—forthcoming) 'Regions Beyond the State: External Relations and Paradiplomacy' in E. Hepburn and K. Detterbeck (eds) *Handbook of Territorial Politics,* Edward Elgar.
[254] http://news.gc.ca/web/article-en.do?nid=1136739

autonomous communities to meet labour market needs, though some ACs – such as the Basque Country – feel that the lists are too restrictive.[255]

189. The Swiss cantons have a significant degree of input into Swiss immigration policy-making, through their representation in the second parliamentary chamber. Whereas the first chamber is based on proportional representation of the population, the second chamber (Staenderat) accords each canton two seats, and thus "guarantees that the interests of all cantons are equally represented in the legislative process."[256] This influence owes to the decentralised nature of the Swiss federation.

190. Clear differences between federal and non-federal multi-level states have emerged in the course of this research. While Canada, Australia and Switzerland's structures of IGR guarantee substate input into central-state policy-making, in other devolved or regionalised states, this input was not guaranteed. For instance, Catalonia was granted input into Spanish decision-making on immigration in the revised Statute of Autonomy in 2006, however this right depends on the agreement of Madrid and has not yet materialised.[257]

Creating bespoke sectoral migration programmes

191. Another substate strategy that emerged in the course of this research was the possibility of creating bespoke programmes and agreements to attract migrants from certain sectors. These types of migration programmes enable substate governments to focus on filling sector-specific labour-market gaps on a temporary basis.

192. The Basque Country provides a 'soft' version of this, whereby the Basque Government has developed several policy programmes to regulate the large numbers of seasonal migrants who work in the agricultural sector (in particular, wine-growing). The latest *Plan Integral de Atención al Trabajo Temporero 2013-2016*[258] (Comprehensive Plan for Seasonal Work 2013-2016) focuses on three areas: the improvement of contracting conditions, accommodation, and improving the situation of children of seasonal migrant workers. While the Basque Country does not have any formal powers over granting resident permits to temporary migrants, it has developed a uniquely Basque approach to ensuring effective working conditions for seasonal migrants and their dependents.

193. If we look elsewhere in Europe, the German *Land* of Bavaria has some experience of managing a bespoke sectoral migration scheme. In the late 1990s, when Germany created a 'Green Card' system that allowed the temporary employment of foreigners in areas of skills shortage (i.e. computing),

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[255] Interview with Policy Officer, Ministry of Employment and Social Policy, Basque Government (27/3/2017).
[256] Manatschal, A. (2014) 'Swiss Immigration Federalism' in Baglay, S. and D. Nakache (eds.) *Immigration Regulation in Federal States: Challenges and Responses in Comparative Perspective.* London: Springer, 179-198, p182.
[257] Interview with Catalan Secretary of Equality, Migration and Citizenship (20/3/2017).
[258] http://www.euskadi.eus/contenidos/proyecto/3_plan_trabajo_temporero/es_agripes/adjuntos/III_Plan_trabajo_temporero2013_2016.pdf

the Bavarian government introduced its own parallel 'Blue Card' scheme.[259] The Blue Card enabled information technology (IT) specialists to come and work in Bavaria for a limited period of time (5 years). The aim was to overcome a perceived shortage in IT specialists in the labour-market. However, unlike the German Green Card, which granted five years residency to 20,000 specialists, the Bavarian Blue Card tied residency permits to holding a particular employment contract, which would expire when the job came to an end (thus making it difficult for a visa-holders to move to another position or industry). The scheme, which was criticised by some as "a guestworker program *mit Niveau,* catering to groups already privileged by globalisation,"[260] was superseded by the EU Blue Card work-permit scheme.

194. Finally, if we look closer to home, Scotland exercised a modicum of control over HE sectoral migration in the 2000s through the *Fresh Talent Working in Scotland* (FT) scheme. FT allowed international graduates that had pursued studies at a Scottish university to live and work in Scotland for two years without the need for a work permit directly after graduation. It was hoped that the policy would encourage skilled graduates to stay in Scotland after their studies and help to mitigate population decline.[261] However, while the FT scheme was viewed as successful, it only lasted until 2008, at which point it was mainstreamed into UK policy with the creation of the Points Based System (PBS), and then terminated in 2012.[262]

Granting administrative competences to substate administrations

195. There have been instances where central-state governments have granted administrative competences to substate governments over limited aspects of immigration. These arrangements have usually benefitted both parties, whereby the substate unit enjoys a modicum of control over managing an aspect of immigration, while the central-state authorities are relieved of that responsibility, thus potentially hastening efficiencies.

196. Catalonia offers an example of this model, whereby the Spanish state granted the Catalan government powers to authorize work to foreigners in the revised Statute of Autonomy in 2006. The Employment Service of Catalonia is now responsible for issuing and renewing working visas, which is seen to help reduce backlogs in Madrid, as well as allowing Catalonia to speed-up application processing times.

197. In the 1970s, Quebec was also granted a degree of administrative control over immigration. The Lang-Cloutier agreement (1971), allowed Quebec representatives to be employed in Canadian embassies to advise Canadian immigration officers about social conditions that were specific to Quebec. The

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[259] Hepburn, E. (2008) 'The Neglected Nation: The CSU and the Territorial Cleavage in Bavarian Party Politics', *German Politics*, 17:2, pp184-202.
[260] Mushaben, J. (2008) The Changing Faces of Citizenship: Integration and Mobilization among Ethnic Minorities in Germany, Berghahn Books, p18.
[261] Hepburn, E. (2014) 'Is There a Scottish Approach to Citizenship? Rights, Participation and Belonging in Scotland', *European Yearbook on Minority Issues*, Vol. 13.
[262] Scottish Government (2008) Fresh Talent: Working in Scotland Scheme an evidence review. Edinburgh.

1975 Andras-Bienvenue Accord expanded the role of Quebec immigration agents, as they were allowed to conduct interviews with candidates. However, final decisions on selection remained with the Canadian government.

198. Vaud, and other Swiss cantons, also exercise the authority to issue and renew work and residence permits, which is part of their comprehensive cantonal citizenship laws. Finally, Åland has enjoyed some administrative competences in processing residence permit documentation, before forwarding this to the Finnish government for final approval. Under this system, local police officers in Åland would receive applicants at their offices and register their documents. The system has recently changed, whereby visa applicants must now visit mainland Finland to register their documents. This has created some problems for migrants who are unable to make the journey to mainland Finland. A compromise agreement has been found whereby the Finnish authorities visit Åland every 6 weeks to meet applicants.

Category 3: Hard Levers: sharing and devolving new competences

199. Our final category of differentiated immigration policy options involves the creation of comprehensive new frameworks for immigration in multi-level states. Here, substate governments may be granted concurrent or exclusive rights over selecting immigrants to settle in their territory. This division of competences is usually motivated by the desire of the state to redistribute immigrant flows to low-population parts of the country and thereby balance regional economic development, as well the substate territory's objective of tailoring immigration flows to meet its labour-market and sociocultural needs. This category comprises two options: (1) the creation of a statewide system that accommodates regional immigration needs through regional sponsorship/nomination schemes (whereby the central-state government maintains final control over selection); and (2) decentralising exclusive control over selection to substate administrations.

The creation of regional sponsorship and nomination schemes

200. Under this option, central-state authorities may introduce a statewide framework for differentiating requirements for the selection of immigrants on a regional basis. Substate governments will have the opportunity to sponsor, or nominate, a limited number of immigrants to be granted visas on their territory based on skills criteria and labour-market shortages. Central governments then make the final decisions on visa nominations. Regional sponsorship/nomination schemes encourage immigrants to settle in regions that have low population-growth, where the condition is that they must reside in that region for certain period of time.

201. As we saw in the case study analysis, both Australia and Canada provide different models of this scheme. In Australia, under the State Specific Regional Migration Scheme (SSRM), the federal government has created a number of regional visas that some States and Territories may be eligible to apply for. States and Territories are also encouraged to engage in international outreach

and recruitment activites to attract migrants to their territories. The authority for issuing regional visas sits with the Australian government.

202. In contrast, the Canadian government has signed individual bilateral agreements with Provinces and Territories in Canada. Each agreement is unique, setting the scope and size of the immigrant population that substate governments seek to attract, and criteria for selection. Provinces and Territories are then able to nominate a certain number of skilled immigrants for admission under the framework of the bilateral agreement. The Canadian government also exercises final authority over the approval of provincially nominated immigrant visas, as well as the total volume of admissions.

Decentralising exclusive competences in the area of immigration

203. Our final option goes one step further, by decentralising full control over admissions and selection to the substate government. Quebec offers a singular example of how a substate administration has been granted exclusive and concurrent powers over immigration in order to meets its sectoral, linguistic and nation-building needs and interests.

204. Under the Canada-Quebec Accord (1991) – which built on twenty years of gradually devolving immigration powers to the province – Quebec now assumes sole responsibility for establishing immigration levels in the province, for selecting immigrants, and for the integration of immigrants into Quebec's society and labour-market, with a particular emphasis on providing newcomers with the means to learn the French language. This has involved the creation of new offices, policies, programmes, regulatory frameworks and standards for immigration that are guided by the principles set out in the CQA.

Lesson-drawing: Implementing Options in Scotland/the UK

205. Now that we have examined what options are available to substate governments to differentiate their immigration policies, we can now consider to what extent it is possible to transfer (elements of) these options to the Scottish/UK context. This section explores the possibilities of policy translation from abroad with regard to implementing the range of differentiated immigration options presented above. It focuses on the practicalities of implementing each option as well as the consequences of differentiating immigration in Scotland/UK. For each option, the following questions are explored:

- Which powers would (or would not) need to be devolved?
- How would this system operate? What structures need to be established?
- What inter-governmental structures would need to be established?
- How might each option be financed?
- What might be the consequences of implementing each option in Scotland/the UK?
- What are the implications for future EU relations?

206. This analysis is structured along the same continuum presented above, which ranges from soft levers (no changes to the current devolution settlement) to mid-range options, to new frameworks (significant changes to the division of powers).

Scottish Migrant Integration & Reception Policies

207. A first option is for Scotland to develop a robust framework for migrant reception and integration in order to attract and, importantly, retain newcomers to Scotland. Given that migrant integration involves the incorporation of migrants into the society and economy of the territory – which has implications for health, education, housing and economic development in particular – this policy competence is normally devolved. Substate territories across the world – including the Belgian regions, German Länder, Italian regions, Swiss cantons, Spanish autonomous communities, Canadian provinces and Austrian Länder – have assumed authority over migrant integration, and created their own bespoke policies.[263] Scotland is one of the few legislative regions lacking a clear policy framework in this field.

208. By developing its own explicit Migrant Integration Policy, Scotland could spell out its distinct approach to migrant rights and services that has evolved implicitly over time since devolution.[264] This could include reception services (such as language classes and orientation services), the bundle of rights that is granted to newcomers (such as the right to vote in municipal and in some cases parliamentary elections and referenda; the right to access to housing, education, healthcare and social services; the right to equal opportunities and anti-discrimination) and the re-launch of a *One Scotland, Many Cultures* integration campaign.

