



The Scottish Parliament
Pàrlamaid na h-Alba

DEVOLUTION (FURTHER POWERS) COMMITTEE

AGENDA

4th Meeting, 2016 (Session 4)

Thursday 28 January 2016

The Committee will meet at 9.30 am in the Mary Fairfax Somerville Room (CR2).

1. **Post-Study Work Visas:** The Committee will take evidence from—

Mr Maulin Buch, and Ms Mary Njoki, former participants on the Fresh Talent Scheme;

Lucy Flynn, International Officer, South Lanarkshire College;

Alan McKay, Deputy Vice-Principal International and Director of the International Office, Edinburgh University.

2. **Parliamentary Scrutiny of Intergovernmental Relations:** Committee Members will report back from a recent fact-finding visit to Spain.

Stephen Imrie
Clerk to the Devolution (Further Powers) Committee
Room T3.40
The Scottish Parliament
Edinburgh
Tel: 85206
Email: devolutioncommittee@scottish.parliament.uk

The papers for this meeting are as follows—

Agenda Item 1

Written evidence submissions

DFP/S4/16/4/1

SPICe briefing

DFP/S4/16/4/2

PRIVATE PAPER

DFP/S4/16/4/3 (P)

Agenda Item 2

Note by the clerk

DFP/S4/16/4/4

Devolution (Further Powers) Committee

Post Study Work Visas - Written evidence submissions

Introduction

1. Annexed below are three written submissions from Edinburgh University, South Lanarkshire College and Universities Scotland.

Action/recommendation

2. Members are invited to take these submissions into account during their questioning of the witnesses.

**Clerking Team
January 2016**

ANNEXE**EDINBURGH UNIVERSITY**

The following evidence is submitted by the **University of Edinburgh** to the Scottish Parliament's Devolution (Further Powers) Committee evidence session into Post Study Work visas for international students.

As one of the world's leading universities, based in Scotland, we operate and compete on the global stage. The inclusion of competitive and flexible post study work options for our international graduates is in our national interest. We have one of the largest international student communities in the United Kingdom with over 15,000 students from over 160 different nations.

As one of the world's leading universities we work with the brightest and best researchers, students and scholars from across the world, providing real world impact and benefit. Post Study Work is a very important aspect of our global offer, not only as a University but as a nation, as we seek to maintain and advance our position on the world stage.

The attraction, development and retention of this global talent not only advances the quality of our research, learning and education but advances our nation, its economy and competitiveness. International students contribute enormously to our universities, communities and local economies. International students enrich our teaching environment, strengthen our research capacity, are valued by employers, enhance the cultural diversity of our city.

Executive Summary

1. Flat sector growth in international student recruitment despite rising enrolments in competitor nations during significant increases in global student mobility
2. Need for competitive and attractive package to welcome international talent
3. Negative impact on perceptions of UK/Scotland as study destination due to lack of Post Study Work options that are competitive and attractive on the global stage
4. Restrictions of current Post Study Work routes and lack of interest
5. Negative impact on economy and small to medium sized enterprises in Scotland
6. Attracting, developing and then losing some of the world's leading talent to competitors
7. Need for 2 year Post Study Work route being reintroduced with flexible approach

1. What impact has the closure of the Tier 1 (Post-Study Work) Visa had on Higher Education Institutions in Scotland?

The closure of the Tier 1 post-study work route has impacted on the competitiveness of the international offer of higher education institutions in Scotland.

There is little doubt that the closure of the previous work study route has been one of the most damaging changes in UK immigration policy for the higher education sector and has impacted negatively on initial interest in the UK and the perception of the UK as a study destination.

International students are carefully considering various options and packages that exist in major Anglophone nations, who host the vast majority of students studying outside of their home nation, and the UK's offer regarding post study work opportunities is simply not as competitive.

As the HESA (Higher Education Statistical Authority) figures for non-EU enrolments in the UK each year since 2011 demonstrate, when the Tier 1 post study work route was closed, non-EU international student enrolments across UK higher education have remained flat during a period of strong global growth. The OECD note average annual global growth in international student mobility of 7 per cent each year between 2000 and 2012.

Compare and contrast annual UK and Scottish national performance against the two major Anglophone competitors for the UK, the United States of America and Australia. Both these nations report 10 per cent growth across the last year, with the United States reporting their largest increase in 35 years and extending their position as the world's leading destination for international students. Other major competitors are increasing significantly, Canada reporting 11 per cent growth and Germany 7 per cent growth during the same period.

The latest HESA (Higher Education Statistical Authority) figures released for the UK in January 2016 which highlight a 1 per cent increase for the UK with regards to non-EU international student enrolments. In Scotland, the HESA figures indicate that non-EU enrolments (2012-2013 to 2014-2015) have increased very marginally from 28,610 to 29,210, representing a 2 per cent increase¹. In terms of the top 10 non-EU sending nations to the UK last year, 8 nations have decreased enrolments with the overall figure for the top 10 non-EU sending nations declining by 3 per cent.