Devolved Powers

209. Migrant integration was not specifically spelled out as a policy area in the legislation that created the devolved Scottish institutions (Scotland Act 1998), nor in subsequent enhancements to devolution in 2015.[265] This is largely because 'migrant integration' has not, until recently, been part of the British policy lexicon. Instead, the preferred terms to address the status of individuals with a migration background have historically been black and minority ethnic (BME) policy, race relations policy, and community cohesion policy. However, none of these terms specifically address the situation of new (often non-BME) migrants to the UK, where for instance the largest immigrant group in Scotland is Polish people.

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[263] See Hepburn, E. & R. Zapata-Barrero (eds) (2014). *The Politics of Immigration in Multilevel States: Governance and Political Parties.* (Basingstoke: Palgrave); Joppke, C. and L. Seidle (2012) *Immigrant Integration in Federal Countries* (Montreal: McGill-Queens University Press).

[264] For the evolution of Scotland's approach to citizenship, see E. Hepburn (2014) 'Is There a Scottish Approach to Citizenship? Rights, Participation and Belonging in Scotland', *European Yearbook on Minority Issues*, Vol. 13.

[265] Hepburn, E. (2015) 'Immigrant Integration and Policy Divergence in Scotland since Devolution', paper presented at PSA 65th Annual Conference, University of Sheffield, 30 March – 1 April.

210. Regardless of this lack of explicit legislative control over migrant integration, because devolution is based on a 'retainer' model – whereby anything not specifically reserved to the UK level is devolved to the Scottish level – the majority of policy areas that affect an immigrant's incorporation into their host society – such as health, education, housing, children's services, legal aid and policing – are devolved to the Scottish Parliament. To that end, migrant integration can be understood as a *de facto* devolved competence to Scotland.[266] Therefore, no additional powers would need to be devolved.

Structures and Capacity

211. Regarding the operation of a Scottish Migrant Integration policy, this could largely be accommodated within existing structures. In particular, most aspects of a migrant integration policy would fall within the remit of the following Scottish government directorates-general: Health and Social Care, Learning and Justice, Communities and Economy. However, it would be useful to create an Inter-departmental Committee with representatives from each of the directorates-general (in particular, housing; children and families; health and social care; learning; justice; economic development) to develop a coherent policy framework, to oversee the process of mainstreaming migrant integration policy across government directorates, and to coordinate policy with local councils, for instance vis-à-vis the COSLA Strategic Migration Partnership (CSMP).

212. The Inter-departmental Committee on Migrant Integration, in consultation with stakeholders (see below), would determine desired local migration levels and patterns, and assist in the process of encouraging newcomers to stay in Scotland. The focus would be on employability, recognition of qualifications and experience, support programs, language training courses, community orientation and integration, accommodation and marketing.

213. The activities of the Inter-departmental Committee on Migrant Integration could be scrutinised by either the Scottish Parliament's Culture, Tourism, Europe and External Relations Committee (CTEER), the Economy, Jobs and Fair Work Committee, or the Equalities and Human Rights Committee (or a joint task-force).

214. In addition to the creation of an Inter-departmental Committee on Migrant Integration within the Scottish Government, it would be ideal to create a Scottish Migrant Integration Forum, that had representatives from local government, the COSLA Strategic Migration Partnership, charities and NGOs, migrant associations, the Scottish Chamber of Commerce, business associations, trades unions, university and college associations, and other organisations involved in providing services to migrants in Scotland. This Forum could meet regularly to scrutinise current policies, make recommendations, and feed into Scottish Government policy-making.

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[266] Ibid.

Intergovernmental Relations

215. Although migrant integration is a devolved competence, there are some transversal aspects that would benefit from coordination with the Department of Communities and Local Communities (which is largely responsible for migrant integration in England) and the Home Office. In particular, coordination should be sought on residence permits and citizenship acquisition. Intergovernmental coordination on migrant integration could build on channels and structures that already exist for the UK-Scottish coordination of policies for the integration of asylum seekers in Scotland, which is currently required in terms of accommodation and access to social services. Finally, IGR may also be pursued with other devolved administrations in the UK, and elsewhere in Europe, to share best practice.

Finance

216. Most of the migrant integration policies implemented by the substate cases analysed above were financed by a mix of devolved and central-state funds (depending on the funding formula used in each state). It is anticipated that a Scottish Migrant Integration policy would be funded under a block grant allocation from the UK government, whereby each of the SG directorates involved could contribute a slice of funds to developing this policy framework. Local governments should also continue to set aside funds to implement integration strategies, with particular attention to language services, labour market integration, integrating migrant children in schools, and access to healthcare and housing.

Consequences

217. The creation of a Scottish Migrant Integration Policy would be the natural culmination of almost two decades of pursuing an informal approach to integration in Scotland. "Scottish policymakers have – quietly, consensually, and in consultation with a wide range of migrant organisation stake-holders – developed a different approach to migrant integration that is firmly embedded in Scotland's unfolding nation-building project. This appears to be a serendipitous development rather than a strategic one. Scotland's migrant integration policy has emerged out of Scotland's principal cultural and economic policy frames, which have, respectively, placed an emphasis on creating a multicultural society whose economy is reliant on attracting and retaining migrants." [267]

218. Scotland's distinctive approach to migrant integration first began with the 'One Scotland, Many Cultures' campaign and enhanced by the Fresh Talent Initiative in the 2000s. It has since been taken forward with the Scottish refugee integration strategy, *New Scots: Integrating Refugees in Scotland's Communities*, which seeks to recognise 'the contribution that refugees can make by enriching our cultural diversity, expanding the world view of our

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[267] Hepburn, E. (2015) 'Immigrant Integration and Policy Divergence in Scotland since Devolution', paper presented at PSA 65th Annual Conference, University of Sheffield, 30 March – 1 April. See also E. Hepburn (2014) 'Is There a Scottish Approach to Citizenship? Rights, Participation and Belonging in Scotland', *European Yearbook on Minority Issues*, 13.

children and bringing new languages, skills and experience'.[268] The Scottish refugee integration policy offers a comprehensive approach to refugee integration, which could be built upon to develop a general approach to the integration of *all* migrants in Scotland.

219. It is difficult to see that there would be any political resistance to the creation of a Scottish Migrant Integration Strategy. Political parties in Scotland have shown unanimous support in recognising the contributions that migrants have made to Scotland's society and economy. Any endorsement of a Scottish Migrant Integration Policy would be a natural extension of this political support to welcome and integrate newcomers to Scotland. Likewise, given that migrant integration is a devolved policy competence within the current 'retainer' model of devolution, it is unlikely that there would be any opposition from Westminster.

220. The creation of a migrant integration policy for Scotland, which clearly sets out the rights and services that migrants are entitled to, could potentially have a massive impact on improving the social and political inclusion, and economic mobility, of migrants in Scotland. Migrants in Scotland would benefit from clear guidance, support and frameworks for their integration into the labour market, education system, political system and society at large. Furthermore, this policy would complement the immigration objectives of the current (and, indeed, previous Labour-Liberal Democrat) Scottish Governments, whereby a coherent Scottish Migrant Integration would not only serve as an important tool in attracting potential newcomers to Scotland, but also in encouraging them to stay (retention).

EU Dimension

221. By developing a comprehensive migrant integration framework for Scotland, this could potentially act as a 'pull' for prospective migrants from the EU and beyond. Other substate governments have sought to advertise their integration services to prospective applicants. For instance, one Quebec law firm states:

> "Quebec has invested resources to ensure that when new families move to Quebec, they have the tools and resources they need to succeed. Newcomers to Quebec will find excellent integration services like free language training, employment counselling/training, free healthcare, heavily subsidized post-secondary educational institutions and free access to public schools."[269]

222. In order to continue attracting EU nationals to Scotland (whatever the outcome of the ongoing Article 50 negotiations), a Scottish Migrant Integration framework could advertise to EU nationals that Scotland is still strongly committed to attracting newcomers. Furthermore, a Scottish Migrant Integration Policy could codify all of the rights and services that newcomers from the EU and beyond are entitled to under the devolved framework. Given that Scotland legislates on most areas relating to social, economic and political rights (such

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[268] Scottish Government (2013) *New Scots. Integrating Refugees in Scotland's Communities.* Edinburgh, p7.

[269] http://www.canadim.com/quebec-immigration/

as housing, healthcare, education, economic development, voting in local and Scottish elections, and – since 2016 – employability services, social care benefits and disability benefits) – Scotland could potentially decide to what extent these services and rights would be available to EU migrants. And if there continues to be a more generous attitude towards social and political entitlements, then this could act as both a 'pull' factor in attracting EU migrants, as well as encouraging them to remain in Scotland.

Scottish International Outreach on Immigration

223. A second option for Scotland to enhance its profile in the area of immigration is to expand its international outreach activities. This is currently a priority of several of the substate cases that we examined earlier (in particular, South Australia, PEI, Quebec, Catalonia), whereby substate governments have sought to augment their international profile, through various strategically focused activities, to advertise their territory as a welcoming country of destination. Some substate governments credit their international outreach activities as constituting the main mechanisms for attracting potential migrants.

224. The Scottish Government has already invested considerable energy into its international activities, with a focus on promoting its policy interests within the EU, reaching out to its diaspora (especially in North America), encouraging foreign investment, and promoting a positive image of Scotland overseas. The aims of Scotland's International Framework are "to create an environment within Scotland that supports a better understanding of international opportunities and a greater appetite and ability to seize them; and to influence the world around us on the issues that matter most in helping Scotland flourish."[270] Although Scotland's International Framework does not mention immigration *per se,* it does signal a commitment to using its overseas presence "to promote and celebrate our culture, education, values, heritage and economic strengths, and to build the Scottish brand to support greater exports, inward visitors and investment."[271] There is therefore scope to add a stronger immigration aspect to Scotland's internationalisation agenda.

Devolved Powers

225. Although foreign policy is an area reserved to the UK Government, this has not prevented Scotland from developing its own international portfolio of activities that focus on devolved areas of competence – i.e. economic development, energy and the environment, tourism, culture and forging links with Scotland's diaspora. There would be little to prevent the Scottish Government from adding an additional focus to its international activities, namely growing its population. To that end, it is anticipated that no additional powers would need to be devolved in order to market Scotland as a welcoming country overseas.

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[270] Scottish Government (2015) *Scotland's International Framework*, Edinburgh, p1.
[271] Ibid, p11.

227. The goal of enhancing Scotland's international outreach activities in the areas of immigration/population growth could be accommodated within Scotland's international framework strategy. Scotland already has international offices in the USA, Canada and Brussels, with the aim of creating several new Innovation and Investment Hubs at key global locations such as Dublin and Brussels. According to the Scottish Government, "these hubs will play a critical role in attracting investment to Scotland, helping businesses to trade internationally, raising Scotland's international profile and, crucially, protecting Scotland's relationship with the EU.[272] Thus, the goal of raising Scotland's international profile is already embedded in current internationalisation policies, which could be expanded to include strategic goals of marketing Scotland as a welcoming country of destination.

228. Scotland's current international activities could be given a stronger immigration focus through several means. Firstly, Scottish Offices abroad (in the USA, Canada and Brussels) as well as the proposed Innovation and Investment Hubs – could be given an extended remit to focus on advertising Scotland as a welcoming country of destination for potential immigrants. Secondly, Scottish officials could be placed in additional UK offices and embassies abroad (i.e. corresponding with the largest migrant-born resident populations in Scotland – Poland, Germany, India, Pakistan), where Scottish officials could offer advisory services to potential immigrants on the current labour-market and social conditions pertaining to Scotland. Third, the Scottish government could invest in the development and international marketing of multi-media online materials to promote Scotland overseas to potential migrants (such as advertising its Scottish Migrant Integration policy and suite of related services to prospective migrants). Fourth, Scotland might coordinate with related agencies (such as UK trade delegations) to promote immigration to Scotland during overseas visits. Fifth, the activities of Scottish representatives abroad could be reported back to an Inter-departmental Committee on Migrant Integration for feedback and response (see above). These immigration-focussed activities would require only an enhancement of existing internationalisation structures.

Intergovernmental Relations

229. Given the extensive portfolio of international activities that the Scottish Government is already engaged in – with the support and cooperation of the UK Government – it is anticipated that existing IGR structures and lines of communication could be utilised to further enhance Scotland's internationalisation activities to encourage population growth by marketing Scotland as a welcoming country of destination to prospective migrants.

230. For instance, it would be necessary to coordinate international strategies with the Foreign and Commonwealth Office to post Scottish officials to UK embassies in countries of a strategic immigration interest to Scotland (i.e. Poland, India, Germany, Pakistan). Scottish officials could offer an advisory service that is complementary to UK diplomatic activities, giving potential migrants information on conditions that are specific to Scotland. The Scottish

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[272] Scottish Government (2016) A Plan for Scotland. The Government's Programme for Scotland, Edinburgh, p47.

Government would also coordinate activities with the FCO on international trade missions where Scottish officials could advertise Scotland not only as an attractive country to invest, but an attractive country to live.

Finance

231. Given that Scotland's current international activities are financed by the Scottish budget, it is anticipated that the majority of Scotland's international outreach activities on immigration would be included under this budget line. However, the UK Government might provide additional capacity by offering office space, equipment and resources in embassies in which Scottish policy officials may be placed.

Consequences

232. It is anticipated that the main consequence of enhancing Scotland's international outreach activities in the area of immigration would be to modestly increase the number of applicants wishing to live, work and study in Scotland, which would help stabilise Scotland's population and offset the challenges of an ageing population. This goal – of stabilising Scotland's population growth – has achieved support from all of Scotland's political parties. It is not anticipated that these activities would arouse opposition from the UK Government, which has been supportive of Scotland's internationalisation strategy, including its offices in North America and Brussels. However, it would be necessary to obtain the goodwill and cooperation of the FCO in order to expand Scotland's international profile in this area.

EU Dimension

233. One way in which Scotland could seek to continue attracting EU nationals to live and work in Scotland (whatever the outcomes of the Article 50 negotiations) is to focus its international outreach activities on EU countries that have large existing migrant populations in Scotland. Thus, Scotland could explore the possibility of targeting its international activities in Poland, Germany, Spain and Italy (which constitute the largest groups of EU nationals in Scotland).

234. Outreach activities might involve posting advisory Scottish officials to UK embassies in these countries to disseminate information about living and working in Scotland; targeted media campaigns advertising Scotland as a welcoming country of destination; sending 'migration' advisers to accompany trade delegations to these countries; and developing a multi-media website (translated into Polish, German, Spanish and Italian) that provides information about living, working and studying in Scotland, which could highlight the efforts made by Scotland to welcome newcomers through its Migrant Integration strategy.

Increasing Scottish influence in UK decision-making

235. A third option to enhance Scotland's voice in migration-related matters is to increase Scotland's influence within, and thus representation on, UK decision-making and advisory bodies. The case studies analysed above (in particular, Quebec, PEI, South Australia and Vaud) demonstrated the importance of having substate engagement in the development of statewide immigration strategies in order to ensure that different labour market and demographic needs across the country were being met. Substate engagement in statewide decision-making may take various forms, including bilateral and multilateral committees and forums, and regular meetings between civil servants and ministers. There are three areas where Scotland could have a greater 'voice' in UK decision-making on immigration:

- Substate representation on the Migration Advisory Committee (MAC), in order to advise on labour shortages and skills gaps in Scotland (and other regions).

- Revising and expanding the Shortage Occupation List for Scotland, in order to make it more flexible to take account of current and future labour shortages.

- Increasing bilateral relations between the Home Office and Scottish Government, for instance through a JMC on Immigration and regular meetings of civil servants.

236. Each of these options would benefit from the creation of an annually published Population Strategy for Scotland, which would build on data collected by NRS to help clarify Scotland's population and immigration needs, determine where labour shortages exist in Scotland, and pinpoint what additional infrastructure and services may be required if labour shortages are met through immigration. Scotland's population policy could identify 'key influencers' in attracting migrants to Scotland (such as cost of living, family support networks, employment prospects, public services--especially education, housing and health, infrastructure and reception policies), as well as key immigration objectives (such as meeting certain labour market gaps, distribution to rural areas, improving settlement/reception services, international student strategy, a reinvigorated pro-diversity campaign that is visible in schools, paradiplomacy, and the development of the arts to attract potential migrants). Although migration is perhaps the most difficult aspect of population change to estimate or record, estimates of migration could be based on survey data, local council registrations and/or registration in local health centres.

237. South Australia has an excellent example of a population report – called "Bringing them back Home: Factors influencing interstate migration to and from South Australia""[273] – which provides a wealth of data on the composition and characteristics of in- and out-migration in the context of the SA labour market.

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[273] http://www.pc.gov.au/__data/assets/pdf_file/0004/128776/sub034-labour-mobility-attachment.pdf

238. A Population Strategy for Scotland would help answer questions such as those posed by the Scottish Affairs Committee in their inquiry on the Demography of Scotland, such as modelling optimum levels of immigration for Scotland, and identifying which sectors of the economy would benefit for immigration. As the PEI Director of the Chamber of Commerce stated, it is sometimes necessary to ask questions such as: "who is it that we should be bringing here? Where are the gaps in the labour market that need to be filled? And are we targeting the people who can integrate easily into our community?"[274]

Devolved Powers

239. Increasing Scotland's representation and influence in UK advisory and decision-making bodies would not require devolving additional powers to Scotland, as the focus here is not on increasing autonomy over immigration policy-making for Scotland, but rather, increasing Scotland's influence within UK policy-making.

Structures and Capacity

240. Increasing Scotland's influence over UK immigration decision-making would not require any significant changes to current structures:

241. First, the Migration Advisory Committee (MAC) is an independent, non-departmental public body that advises the government on migration issues. The MAC is made up of a chair and three independent economists, in addition to a representative from the Home Office. It would not be inconceivable to also have representation from the Scottish government and other devolved administrations and regions, given that migrant integration – which falls under the category of 'migration issues' – is a devolved competence. This could be achieved by: (a) having representatives from the UK's nations and regions on the MAC itself; (b) creating a Sub-Committee representing the UK's nations and regions, to offer advice on migration issues in their respective territories; or (c) having a single substate representative on the MAC committee, which is undertaken on a 'rotating' basis between the devolved administrations – which is currently the case in Australia. [275]

242. Second, the UK Point Based System (PBS) is designed to address shortages through its Tier 2 (non-EU skilled work route). The shortage occupation list (SOL) identifies occupations where a shortage exists that should be addressed through labour immigration. There is a UK list and a Scotland-only Shortage Occupation List. The Scotland-only SOL to is designed to enable Scottish employers facing labour shortages to fill these jobs with skilled third-country nationals. However, this list is "currently very short, containing just two

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[274] Interview with former Director of the Greater Charlottetown Chamber of Commerce (PEI) (25/5/2010).
[275] This is currently the case in Australia, where the States and Territories have a single representative on the Ministerial Advisory Committee on Skilled Migration (MACSM), where representation is undertaken on a rotating basis between the States and Territories.

additional occupation fields to the UK-list (physical scientists and medical practitioners)."[276]

243. The Minister of State for Immigration Mr Robert Goodwill stated that the MAC "has consulted extensively with employers and other organisations in Scotland when recommending changes to the Scotland-only shortage occupation list. But for the most part, the list reflects the UK-wide shortage occupation list, suggesting that Scotland's skills needs are largely aligned with the rest of the UK."[277] However, while the Scottish Minister for International Development and Europe, Dr Alasdair Allan, agreed that "it has been useful up to a point...In terms of some of the detail, I think we would probably be a bit more ambitious in terms of the number of professions that have been listed there. Scotland does have quite a number of skills shortages." Skills shortages in Scotland have been identified in the IT sector; in Science Technology Engineering and Mathematics (STEM); and in the case that workers from EU countries were restricted from entering the UK, there would be likely shortages in the construction, hospitality, and health and social care sectors.[278] There is therefore a strong argument to nuance the Scottish Shortage Occupation List, by adding more jobs to the vacancies list in consultation with Scottish industry stakeholders, to take account of Scotland's skills shortages.

Intergovernmental Relations

244. Another mechanism to increase Scottish input into, and influence over, UK immigration policy is to increase (formal and informal) bilateral relations between the Home Office and Scottish Government. At present, there exists a Joint Ministerial Committee (JMC) on Europe and a JMC (European Negotiations), which bring together ministers from the four UK administrations to discuss European issues affecting UK and devolved areas of competence.[279] Immigration is a topic that has surfaced in past meetings. However, to ensure more coherence and coordination between the Scottish (and other devolved) governments and the Home Office, a Joint Ministerial Committee (JMC) on Immigration could be created, which would meet quarterly throughout the year to discuss immigration issues that affect UK and devolved areas of competence (i.e. migrant integration, Scottish SOL) and to review how the UK's points-based system is working for each of the devolved territories. The scope and objectives of a JMC (Immigration) should be clearly stated and agreed to ensure that the views of devolved administrations are adequately taken into account. Moreover, in order to achieve more balance in the representation of the views of the administrations, the chair of the JMC could be rotated in a quarterly basis.

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[276] Tindal, S, McCollum D and Bell, D (2014) Immigration policy and constitutional change: the perspectives of Scottish employers and industry representatives, Centre for Population Change, Working paper 44, p3
[277] http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/scottish-affairs-committee/demography-of-scotland-and-the-implications-for-devolution/oral/41669.html
[278] See Scottish Parliament (2017) Brexit: What Scotland thinks, CTEER, Edinburgh.
http://www.parliament.scot/parliamentarybusiness/CurrentCommittees/103135.aspx
[279] Burrows, N. and M. Fletcher (2017—forthcoming) 'Brexit and Scotland', *Juridical Review.*

Finance

245. It is proposed that enhanced IGR and representation of Scottish interests in UK decision-making structures on immigration (i.e. a JMC sub-committee on immigration) should continue to be funded along current lines. The Home Office would continue to fund the MAC with additional devolved representation (and potentially, a MAC advisory committee comprised of regions and nations). Meanwhile, the Scottish government would budget for the annual publication of a Population Strategy for Scotland, which would be used to inform its goals.

Consequences

246. Increasing Scotland's input into UK immigration decision-making would better ensure that the current Points Based System is taking Scottish labour-market and demographic needs into account. These actions would strengthen the functioning of the devolution settlement by ensuring that Scotland's views and needs are formally accounted for within UK immigration structures. As these actions would require only moderate institutional changes (adding devolved representation to MAC, creating a new JMC sub-committee), but which could have potentially large gains (by creating formal means by which Scotland can represent its interests in UK immigration decision-making), they are unlikely to face opposition in Scotland. However, there is a need to ensure that Scotland isn't seen to be the recipient of 'favouritism' and that the immigration needs of the UK's other substate nations and regions are taken into account. Thus, the UK Government may consider extending the shortage occupation list to other areas of the UK; and to ensure the representation of all substate administrations on the MAC and JMC (Immigration).