It is well reported that one of the major impacts for the UK due to the closure of Tier 1 PSW has been South Asia and in particular India. India is one of the leading nations for sending students across the world for tertiary level education and a major provider of global talent. In the last year the United States reported a 29.4 per cent increase in Indian enrolments which sits in stark contrast with 50

¹ <https://www.hesa.ac.uk/sfr224> Key points - enrolments (Scotland only)

per cent plus reduction in Indian student enrolments within UK higher education in recent years.

The current post study work routes for international students attract little interest due to their restrictive nature. Across the last year the uptake at a UK national level across all of these schemes was just under 7,000 for post study work compared with 46,650 in 2011, a reduction of 90 per cent. To place the current uptake in context, there are 310,000 non-EEA international students studying in the UK.

2. What impact has the closure of the Tier 1 (Post-Study Work) Visa had on economic growth in Scotland?

The continued loss of some of the world's brightest and best graduate talent will have impacted on economic growth in Scotland and the UK. We need to ensure that we can attract, develop and importantly retain some of the talent that we have invested in and trained to ensure we remain competitive on the world stage.

3. What impact has the closure of the Tier 1 (Post-Study Work) Visa had on the ability of Scottish employers to find skilled staff?

A range of employers and national employer's associations in Scotland have repeatedly stated the need for access to more high skill talent through improved immigration policy.

A post study work scheme in Scotland will not only enable international graduates to consolidate their qualification through industry experience, but will importantly contribute to Scottish economic growth and business development, enabling Scottish employers to benefit from a pool of international graduate talent.

4. What impact has the closure of the Tier 1 (Post-Study Work) Visa had on raising the skill levels of Scotland's own young people and attracting skilled workers from the rest of the United Kingdom?

The social, cultural and educational benefits that Scotland receives from international student talent is immeasurable. Students in Scotland directly benefit from the internationalisation of their campuses, lecture theatres and laboratories, broadening their horizons and world views that assist with critical thinking and global citizenship. International students create future connections and networks globally for Scottish students and ensure that they benefit from a global perspective being introduced into their study and life at University.

5. How effective are current Tier 1 (Graduate Entrepreneur) and 2 (General) visas for enabling international students to remain in Scotland, after completing their studies, to contribute to the Scottish economy?

The UK figures mentioned before illustrate the lack of impact and demand for the currently available Tier 1 and Tier 2 options for non-EEA international graduates.

The current post study employment options for international graduates in the UK, are not sufficient to meet the needs of employers in Scotland. The reality is that it leads to a 'brain drain' of highly skilled global talent from Scotland as there is no effective pathway for international graduates to gain the necessary work experience to qualify for a Tier 2 visa.

As a nation therefore we are attracting, developing and then losing some of the brightest talent and minds in the world. The current PSW routes serve to deter some international students from considering studying in Scotland in the first place as competitor nations offer a range of more attractive and competitive post study work schemes. Finally, the restrictive nature of the current work options and limited impact of them means that businesses are being deprived of a world class talent pool, trained and developed in Scotland.

6. What are the limitations of current arrangements?

Whilst the current arrangements are welcomed there are a range of limitations and restrictions with the result that few students are using these routes as current Home Office statistics demonstrate very clearly for each available route.

7. Tier 1 Graduate Entrepreneur route

We support this route and we are an endorsing institution. However, the number of graduates involved is very low with only 286 students across the UK transferring from a student visa in Tier 4 to Tier 1 across the whole of 2014. Furthermore, participating universities are restricted to endorsing only 20 graduate entrepreneurs each year.

8. Tier 2 General Visa

This is highly restrictive for international graduates and has some of the strictest conditions when compared to the flexible and longer-term packages of post study work available in other leading destination host nations. In Australia international graduates at postgraduate research level can apply for four year post-study work options. In 2011 before closure of the post study work route there were 46,875 graduates through the route, in the year ending August 2015 Home Office statistics demonstrate that there were only 5,867 international graduates moving from Tier 4 to Tier 2 in the United Kingdom, reducing from over 80,000 under the former Tier 1 post study work route and representing a reduction of over 90 per cent².

International graduates have only 4 months when they graduate to secure 'graduate level' employment so they can get a Tier 2 visa that must meet the minimum salary threshold of £20,800. The recent Migration Advisory Committee report has recommended that this threshold increases to £23,000 for new entrants (which would include most new international graduates) and to £30,000 for experienced workers, in order to prioritise higher valued, skilled migrants

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https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/493039/Tier_2_Report_Review_Version_for_Publishing_FINAL.pdf (Table 7.2, Page 162, Tier 4 migrants moving to Tier 2 Year ending 8/15

within the Tier 2 visa route³. Increasing the salary thresholds is very likely to further restrict post study work opportunities for international students to the detriment of the UK's competitiveness.