EU Dimension

247. By increasing its influence over, and representation on, UK decision-making bodies, Scotland would be in a stronger position to influence EU streams to the UK/Scotland – for instance, through the creation of a quota for EU nationals without restrictions on occupation or earnings, or sector-specific quotas, as proposed by the London Assembly.[280] Scotland would have a stronger voice – through a more robust Scottish Shortage Occupation List, a seat on the MAC, and a JMC (Immigration) – to input into UK decision-making on admissions for EU nationals post-Brexit.

248. In particular, Scotland may wish to advocate a post-Brexit immigration programme for EU nationals that seeks to protect the rights of EU nationals living in Scotland, and which encourages the continuing migration of EU nationals to Scotland. Scotland could draw on its Population Strategy for Scotland, which would provide statistical data on the contributions made by EU nationals to its labour market (with details on particular sectors – such as hospitality, construction and healthcare) – to argue for an expansion of the Scotland-only SOL and an approach to future EU migration that reflects Scotland's needs and values.

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[280] London Assembly (2017) *EU Migration*, Economy Committee, London.

Creating Scottish sectoral agreements

249. A fourth differentiated immigration policy option for Scotland is to create bespoke sectoral agreements that target the labour-market needs of specific sectors and industries in Scotland. Scotland already has some experience of administering a regionally specific sectoral agreement to attract and retain certain categories of migrants to Scotland. The *Fresh Talent: Working in Scotland* (FT) scheme allowed international graduates that had pursued studies at a Scottish university to live and work in Scotland for two years directly after graduation without the need for an additional work permit. This fruitful collaboration between the Home Office and the Scottish government provides a potential template for other initiatives. For instance, Fresh Talent could provide a model for:

- A new postgraduate work visa for Scotland
- Temporary work permits for seasonal migrants in Scotland
- Bespoke work permits for specific sectors (such as the digital/IT sector)
- A 'European Talent: Working in Scotland' scheme

250. Bespoke sectoral agreements for Scotland (for HE students, seasonal workers, or IT professionals, for example) would enable Scotland to meet specific labour shortages for both high- and low-skilled migrants. Sectoral agreements would allow for the temporary employment of migrants in these areas of skills shortage, which may or may not be tied to holding an employment contract, and which could lead to permanent settlement.

251. The Scottish Affairs Committee has recently recommended that the UK Government explore the possibility of creating a new Scotland-only post-study work visa for international students who have graduated from Scottish further and higher education institutions. The Committee argued that "Scotland has different demographic needs than other parts of the UK, due to slower population growth and a need to expand the size of the workforce, and also faces significant skills shortages in a variety of sectors. Retaining non-EU international graduates to work in Scotland is an important element of the response to these challenges."[281]

252. In response to concerns that students on Scottish-only post-study work visas would move to other parts of the UK, the Committee concluded that it had "received compelling evidence that these challenges [to implementing such a visa] could be overcome. The requirements for employers to check right to work and landlords to check right to rent would facilitate the existence of a Scotland-specific visa."

253. IPPR North has also researched the practicalities and consequences of introducing a post-study work visa in the North-East of England: "This could clearly be administered through the Biometric Residence Permit to avoid creating a back door to the rest of the UK labour market. The card would clearly state the holder is only entitled to work in the North East. As with other

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[281] Scottish Affairs Committee (2016) Demography of Scotland and the implications for devolution. Second Report of Session 2016–17, HC 82, London, p2.

immigration conditions, employers would be responsible for checking the visa status of their employees. The UK Border Force would be able to verify the visa was being correctly administered through intelligence leads and spot-checks on national insurance contributions."

254. With regard to other sector-based migration, the UK offers recent examples of sectoral migrant worker schemes. For instance, the Sectors Based Scheme (SBS) was introduced in 2002 to attract low-skilled migrants to come and work in the UK for a limited period of time (12 months) in the food manufacturing, hotels and catering sectors. Similarly, the Seasonal Agricultural Workers Scheme (SAWS), which was established after the Second World War, encouraged seasonal agricultural workers to work temporarily in the UK. From 2008-13, the SAWS encouraged workers from Romania and Bulgaria to work in the UK (predominantly in the horticultural sector).

255. As Christina Boswell has observed, temporary or seasonal schemes "allow more flexibility in recruitment, they also imply immigrants will only stay for a short period, thus reducing concerns about integration and impacts on public services. Where immigrants stay for under 12 months, it also means they won't show up on the net migration statistics, and so will remain under the radar of the government's net migration target."[282]

Devolved Powers

256. The creation of regionally bespoke sectoral agreements for Scotland would not require the devolution of legislative powers to Scotland, as they would be managed by the Home Office if they were to follow the Fresh Talent/Tier 1 (Post Study Work) visa template.

Structures and Capacity

257. Any bespoke sectoral agreements for Scotland would be managed by the Home Office, as was the case of the Fresh Talent scheme. "The FTWiSS process was managed by the UK Government Departments and all those applying therefore had to go through a standard procedure in order to get their application and extension verified."[283]

258. In order to support the Fresh Talent Working in Scotland Scheme, the Scottish Government created a Relocation Advisory Service (RAS), with offices in Glasgow. The principal aim of the RAS was to "provide information and advice to people looking to relocate to Scotland."[284] Its activities were targeted at particular groups, including universities and students, offering information about business and academic opportunities in Scotland in order to ease the relocation process. Certainly, the activities and advice of any future RAS could be tailored to meet the needs of other sectors depending on the type of agreement.

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[282] https://christinaboswell.wordpress.com/
[283] Scottish Government (2008) Fresh Talent: Working in Scotland Scheme an evidence review. Edinburgh. Available at: http://www.gov.scot/Publications/2008/08/15155422/0.
[284] Ibid.

Intergovernmental Relations

259. While any bespoke sectoral schemes would be managed by the Home Office, Scottish input into the functioning of bespoke agreements would be necessary to ensure coherence. Thus regular bilateral channels between the Home Office and Scottish Government should be established. A Joint Ministerial Committee on Immigration (as described above) would ensure regular coordination at the ministerial level, while it is expected that informal relations between civil servants in Scotland and London would underpin IGR. It is important to also stress that the success of the Fresh Talent scheme – for the three years that it was active – was largely due to the goodwill between Edinburgh and Whitehall. A commitment to cooperation and constructive dialogue would form the basis of any future schemes.

Finance

260. As was the case with Fresh Talent, any regional sectoral schemes would be managed and financed by the Home Office. Similarly, a RAS tailored to sectoral schemes, with accompanying website, would be funded by the Scottish Government.

Consequences

261. The Scottish Affairs Committee has argued that the re-introduction of a Scotland-only post-study work visa would have on overwhelmingly positive impact on student recruitment, economic growth and innovation in Scotland. The removal of the scheme in 2012 was seen to have made Scotland a less attractive destination to study. This view was mirrored by Universities Scotland (US), which submitted evidence to the Scottish Parliament's Devolution (Further Powers) Committee in 2016 on post-study work visas:

> "Scotland is losing out in the recruitment of international students to Australia, New Zealand, America and Canada because the UK has one of the least competitive policies on post-study work in the English-speaking world."

- The UK's current student immigration policy is to the detriment of Scotland's universities and to Scotland's economy as international students generate over £800 million of income every year. Around half of this economic impact is in off-campus expenditure.

- The UK's current student immigration policy is to the detriment of Scotland's business and industry as there are high-skill shortages across a number of sectors that are not being met by UK and EU-domiciled people.

> "There is support for a change in immigration policy among university Principals, staff and students, among business leaders in Scotland and across all political parties within the Scottish Parliament."[285]

262. According to statistics, there has been an 80% drop in non-EU students remaining in the UK after graduating, while the number of Indian students studying in Scotland has fallen by 60 per cent since 2012. "This fall coincides with the removal of Tier 1 as a route for international students to work in the UK after graduation."[286]

263. However, the UK government has rejected these proposals, stating that "Applying different immigration rules to different parts of the UK would complicate the immigration system, harming its integrity, and cause difficulties for employers with a presence in more than one part of the UK." However, it did confirm that a pilot was taking place at the universities of Oxford, Cambridge, Bath and Imperial College London to simplify the visa application process for Masters students and grant them six months leave to remain after the end of the course to find a graduate job under Tier 2 visa rules. The government said: "Should the pilot be a success, the Home Office will be considering expansion of the pilot further, including to highly-compliant institutions in Scotland."[287]

EU Dimension

264. The most obvious way in which Scotland could seek to continue attracting EU nationals through the use of bespoke agreements is to create a specific visa(s) for EU nationals seeking to live in Scotland. This could follow the model of the 'Fresh Talent Working in Scotland' scheme that enabled graduates of Scottish universities to work in Scotland for an additional two years after completing their studies. A 'European Talent: Working in Scotland' scheme could follow similar principles, in that it might encourage EU nationals to work or study in Scotland for a set period of time (such as five years), which would enable EU nationals in Scotland to then submit an application for permanent residence.

265. More specific schemes could also be designed to encourage EU nationals working in certain industries to move to Scotland. For instance, in order to maintain the contributions made by EU nationals to Scotland's hospitality, construction, healthcare and agricultural sectors, for instance, bespoke agreements could be created to maintain these flows:

- A 'European Talent: Working in Hospitality in Scotland' visa could be created, that followed the guidelines specified above (a visa entitling the applicant to five years residence in Scotland, at which point they could apply for permanent residence).

- A 'European Talent: Working in Agriculture in Scotland' could target seasonal workers who work in the horticultural industry in Scotland, where

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[285] Universities Scotland: http://www.universities-scotland.ac.uk/campaigns/post-study-work-for-international-students/

[286] http://www.universities-scotland.ac.uk/campaigns/post-study-work-for-international-students/ See also http://monitor.icef.com/2016/11/scotland-continues-press-post-study-work-rights/

[287] https://www.publications.parliament.uk/pa/cm201617/cmselect/cmscotaf/787/78702.htm

the visa was limited to 12 months (which would have the benefit of not showing up under migration targets).

- Finally, a 'European Talent: Studying in Scotland' scheme could be created to attract prospective students to Scottish universities, which could be complemented by a post-graduate visa that enables EU students to work for a further two years in Scotland (at which point they could leave or switch to another scheme).

266. Given that there is already a precedent of the Fresh Talent Initiative, it is not impossible to imagine that these sectoral schemes for EU nationals could function effectively.

Scottish administration of work permits

267. A fifth differentiated immigration policy option for Scotland is to assume responsibility for the administration of work permits for some categories of workers living in Scotland. This option draws on the Catalan model, whereby the Catalan government has been given the power to authorise and renew working visas for migrants who are employed in Catalonia. Although the Spanish state makes the final decisions on work permits, decentralising the administration of work permits enables Catalonia to accelerate processing times. The Åland Islands have recently had a similar model, whereby the Åland Police Service has processed visa documentation for migrants living on the islands, before forwarding applications to the Finnish government for final approval. Decentralising the administration of work permits to the substate level is generally seen as more efficient, as it decongests overcrowded central offices and reduces administrative backlogs.[288]

Devolved Powers

268. This model would not require the devolution of any legislative powers to Scotland, as it would be responsible for the administration of work permits only.

Structures and Capacity

269. In order to process and administer work permits, the Scottish Government would have to expand or create new offices to process work permits. At present, the Employment Service of Catalonia (Servei d'Ocupació de Catalunya) manages this work in Catalonia, and it has four offices spread throughout the territory. These offices have the authority to issue and renew work permits for non-EU nationals.

270. In the case of Scotland, a 'work permit' office may be part of new arrangements that devolve employment support programmes previously run by the Department of Work and Pensions (DWP) to Scotland under the Scotland Act 2016. A Work Permits section may sit alongside the Work Programme and Work Choice services, for instance, which could be part of the Scottish

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[288] Spiro, P. (2011) "Federalism and Immigration: Models and Trends." *International Social Science Journal*: 66-74, p9.

Government's full programme of employment support that will commence in April 2018 under the new devolved framework.[289]

271. One area where a Work Permit office in Scotland could operate a pilot programme is in the area of student visas (and indeed, post-graduate student visas if it is decided that this scheme should be reformed and extended to Scottish universities – see above). Thus, students applying to study at a Scottish University would send the relevant documentation (application, sponsorship agreement) to a Scottish Work Permit office in the first instance. Upon approval by the Scottish Work Permit office, applicants would then apply for a visa.

272. Scottish administration of work permits for people working and studying in Scotland could have the benefits of reducing processing times and enhancing Scotland's international reputation as a world-class provider of higher education. In addition, the UK Government would benefit from a reduction in administrative duties while retaining legislative control.

Intergovernmental Relations

273. This model would require smooth functioning between a Scottish Work Permit Office, the Home Office, UK Visas and Immigration, and the Department of Work and Pensions. In order to ease the transition of devolving employability services to Scotland following the 2016 Scotland Act, a Devolved Employment Services Advisory Group has been created to help take this work forward.[290] If the administration of work permits were to be devolved to Scotland, a similar advisory group could be established to aid the transition. Furthermore, the operation of Scottish Work Permits office could be regularly discussed by Scottish, Home Office and DWP ministers in a JMC sub-committee on Immigration (as well as by civil servants in informal pre-JMC discussions), as proposed earlier.

Finance

274. As the UK Government would retain legislative control for making decisions on work permits, it is anticipated that it would oversee the budget of a Scottish Work Permits office.

Consequences

275. An administrative office that authorised work permits for migrant workers in Scotland would have the potential benefits of speeding up processing times for work permit applications, making it easier for migrant workers living in Scotland to renew their work permits by applying locally to an office in Scotland, and reducing backlog in the Home Office.

276. On the last issue, there have been several reports of backlogs in visa applications in the UK Visas and Immigration directorate, due to a significant

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[289] https://news.gov.scot/news/employment-support-programmes-from-april-2017
[290] http://www.employabilityinscotland.com/policy-and-partnership/scotlands-devolved-employment-services/scotlands-devolved-employment-services-advisory-group/

rise in applications with the ongoing refugee crisis and the EU referendum (the latter of which has encouraged large numbers of EU nationals to apply for residence to secure their future in the UK). For instance, the number of outstanding applications from EU citizens for permanent residence is estimated to have increased from 37,618 in 2015 to almost 100,000 in July 2016.[291] The Home Office Committee published a report in 2016 stating that that:

> "We have regularly expressed concern about the size of the immigration backlog…at the end of Q4 2015, the number of cases that had been received but had yet to be inputted was 85% higher than at the end of the previous quarter despite the overall number of applications being lower… UKVI is in danger of being overwhelmed by the extent of its asylum casework…The ongoing migration crisis in Europe suggests that the pressures on UKVI will get worse…"[292]

277. By devolving administrative responsibility for issuing work permits for migrant workers living in Scotland, and student visas for students studying at Scottish universities, this would reduce the backlog in visa applications and increase processing times. It is assumed that any means of improving the efficiency of the UKVI in processing applications would be welcomed by politicians and the public in Scotland and across the rest of the UK.

EU Dimension

278. The Scottish administration of work permits for EU nationals living in Scotland would have several benefits. Firstly, it would make it easier for EU nationals currently living in Scotland to apply for permits (by dealing with local processing offices that are closer to travel to). Second, it could speed up processing times for applications. And third, it would reduce the backlog in the Home Office which has been caused by a surge in applications from EU citizens.

Scottish visa sponsorship scheme

279. A sixth differentiated immigration policy option for Scotland/the UK involves the introduction of a substate visa sponsorship scheme as part of the PBS. This type of scheme has been successfully implemented in Canada and Australia. It involves the creation of visas for substate territories to sponsor a limited number of migrants to live, work and study in the region for a specified period of time.

280. There are several ways in which the UK could implement this type of system:

- First, the UK could follow the model of the Australian State-Specific and Regional Migration (SSRM) visa categories, by creating new visas within the existing tiers that substate regions across the UK can use to nominate migrants. Here, there would be a *single regional visa framework that all regions could be eligible for*.

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[291] https://www.theguardian.com/uk-news/2016/nov/30/eu-citizens-in-uk-home-office-residency-applications-right-to-remain-before-brexit-talks
[292] https://www.publications.parliament.uk/pa/cm201617/cmselect/cmhaff/675/67504.htm
https://www.publications.parliament.uk/pa/cm201617/cmselect/cmhaff/151/151.pdf

- Second, the UK could implement a restricted SSRM-type model, by creating a number of new visas within existing tiers that Scotland could use to nominate migrants (such as a Scottish Post-Study Work Visa route under Tier 1). This would entail the creation of a *single regional visa framework for Scotland only*.

- Third, the UK could follow the Canadian PTNP system, by creating bilateral agreements with substate regions across the UK which would allow them to nominate migrants based on their own selection criteria. Here, there would be *multiple bilateral programmes that would need to be created for each region*.

- Fourth, the UK could create a bilateral agreement with Scotland, whereby Scotland would be able to nominate migrants for visas based on its own selection criteria. Here, there would be *one bilateral programme for Scotland only*.

281. These schemes could be incorporated into the current Points Based System (PBS), whereby migrant workers would be offered various incentives for applying through the regional visa scheme where they would be required to settle in Scotland. For example, applicants could gain additional points for moving to Scotland; temporary migrants could be offered shorter times or bonus points to obtain permanent residency in Scotland; and income requirements/monetary thresholds could be reduced for migrants moving to Scotland.

282. To effectively operate a regional visa scheme, the UK Government would need to consider rules around retention and enforcement, to ensure that migrants settle in their nominated region. As the case studies revealed, PEI and South Australia have both experienced inter-state/provincial transfers, whereby some migrants – upon completion of their residence requirements - move to other parts of the country. (The numbers of migrants breaking their contract by moving out of the territory before their residence requirement ends is much lower). This issue has been tackled by substate governments in the following ways:

- Developing migrant reception and integration strategies, with specific focus on labour market integration, to encourage migrants to stay in the region;

- Requiring migrants to sign a statement in advance of their arrival, pledging to remain within the region for the duration of their visa residence requirement. This constitutes a 'moral obligation' to fulfil requirements on the part of applicants;

- Requiring some categories of migrants (i.e. business and investor migrants) to pay a deposit that would be returned to them when the residence period ends;

- Requiring migrants to confirm their address within the region during their stay;

- Encouraging employers to check the visa status of migrants and inform the authorities if there is a change of circumstances (i.e. job or address);

- Highlighting the risks involved if migrants break their agreement and move to a different region during the residence period, i.e. revoking their visa;

- Other means by which to ensure compliance with settlement conditions, as suggested by IPPR North, is to clearly state that the nominated migrant is only entitled to work in the nominated territory on their Biometric Residence Permit.[293]

Devolved Powers

283. If the UK Government were to opt for an Australian SSRM-type system, there would be no need to devolve any legislative powers to Scotland (or indeed the other substate nations and regions of the UK) as the UK government would continue to exert full authority over the granting of visas. Instead, substate nations and regions would have a right only to 'nominate' or 'sponsor' skilled migrants to submit applications for a visa. However, if the UK Government were to opt for the Canadian PTNP-type system, it is envisaged that the Scotland Act should be revised to account for the shared/concurrent exercise of powers over immigrant nomination and selection that is determined in any bilateral agreement.

Structures and Capacity

284. The implementation of any of the four options listed above (which include statewide and Scotland-only variations of the Canadian and Australian regional migration schemes) would require the creation of new structures, offices and staffing within Scotland. The most obvious suggestion, in line with most of the substate cases analysed, would be to create a separate Immigration directorate within the Scottish Government (which might fit under the Economy Directorate-General).

285. An Immigration directorate would support the processing of applications, assessment tools, and policy development and support. Moreover, an Immigration directorate would collaborate with both Scottish devolved institutions (such as an Inter-departmental Committee on Migrant Integration and A Scottish Forum on Migrant Integration as described above, and Scottish Development International to enhance international outreach activities), as well as local governments (i.e. through the COSLA Strategic Migration Partnership), and the UK Government (see below).

286. An Immigration directorate would supersede the need to create a Scottish Work Permits office and Relocation Advisory Service (as discussed above), as the directorate would assume responsibility for the processing of regional visas, providing advice to employers and migrants, and acting as the lynchpin for Scotland's migration strategy. Furthermore, substate regions should be given greater reign to develop international marketing strategies for the visa scheme,

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[293] Murray, C. and S. Smart (2017) *Regionalising Migration. The North East as a Case Study*, Institute for Public Policy Research—IPPR North, Manchester.

for instance by installing substate migration advisory officers in embassies of the UK.

Intergovernmental Relations

287. The successful operation of a regional visa scheme is entirely dependent on the goodwill between the Scottish and UK governments, and their willingness to cooperate, listen and engage with each other. The objectives, principles and functions by which any regional visa scheme should operate should be clearly stated in a written agreement signed by the Scottish and UK governments. Here, for instance, PEI has an Agreement for Canada-Prince Edward Island Cooperation on Immigration[294], while South Australia's participation in the SSRM scheme is articulated via a State and Territory-Federal Skilled and Business Migration Agreement.[295] Whether or not such a document should be made legally-binding ultimately depends on which visa model is chosen.

288. With regard to formal intergovernmental structures, the Canadian and Australian cases reveal that it is helpful if there are a range of informal and formal mechanisms by which the UK and Scottish governments could meet to discuss shared immigration concerns, and formal and informal procedures by which the Scottish government can provide input into UK decision-making on the regional visa migration scheme. IGR mechanisms could include:

- Quarterly meetings of a new Joint Ministerial Committee (Immigration)

- Regular meetings of representatives of the Scottish Immigration directorate, the UK Visa and Immigration directorate, the Home Office and the DWP

- Scottish representation on the Migration Advisory Committee (as discussed earlier)

- Regular liaison between the Scottish Immigration directorate and the Migration Advisory Committee

- Informal and ad hoc meetings to enable Scottish input into UK decision-making

Finance

289. It is anticipated that the Scottish Government would provide the majority of financial contributions for the operation of this scheme, which would be allocated through an adjusted block grant. This would include operational and promotional costs (which could be recouped through regional visa application fees).