UK and non-UK nationals, do not always move immediately into work that would meet the requirements of Tier 2. Instead there is often a period of orientation in the workplace during which they further develop and gain work experience. The Evidence Review of the Fresh Talent Working in Scotland Scheme illustrated this when those who were not in suitable employment were asked why they thought this was. The responses showed that most who were not yet working in skilled jobs were using their current employment to gain work experience while applying for more suitable positions or as a way of developing knowledge in their chosen career area to enable them to then move to more senior positions. It was found that international graduates actually experienced difficulties in immediately moving into skilled employment as they did not have UK experience (even though many had experience outside the UK).

Not all graduate employment, dependent on sector or profession, will have a starting salary of £20,800. It is clear that this threshold will impact on specific sectors, industries and professions more than others where graduate salaries are traditionally lower, for example the creative industries.

Importantly, as Home Office statistics indicate, there are a relatively small number of employers registered with a Tier 2 licence which is required to employ international graduates. From evidence in previous studies it is clear that small to medium sized enterprises are very concerned about the costs and efforts involved with being a registered sponsor and the compliance requirements that are involved within the UK immigration system. Home Office statistics also indicate regional variance in Tier 2 sponsors across the UK with employers in London and the South East of the UK accounting for 63 % of active Tier 2 general sponsors compared with under 10 per cent in Scotland, with only 672 organisations registered to recruit within this route in the whole of Scotland and Northern Ireland⁴.

In the context of the Scottish economy, characterised by the SME sector, the impact on companies not being able to recruit to graduate level roles, particularly where there are skills shortages and where a potentially large pool of international graduate talent exists, for instance the STEM sector, is likely to have a detrimental and longer term impact on our international competitiveness as a nation.

The Migration Advisory Committee's report (January 2016) recommends the implementation of an Immigration Skills Charge, set at £1,000 per year, for employers to hire international staff and advises that the Resident Labour Market Test be extended to in-country switchers from other routes, including from the international student Tier 4 route to Tier 2 and including these

³ <https://www.gov.uk/government/publications/migration-advisory-committee-mac-review-tier-2-migration>

⁴ http://www.appmigration.org.uk/sites/default/files/APPG_PSW_Inquiry_Report-FINAL.pdf Regional distribution of active Tier 2 sponsors within the United Kingdom (p31)

international students within the cap on Tier 2 visas as they have already studied and lived in the UK. To date international students have been exempted from the RLMT and the Tier 2 visa cap.

These recommendations from the Migration Advisory Committee, if implemented, would serve to further reduce and restrict the opportunities through existing routes for international graduates and serve as a further disincentive for employers, and SME's particularly, to recruit international graduates⁵.

9. To what extent is the competitiveness of Scottish universities driven by factors such as the availability of post study work schemes, as compared to the quality of education?

As one of the world's leading universities, based in Scotland, we operate and compete on the global stage. The inclusion of competitive and flexible post study work options for our international graduates benefits not only the University but the entire nation. As one of the world's leading universities we work with the brightest and best researchers, students and scholars from across the world, providing real world impact and benefit. Post Study Work is a very important aspect of our global offer, not only as a University but as a nation, as we seek to maintain and advance our position on the world stage. The attraction, development and retention of this global talent not only advances the quality of our research, learning and education but advances our nation, its economy and competitiveness.

10. What progress has been made on discussions between the UK and Scottish governments to explore the possibility of introducing formal post study work schemes for international students in Scotland?

The University of Edinburgh has contributed to the Scottish Government's Post Study Working Group report to Scottish Ministers in 2015 and continues to be represented on this group.

11. How should any post study work scheme for international students in Scotland be structured?

We fully support the recommendations of the Post Study Working Group report to Scottish Ministers published in 2015.

Any future post study work route visa should be set at a minimum of two years to ensure that the UK has a competitive package for international talent and so that UK businesses can recruit skilled non-EEA graduates. Importantly, this time period would enable graduates to prepare and apply for positions and via graduate recruitment cycles. At the conclusion of the 24 month period graduates would need to secure employment under Tier 2 (general) or move into another permitted migration route or leave the UK.

⁵ <https://www.gov.uk/government/publications/migration-advisory-committee-mac-review-tier-2-migration>

Improvements should be made to Tier 2, in order to ensure that skilled international graduates can be retained within key sectors of the UK economy. The government should review all current routes relating to Post Study Work to improve the attractiveness of the route for employers and small and medium sized enterprises and permit greater flexibility with regards to salary thresholds and the resident labour market test.