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[294] http://www.gov.pe.ca/photos/original/dev_canpeiagree.pdf
[295] http://www.migration.sa.gov.au/about-us/state-migration-plan

Consequences

290. The greatest consequence of this scheme would be the ability of the UK government to channel newcomers to settle in low-population regions of the country that are experiencing labour and skills shortages, such as Scotland (and others, such as North-East England). The territorial redistribution of migrants to parts of the country in which there was a greater need for migrants to fill jobs in the regional economy, would remove pressure from major metropolitan areas (such as the South-East of England) where immigrants are perceived to be placing pressures on public services. Thus, by implementing a regional visa scheme, "it is possible for governments to shape not only who migrates but where they settle."[296]

291. The need to address territorial disparities in the settlement of migrants has been acknowledged in the past by the UK government. For instance, the Home Office published a Green Paper in advance of the creation of the PBS in 2006 which specified that "skilled and highly-skilled migrants [could be encouraged] to stay in Scotland in the longer-term, for example through a reduced qualifying period for some Tier 1 and Tier 2 migrants who can demonstrate they have lived and worked in Scotland for an appropriate period of time."[297]

292. The All-Party Parliamentary Group (APPG) on Social Integration has also expressed support for a regional visa scheme, recommending the creation of an independent commission to explore how a regional scheme might work:

> "Devolving substantial immigration policy powers to the UK's nations and regions would almost certainly involve significant challenges, but might be achieved through the introduction of region (and potentially sector) specific visas. Quotas for the dissemination of these visas could be agreed by devolved administrations, city regions, and other democratic forums… A move to regionalise the UK's immigration system might have a positive knock-on effect on the public debate on immigration."[298]

293. The Aberdeen and Grampian Chamber of Commerce also supported the creation of a regional visa scheme, which was explored in a report they commissioned in 2009:

> "evidence gathered from Canada clearly shows that a points-based system with regional elements works better and more effectively than country-wide procedures. Bespoke factors for Scotland could easily be factored in through bonus points or lower thresholds for those who agree to work, live and stay here for a minimum period of time, a process that could not only help us to

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[296] Hugo, G. (2008) 'Australia's State-Specific and Regional Migration Scheme: An Assessment of its Impacts in South Australia,' International Migration & Integration 9:125–145, p144.
[297] A points-Based System: Making Migration Work for Britain presented to Parliament by the Secretary of State for the Home Department, March 2006
[298] APPG (2016) Interim Report into Integration of Migrants, London, p16.

find skilled people for jobs but will also help to boost the declining population in a targeted and controlled way."[299]

294. However, the operation of a regional visa scheme would need to ensure that migrants stay in their nominated region for the duration of the visa (and ideally, beyond this if permanent). The SA government has concluded that if onward migration was to occur, it would likely take place in the early stages of their time in the region. The SA government had the following recommendations on retention:

> "Setting State nomination requirements so migrants are more likely to have settlement success is the best method to reduce onwards migration. Providing early arrival services is also designed to encourage good settlement outcomes. All migrants are reminded of the moral obligation they made to the South Australian Government for their nomination."[300]

295. Proposals to create a regional visa scheme have been regularly rejected by the UK Government. In 2008, the Home Office, argued that creating 'a two tier system for Scotland at the same time as the Irish and British governments are working to close the existing "back doors" does not make sense'.[301] More recently, in January 2017, the Home Secretary stated that "Applying different immigration rules to different parts of the UK would complicate the immigration system, harming its integrity and cause difficulties for employers who need the flexibility to deploy their staff over the UK."[302] And the Secretary of State for Scotland David Mundell responded during a Scottish Affairs Committee session: "If you are asking me if I think that Scotland needs a different immigration system to the rest of the UK… then, as you would anticipate my answer to that question, no."

296. However, given the imminent changes to the UK immigration system following the UK's departure from the European Union, whereby EU nationals will no longer be able to enjoy freedom of movement and will presumably be filtered through a new or existing tier of the PBS system, this will place considerable pressures on the UKVI, which is already experiencing backlogs in applications. The creation of a regional visa scheme, which will transfer some visa applications – as well as some migrant workers – away from the congested South-East may well, in time, become a more attractive option, especially if every effort is made to encourage long-term settlement in those areas.

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[299] Cited in Arrighi de Casanova, J.-T. (2012) Those who came and those who left: The Territorial Politics of Migration in Scotland and Catalonia, PhD Thesis, European University Institute, p157.
[300] Interview with Policy Officer, Department of State Development, South Australia (29/3/2017).
[301] *Managing Migration: A Public Sector Dialogue on Migration into Scotland*, published by COSLA, 2008.
[302] http://www.bbc.co.uk/news/uk-scotland-scotland-politics-38729760

EU Dimension

297. It is possible that one (or more) of the regional visa streams that could be created within this model would explicitly target EU nationals. For instance, EU nationals could apply for:

- a "Business/Investor (EU)" regional visa (under Tier 1 of the PBS)
- a 'Skilled Worker (EU)" regional visa (under Tier 2 of the PBS)
- a "Low-skilled Worker (EU)" regional visa (under Tier 3 of the PBS)
- a "Student (EU)" regional visa (under Tier 4 of the PBS)
- a "Seasonal worker (EU)" regional visa (under Tier 5 of the PBS)

298. EU nationals would be given preferential access to live, work and study in the UK, in addition to bonus points allocated for living in designated substate regions and nations (which may also have lower thresholds for entry) as described above. Substate territories would thus have greater control to determine their labour-market needs for EU migrants.

Scottish Immigration System – Control over Selection

299. The seventh, and final, policy option considered here for differentiating immigration in Scotland/the UK, is to follow a Quebec-type model of devolving legislative responsibility for immigration – including control over selection – to the Scottish government.

300. Quebec won this competence in 1991 with the signing of the Canada-Quebec Accord (CQA), after twenty years of incremental increases in the immigration powers of the province. Under the CQA, Quebec operates its own Points Based System (which follows the general criteria of the Canadian model, but where the weightings are different to reflect the importance given to the linguistic - French-language - knowledge of applicants). Furthermore, potential migrants apply to the Quebec government directly for a "certificat de sélection du Québec", rather than through Ottawa. Once an application has been approved by the Quebec government, Citizenship and Immigration Canada issues visas and work permits and carry out background security and medical checks. "In short, while Canada sets the broad guidelines through its designation of classes of immigrants, Quebec has much room to manoeuvre according to how it chooses to meet its own needs."[303]

301. In a Scottish devolved immigration model, we could expect that Scotland would be granted control over the total volume of migrants for its territory; exclusive control over the selection of applicants that seek to settle in Scotland (with the exception of refugees, which would remain a UK competence unless decided otherwise); and, potentially, the responsibility to issue work permits and manage sponsorship arrangements. Scotland would also post immigration officers to UK embassies abroad, who would have the authority to review files of applicants, interview them and ultimately grant the approval for entrance.

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[303] Iacovino, R. (2014) 'Canadian Federalism and the Governance of Immigration', in E. Hepburn ? R. Zapata-Barrero (eds) *The Politics of Immigration in Multilevel States: Governance and Political Parties*, Basingstoke: Palgrave.

302. Under this model, the UK Government would be responsible for the annual volume of migrants to the UK as a whole; determining and enforcing criteria for entering and staying in the UK, establishing general immigration categories; the admission of immigrants to the UK; and the conduct of security and medical checks; and (potentially) control over family migration and asylum and refugee claims. As in the CQA, we could expect Scotland to be granted a percentage of economic immigrants that corresponds with the percentage of Scotland's population in the UK, with the possibility of allowing for up to 5% more. Moreover, it would be expected that Scotland receives an equal proportion of refugees.

Devolved Powers

303. This model would require the devolution of legislative powers over immigration, which are currently reserved to the UK Government under Section 5 of the Scotland Act. The Scotland Act would therefore need to be revised, with a clear stipulation of the new responsibilities allocated to Scotland and the UK governments over immigration. If the CQA model is followed, these responsibilities would involve both exclusive and shared powers over immigration. For instance, the CQA preliminary text is as follows:

> **THE PARTIES HERETO** agree on the following matters in order to determine their respective areas of activity relative to immigrants and aliens in order to meet the needs and the particular situation of Québec;
>
> 1. This Accord relates to the selection of persons who wish to reside permanently or temporarily in Québec, their admission into Canada, their integration into Québec society, and the determination of levels of immigration to Québec.
>
> 2. An objective of this Accord, is among other things, the preservation of Québec's demographic importance within Canada and the integration of immigrants to that province in a manner that respects the distinct identity of Québec.
>
> 3. Canada shall determine national standards and objectives relating to immigration and shall be responsible for the admission of all immigrants and the admission and control of aliens. Canada shall discharge these responsibilities in particular by defining the general classes of immigrants and classes of persons who are inadmissible into Canada, by setting the levels of immigration and the conditions for the granting of citizenship, and by ensuring the fulfilment of Canada's international obligations.
>
> 4. Québec has the rights and responsibilities set out in this Accord with respect to the number of immigrants destined to Québec and the selection, reception and integration of those immigrants.[304]

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[304] Canada-Quebec Accord 1991. http://www.cic.gc.ca/english/department/laws-policy/agreements/quebec/can-que.asp

305. The revision of the Scotland Act to include exclusive and shared powers over immigration would need to go through the usual approval mechanisms: debate and approval by the Scottish Parliament, Houses of Parliament, and royal assent.

Structures and Capacity

306. In order to assume authority over the selection of economic migrants to Scotland, a number of new structures would need to be created. In line with the recommended structures for the creation of a Scottish visa scheme (option 6 above), a fully devolved immigration portfolio would require the creation of a separate Immigration directorate within the Scottish Government. But rather than just processing applications and policy development around visas (as described for option 6 above), under this model an Immigration directorate would also be responsible for determining the volume of immigrants to Scotland, creating selection criteria and thresholds for admission for skilled/business workers, and operating the selection system (including the issuing of Scottish Certificates of Selection). These additional responsibilities would require higher levels of staffing and resources.

307. An Immigration directorate in the Scottish Government would be scrutinised by the Scottish Parliament, most likely by the Culture, Tourism, Europe and External Relations Committee (or jointly with the Economy Committee). It would also work closely with an Inter-departmental Committee on Migrant Integration and A Scottish Forum on Migrant Integration (as described above), Scottish Development International, COSLA (i.e. through the COSLA Strategic Migration Partnership), and the UK Government (see below).

Intergovernmental Relations

308. As with the regional visa scheme described above, the operation of a devolved immigration system would be reliant on good relations between the Scottish and UK governments. The roles and responsibilities of each level of government should be clearly set out in a revised Scotland Act (and possibly, an additional piece of legislation that stipulates the terms of the agreement on immigration), which is legally binding.

309. The Scotland Act may also specify which bodies are to be created to implement the immigration agreement. For instance, Annex A of the CQA established two committees to implement the Accord, namely the Joint Committee and the Implementation Committee:

310. The role of the Joint Committee is "to promote the harmonization of the economic, demographic and socio-cultural objectives of the two parties in the area of immigration and integration, as well as to coordinate the implementation of the policies of Canada and Québec relating to these objectives." The Joint Committee meets at least once a year and is comprised of the ministers responsible for immigration in Canada and Quebec, in addition to other departmental representatives. It also has joint secretariat services, provided by both the Canada and UK ministries responsible for immigration. Its mandate is:

a. to approve the joint directives formulated by the Implementation Committee;

b. to ensure the exchange of information, documents and analyses, and promote joint projects for research on, and evaluation of, migration flow;

c. to promote further understanding of the order of priority assigned to classes of immigrants, and ensure that applications submitted by immigrants destined for Québec are processed as quickly as possible;

d. to provide an opinion on changes that Canada wishes to make to the definition of classes of immigrants and classes of persons who are inadmissible;

e. to discuss the standards established by Québec with which residents of Québec must comply in order to sponsor or assist a relative in being admitted to Québec;

f. to form standing **ad hoc** committees, and act as mediator in any disputes which may arise within these committees;

g. to study, at least once a year, reception and integration services provided by Canada and Québec;

h. to permit Québec to notify Canada in advance of the countries on which it intends to concentrate its efforts in order to meet its recruitment objectives;

i. to perform the duties specifically assigned to it under this annex.[305]

311. The role of the Implementation Committee is to "coordinate implementation of the Accord and develop the necessary terms and conditions of operation," working under the direction of the Joint Committee. It is comprised as the same representatives as the Joint Committee, and it meets at least twice a year. The duties of the Implementation Committee are:

b. preparing the joint guidelines required for implementation of the Accord;

c. resolving any problems which may arise from implementation of these guidelines;

d. ensuring, to the extent possible, that there is no duplication of the duties performed by officials representing Canada and Québec;

e. reviewing the changes that Canada and Québec wish to make to their laws, regulations and directives respecting immigration;

f. ensuring the exchange between the parties of all pertinent information concerning administration and operations;

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[305] http://www.cic.gc.ca/english/department/laws-policy/agreements/quebec/can-que.asp

    g.   permitting Canada to inform Québec rapidly where the file of a person claiming refugee status is being considered by a Canadian immigration centre located in Québec;

    h.   permitting Canada to inform Québec regularly of the issuance of Minister's Permits for persons destined to Québec.[306]

312. In addition to setting out the IGR structures for the operation of the Canada-Quebec agreement on immigration, the CQA also sets out the timelines for setting out the volume of immigrants to be accepted by Quebec each year, whereby Canada should notify Quebec by 30 April of each year the levels of immigration it plans to set; while Quebec is required to respond by 30 June about the number of immigrants it wishes to receive. [307]

313. If we transfer this model to the Scottish/UK context, a 'Joint Committee' could be replaced with a Joint Ministerial Committee (Immigration) that brings together the Scottish and UK ministers of immigration, respectively. A JMC (Immigration) could also create an Implementation Committee to coordinate actions.

Finance

314. In Quebec, the CQA contains a formula by which the Canadian government contributes to the financing of Quebec's immigration and integration services. Quebec received receives funding for settlement services through a single annual grant from the Canadian government, which amounted to $345 million during the year 2016-17.[308] The Scottish and UK governments would need to decide how much funding is allocated to Scotland under the block grant in order to devolve selection and settlement services.

Consequences

315. The creation of a devolved immigration system that gave Scotland the ability to vary the criteria and thresholds for economic migrants within the framework of the UK's Points Based System (PBS) would undoubtedly give the Scottish government a competitive advantage to attract more people to live, work and study in Scotland.

316. The devolution of powers over the selection of economic immigrants could also offer advantages to the UK government, in that (1) it would channel some migrants away from areas of high-population growth of the UK (such as the south-east) to Scotland, where there are labour-market needs for migrants; and (2) it would decrease pressures on the Home Office to process some visa applications, as these would become the responsibility of a new Scottish Immigration directorate.

317. However, there are also challenges to operating a devolved immigration system. Regional systems do not control for the onward movement of migrants

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[306] http://www.cic.gc.ca/english/department/laws-policy/agreements/quebec/can-que.asp
[307] Ibid.
[308] http://www.cic.gc.ca/english/resources/publications/rpp/2016-2017/

who are granted citizenship or permanent residence after they have met their period of residence requirements: instead, they are entitled to the same mobility rights as other citizens. As Robert Wright observed: "It can be argued, of course, that devolving the responsibility for immigration to Scotland will create a "back door" way of immigrating to England, and thus undermine UK immigration policy."[309]

318. Yet according to a Citizenship and Immigration Canada evaluation of the regional migration programmes, Quebec has the highest rate of retention for skilled migrants across all provinces in Canada. The report cited a study that used IMDB data to look at the interprovincial mobility of immigrants to Canada. It showed that 90% of skilled workers (including spouse and dependants) who landed in Quebec between 2000 and 2006 were still residing in Quebec in 2006.[310]

319. Indeed, research by Wright revealed that "there are few violations of this [residence] requirement and only a handful of deportations caused by such violations" in Canada as a whole.[311] Mosca and Wright (2013) analysed census data relating to inter-provincial transfers before and after the introduction of the PTNP and CQA. Their findings revealed that "there appear to be no major differences in the 'before and after migration rates' for immigrants…. [but] there has been a more equal distribution of immigrants across the provinces and territories."[312] Other studies have shown that the inter-provincial migration behaviour of migrant-born Canadians is the same as that of native-born Canadians.[313]

320. The Quebec case therefore reveals that the devolution of immigration selection powers does not have a deleterious effect on retention rates; if anything, retention rates (especially for economic migrants) are higher in Quebec under its devolved immigration system than for the rest of Canada where PTNP programmes operate. High retention rates may be attributable to a range of factors, including a strong migrant reception and integration programme, and the requirement that migrants stay in Quebec for the duration of their residence requirement.

321. For a devolved immigration policy to work in Scotland, similar enforcement mechanisms could be implemented. For instance:

- newcomers to Scotland could be required to sign an agreement stating their intention to stay in Scotland, thereby creating a moral commitment;

- Scottish visas could state that the migrant is only allowed to work in Scotland;

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[309] Wright, R. (2013) *Sub-National Immigration Policy: Can it Work in the UK?,* Migration Observatory, University of Oxford, p5.
[310] Citizenship and Immigration Canada (2011) Evaluation of the Provincial Nominee Program, Ottawa, p52. Retention also varied by province of intended destination for skilled workers, with the lowest rates being found for Saskatchewan (56%), Manitoba (59%) and the Atlantic provinces (61%).
[311] Wright (2013), op cit, p5.
[312] Cited in Wright (2013), op cit, p4.
[313] Ibid.

- newcomers could regularly confirm their home address and place of work Scotland during the period of their residence;

- employers could also register the migrant's place of work and home address;

- reception and integration programmes could be offered (as described above) to positively encourage and support migrants to live, work and study in Scotland.

322. The last mechanism is especially important in encouraging the long-term retention of migrants in Scotland. As Hugo argued with regard to the Australian case,

> "schemes like SSRM will not succeed unless there are job opportunities of appropriate types in sufficient numbers and with appropriate remuneration available in peripheral areas. However, beyond this, it is clear that there is much that governments (especially State and local governments) can do to facilitate immigrant settlement, provided there is a supportive national immigration policy structure."[314] A comprehensive Scottish migrant integration policy is therefore key to retention, as is a Population Strategy and international outreach activities.

323. However, there are other challenges in pursuing a devolved immigration system for Scotland, which are political in nature. To date, the UK government has refused to consider devolving immigration powers to Scotland, arguing that there should only be a single immigration framework for the whole of the UK. Unless the UK government considers the potential benefits of devolving economic immigration to Scotland (and indeed, other regions), this option will remain unviable.

EU Dimension

324. The devolution of authority for selecting economic immigrants would offer the Scotland the greatest scope out of all the options considered here for attracting and retaining EU nationals in Scotland. As Miller-Westoby and Shaw argue:

> "Further devolution of power, so that immigration control for EU free movement comes within the legislative competence of the Scottish Parliament, could address Scotland's demographic and economic needs, as well as clarifying in law the scope for the Scottish Parliament and Government to continue to protect the accrued rights of EU citizens."[315]

325. Devolving economic immigration would give Scotland the tools to create its own visa categories, which could either be specified for EU nationals or where they would be given preferential access, along the lines suggested in the 'Scottish Visa Scheme' analysis above. For instance, Scotland could create a 'Skilled

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[314] Hugo, G. (2008) 'Australia's State-Specific and Regional Migration Scheme: An Assessment of its Impacts in South Australia,' International Migration & Integration 9:125–145, p144.
[315] Miller-Westoby, N. and J. Shaw (2016) Free Movement, Immigration and Political Rights, Scottish Universities Legal Network on Europe. See https://sulne.files.wordpress.com/2016/11/free-movement-immigration-and-political-rights-sulne-roundtable-oct-2016-4.pdf

Worker (EU)' visa, an 'Unskilled Worker (EU) category and a 'Business (EU)' visa, that had different weightings compared to the PBS, which required the EU applicant to live in Scotland for a designated period of time. In order to ensure compliance with the residence requirements of any visas for EU nationals issued in Scotland, the Scottish government could employ the enforcement mechanisms outlined earlier.

326. An additional enforcement mechanism that could be considered, which has been put forward by Damian Chalmers and Anand Menon, is to devolve the administration of National Insurance (NI) numbers to Scotland. In this proposal, EU/EEA citizens would be given NI numbers that are only valid in Scotland, thus restricting their residence there. This would require an additional devolution of NI administrative powers, which may not be necessary if the other enforcement tools listed above are effective.

327. While the devolution of economic migration selection powers would give Scotland considerable leverage to attract and retain EU/EEA citizens to work in Scotland, this would not, however, amount to freedom of movement. This is because the EU's principle of freedom of movement is incompatible with the Points Based System that the UK currently employs for third-country nationals, which may be be extended in the future to include EU/EEA nationals. A devolved Scottish system would have to broadly replicate the PBS system if it were to avoid the creation of vastly different immigration systems in the UK.

328. Under EU laws, EU/EEA citizens have the right to move freely to any geographical area in the EU, where they are entitled to stay in the host country for a period long enough to look for work, apply for a job and be recruited.[316] If Scotland wished to maintain compliance with freedom of movement, as was proposed in the Scottish Government's 'Scotland's Place in Europe' paper, then Scotland would have to be devolved a set of powers over immigration that extends far beyond those enjoyed in Quebec, as respecting free movement in the EU would be incompatible with a PBS framework. As analysed above, Quebec's immigration system follows the parameters of the Canadian PBS, with different weightings for criteria.

329. If Scotland wished to maintain freedom of movement, it would have to move beyond a system that is designed to select economic migrants, to operate an immigration system that respected the principles of European citizenship (with all the rights this entails) which is separate to the UK's PBS. This would mean that the UK Government would have to give its consent to Scotland to create a new type of devolved immigration system to enable the entry and residence of EEA nationals to Scotland along similar lines to currently permitted. If the UK did not give its consent for Scotland to operate a non-PBS based system, it is likely that the only way for Scotland to respect free movement would be through achieving Scottish membership of the EU. However, Scotland could try to retain the spirit of freedom of movement within the current PBS system by securing preferential treatment for EU citizens, for instance by making visas as attractive as possible to EU/EEA nationals in terms of low thresholds, length of stay, and ample rights and services.

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[316] http://www.europarl.europa.eu/atyourservice/en/displayFtu.html?ftuId=FTU_3.1.3.html

Conclusions

330. This report has examined the diverse ways in which advanced liberal democracies around the world have sought to accommodate the needs of their constituent substate nations and regions within national immigration frameworks. Immigration presents both opportunities and challenges for substate territories, many of which have experienced substantial population movements both *from* (out-migration) and *to* (in-migration) their territories that follow distinct patterns compared to other parts of the state. These demographic changes have had profound effects on the society, economy and culture of substate territories. In response, all of nation-states analysed in this report have sought to create innovative means by which to tailor immigration policies to the substate level.

331. This report has shown that there is no singular policy solution to the challenges of demographic and labour-market change for substate territories. Nor is there one 'right' way for substate territories to approach the issue of immigration. Instead, this analysis has revealed how substate territories in multi-level and multi-national states have developed a variety of responses to population change that meet regional needs but work in parallel ways with central-government projects.

332. Drawing from the case study analysis, the report identified a range of differentiated immigration policy options that could be applicable to Scotland/the UK. These options were examined in order of ease by which they could be implemented:

1. Developing Scottish Migrant Integration & Reception policies
   a. Codifying the services and rights of migrants in Scotland
   b. One Scotland, Many Cultures campaign

2. International Outreach Activities in Immigration
   a. Creation of multi-media resources to advertise Scotland abroad
   b. Adding an advisory immigration remit to current Scottish offices abroad
   c. Expanding the number of Scottish offices abroad
   d. Promote immigration to Scotland during trade talks

3. Increasing Scottish influence in UK decision-making
   a. Scottish representation on the Migrant Advisory Committee
   b. Revising and expanding the Scottish Shortage Occupation List
   c. Creation of JMC sub-committee on Immigration
   d. Dissemination of Population Strategy for Scotland

4. Scottish Sectoral Agreements
   a. Creating a new postgraduate work visa for Scotland
   b. Temporary work permits for seasonal migrants in Scotland
   c. Creating 'European Talent: Working in Scotland' schemes

5. Devolving administrative aspects of immigration
   a. Creation of a Scottish Work Permit processing office(s)

6. Scottish Visa Sponsorship Schemes
   a. Create a statewide visa framework that all regions are eligible for
   b. Create a single regional visa framework for Scotland only
   c. Create multiple bilateral programmes for each region
   d. Create a single bilateral programme for Scotland only

7. Devolving Control over Selection to Scotland
   a. Creating a Scottish PBS alongside the UK PBS
   b. Enabling Scotland to create a new immigration system

333. In total, then, this report has explored 20 options (within seven broad categories) for differentiating immigration policy to Scotland. These responses have ranged from encouraging the development of substate migrant integration frameworks, to increasing substate influence over immigration policy, to migration programmes that respond to the labour-market needs of substate territories.

334. On the latter option, it is useful to highlight the main findings of this report with regard to the enforcement of regional visa programmes. The issue of enforcing regional settlement – whereby migrants are required to complete their residence requirements in a designated region rather than move to another part of the country – appears to be the greatest concern of UK policymakers. This report has found, however, that such concerns should be tempered. While some of the substate territories operating regional visas had problems of migrants leaving for other areas in the early days of the programmes, retention rates have been improved through the implementation of a variety of tools, including:

- nominated migrants could be required to sign an agreement stating their intention to stay in the designated region, thereby creating a moral commitment to settle;

- regional visas could state that the migrant is only allowed to work in that territory;

- nominated migrants could regularly confirm their home address and place of work;

- employers could also register the migrant's place of work and home address, and inform the authorities if there is a change in the migrant's circumstances;

- highlighting the risks involved if migrants break their agreement and move to a different region during the residence period, i.e. revoking their visa.

- reception and integration programmes could be offered (with a focus on labour market integration) to encourage and support migrants to stay in the region.

335. While these enforcement mechanisms aim to ensure that immigrants meet the requirements stipulated in their visa contracts, namely, that they settle in a

designated region for a specified period of time (usually 2-4 years), the long-term goal of retention should also be pursued in the cases where the migrant obtains permanent residence. Here, the emphasis should be on encouragement rather than punitive enforcement – or 'carrots' rather than 'sticks'. Carrots should focus on the creation of robust integration programmes, with clear structures for migrants to access the labour market, a welcoming campaign that celebrates the contributions of migrants to the substate society, and clear information on accessing services and exercising rights. The successful integration of migrants in a community is what makes them stay. This requires effort, and restricting rights (as well as political/media hostility to migrants) has a deleterious effect on retention levels.

336. In the case studies analysed, multi-level states have usually pursued a combination of the policy options considered above to best cater to the needs of their substate territories. However, there are some policy options that have been common to all of the cases analysed: the development of substate migrant integration and reception policies, which are key to the long-term retention of migrants; and the creation of formal and informal intergovernmental structures by which substate territories can provide input into national policy-making.

337. One of the main findings of the case study analysis was that it is vital to have goodwill on both sides for any of these policy options to function effectively. A shared commitment to making these options work is a necessary condition for success. The main ways to underpin a shared commitment to differentiating immigration policy are:

- First, for the substate territory and the central government to acknowledge the benefits that each would enjoy from differentiating immigration policy, i.e. greater ability for the substate territory to meet its labour-market needs and a potential reduction in administrative backlogs for the central government; as well as shared benefits, i.e. regional economic growth underpins national economic growth;

- Second, for both parties to acknowledge and develop shared solutions to the challenges of implementing any differentiated immigration policy option. For instance, concerns about enforcement could be addressed by a joint task force that examines the retention tools employed by cases in this report;

- Third, for any agreement on the differentiation of immigration policy, including finance and resources, to be clearly set out in a document signed by both parties;

- Fourth, for both parties to commit to using formal and informal structures of IGR in order to develop shared goals and address disputes.

338. If these conditions are met, then it would be possible for Scotland and the UK to jointly develop innovative new ways to meet the immigration needs of both parties. It should be stressed here that it is not necessary, or indeed possible, to import the immigration systems of other countries wholesale, given the particular constitutional configuration of the devolved UK. However, it would be

possible to create a differentiated immigration system that is bespoke to Scotland/UK and combines elements of some of the options considered.

339. The need to develop shared solutions is all the more pressing given the imminent changes to the UK's immigration framework as a result of the UK's decision to exit the European Union. The All Party Parliamentary Group (APPG) on Social Integration concluded that the UK's current point-based system is 'generally unresponsive to demographic, economic, and cultural differences between our constituent nations and regions' and these differences will likely be accentuated following the UK's exit of the European Union (where substate territories rely to varying extents on EU nationals to fill labour shortages).

340. Under the Scotland Act, the UK Parliament has an obligation to "not normally legislate in devolved areas without the consent of the Scottish Parliament". While the residency of EU nationals in Scotland is not a devolved competence, their contribution to Scotland's economic development is a devolved concern. Future reductions of EU nationals to Scotland is likely to have a detrimental effect on Scotland's economy, as other reports have shown. Given that UK policy decisions should have 'no detriment' to Scotland's fiscal capacity, there is a pressing need to find agreement on ensuring future EU migration flows to Scotland in order to maintain its economic and demographic growth. This report has explored 20 ways of addressing this need – some of which are likely to have a greater impact than others – and it is hoped that these options will help underpin future discussions on how to best meet Scotland's immigration needs within the United Kingdom.

Annexe A
Research Interview Questions

Immigration Policy – Territorial competences

1. What are [substate territory]'s main immigration objectives?

2. Could you tell me about what competences [substate territory] has in the area of immigration (admissions, selection, residence requirements, permits, integration)?

3. If applicable, what criteria do you use for selecting potential migrants, and what thresholds do you/would you like to create to meet your labour market needs and preferences?

4. What are the advantages of the current system for your territory? Are there disadvantages?

5. Are there any ways in which immigration policy in [state] could be improved to meet the needs of the [substate territory]?

6. Could you tell me about public attitudes towards immigration in the [substate territory]? Is there support for the immigration system that is currently in place?

7. Does the [substate territory] have any competences in the area of refugee and asylum policy?

8. Could you tell me what control the [substate territory] has over immigrant integration and reception? What policies have you pursued to integrate immigrants into your territory? Do you have central government input into these policies?

Immigration Policy – Intergovernmental Relations

9. Could you tell me about what influence the [substate territory] has over central-state decision-making on immigration?

10. How are intergovernmental relations on immigration conducted between the [substate territory] government and the [state] government? In your view, are these structures and institutions effective at taking the needs of the [substate territory] into account?

Capacity and Finance

11. What extra capacity (offices, positions, structures, processes) was needed to enable you to exert control over immigration and integration?

12. How is the immigration system (including integration/reception) in the [substate territory] financed?

Retention and Enforcement

13. Have you experienced any issues around retention (i.e. do immigrants tend to stay in the [substate territory] or move to other parts of the [state])?

14. If relevant, what kind of tools do you employ to enforce regional immigration rules and reduce onward migration to other parts of country?

15. Have you experienced any difficulties around out-migration from the [substate territory]? If so, how have you sought to address these issues?

Replicability of this model

16. Do you think that the [substate territory]'s immigration policies could be implemented in another country? What, in your mind, are the key conditions for this system to work elsewhere?

17. Do you have any general advice for Scottish parliamentarians when considering different policies and systems for meeting Scotland's immigration needs?

Annexe B
List of Acronyms

AC	Autonomous Community
ANC	Association for Newcomers to Canada
APPG	All-Party Parliamentary Group
BC	British Columbia
BCI	Canton Office for the Integration of Foreigners & Prevention of Racism
BME	black minority ethnic
CCCI	Consultative Chamber of Immigrants for the Canton
CIC	Citizenship and Immigration Canada
COSLA	Convention of Scottish Local Authorities
CQA	Canada-Quebec Accord
CSA	Catalan Statute of Autonomy
CTEER	Culture, Tourism, Europe and External Relations Committee
CVOA	Canadian Visa Offices Abroad
DIAC	Department of Immigration and Citizenship
DIPB	Department of Immigration and Border Protection
DWP	Department of Work and Pensions
EEA	European Economic Area
EOI	Expression of Interest
EU	European Union
FCO	Foreign and Commonwealth Office
FT	Fresh Talent
GDP	Gross Domestic Product
HELDU	Legal Service and Social Care for Immigrants
IGR	intergovernmental relations
IRCC	Immigration, Refugees and Citizenship Canada

IT	information technology
JMC	Joint Ministerial Committee
MAC	Migration Advisory Committee
NGO	non-governmental organisation
NI	national insurance
NRS	National Records Scotland
NT	Northern Territory
ONS	Office of National Statistics
PBS	Points Based System
PEI	Prince Edward Island
PN	provincial nominee
PNP	Provincial Nominee Program
PT	Provinces and Territories
PTNP	Provincial and Territorial Nominee Programs
PVI	Basque Immigration Plan
RAS	Relocation Advisory Service
RCB	regional certifying body
RSMS	Regional Sponsored Migration Scheme
SA	South Australia
SAWS	Seasonal Agricultural Workers Scheme
SBS	Sectors Based Scheme
SOL	Shortage Occupation List
SSRM	State-Specific and Regional Migration
UAGA	Union of Agricultural and Livestock Farmers of Álava
UK	United Kingdom
UKIP	United Kingdom Independence Party
UKVI	UK Visa and Immigration
US	Universities Scotland
USA	United States of America

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