These improvements to existing routes would work to address variations in graduate salaries across the UK, including Scotland, and sectoral differences in the economy. A further review is required across the other current PSW routes, including the Tier 1 Graduate Entrepreneur visa, Tier 4 Doctoral Extension Scheme and Tier 5 Temporary Worker/Government Authorised Exchange, to ensure that these are competitive, attractive and flexible.

Any post study work scheme should be regularly reviewed to ensure that it meets the needs of Scotland's labour market as well those of international graduates. Any future scheme should be restricted to graduates with educational qualifications gained and verified from an approved Tier 4 sponsor in Scotland.

It is recommended that any future PSW scheme should work to positively support the needs of SME's in employing international graduate talent otherwise current compliance and cost barriers will remain and serve as a disincentive to the recruitment of international graduates.

SOUTH LANARKSHIRE COLLEGE

The impact of the Fresh Talent Initiative

In the past, the college's international students from India, Pakistan, Nepal, Sri Lanka, Saudi Arabia and China were encouraged to come to study in Scotland in part due to the appeal of the Post Study Work visa. Between 2010 and 2012 the college had over 250 international students studying a range of different subjects.

For some students the guaranteed opportunity to work in the UK offered a number of benefits:

1. Exposure to working in an overseas environment and development of international network.
2. Development of business English.
3. Opportunity to earn salary to repay tuition loans and to save money to pay for future university tuition and subsistence.

The effect of the ending of the scheme and of the current policies with regard to post-study work visas

Since the end of the scheme, the college's international student population has reduced year on year down from 150 students in 2011 to 1 student in 2016. The removal of the scheme, coupled with the numerous unfavourable changes in visa conditions for students at colleges has meant that it is less appealing (and more difficult) for students to study at FE colleges in the UK.

Current Home Office policies, including the inability to work part time and the requirement that a student has to return home to apply to extend a tier 4 visa to articulate to university have a hugely negative effect on our ability to recruit tier 4 students to a college.

In general, the policies about International students in regard to colleges are less favourable than those in regard to Universities.

It is particularly puzzling that 'embedded colleges' ie. private providers such as INTO and Kaplan are treated differently and more favourably under the current rules than publicly-funded colleges, with rigorous systems and processes.

What you consider would be the benefits or negative effects of re-introducing a Tier One scheme along the lines of the Fresh Talent Initiative to your institution (as a learning environment etc.) but also more widely in terms of economic, social and cultural impacts upon South Lanarkshire etc

Positives:

Students will once again have the ability to engage in employment and to apply the employability and transferable skills learned at college - putting in to practice what we teach at college.

Our colleges and universities really benefit from international students, not purely in a financial way. Our UK students have the opportunity to mix with people with whom they may otherwise not have the opportunity and we create 'global citizens' who are encouraged to be globally mobile. This applies to UK and international students.

The 'promise' of the ability to work after graduation may encourage/incentivise students to complete their programme of study.

Students will be able to enhance their CVs with international experience and will benefit from developing a global network of colleagues and we will truly be fulfilling our vision of developing globally mobile graduates with the ability to work and communicate in the global community.

Students will be able to secure paid employment which will perhaps allow them to continue to further study which is of benefit to them and to the wider economy.

We benefit as a nation from the graduates who have trained here rather than experiencing 'brain drain' when they are immediately required to return home after their course.

Relationships with our graduates do not stop when they graduate. Students who are able to remain in the UK and work establish a greater relationship with the country and are more likely to remain engaged for many years to come.

Network marketing- students who have had a positive experience are more likely to encourage friends and relatives to study in the UK.

We create the perception that Scotland/the UK is welcoming and friendly to international students and the UK once more becomes appealing in a similar way to Australia, New Zealand, Canada.

There are also benefits to the wider economy. The fees from International students support employment as new money coming into the economy. In addition to the fees, we estimated at its peak, our International Students were contributing around £1.5m to the local economy of East Kilbride through their spending in the local community.

International students are a benefit to the economy, a resource in terms of the culture they share with UK staff and students and contribute to the rich diversity within a college community.

UNIVERSITIES SCOTLAND

Universities Scotland written evidence: The need for a return of a competitive post-study work route for international students in Scotland and the limitations of current UK immigration policy.

Summary

Universities Scotland wants to see a change to the UK's immigration policy for international students. We would be happy to see this happen at a UK level, for the benefit of all UK HEIs, or at a Scotland-level in a follow-through on the recommendation in the Smith Commission.

1. There is a solid evidence base to support the social and cultural benefits Scotland would gain if a post study work visa were to be reintroduced.
2. There is a very broad consensus of support to see this happen in Scotland. This includes the university and college sectors, the business community and all parties represented in the Scottish Parliament.
3. Tier 2 (as the policy stands of January 2016) is a restrictive and anti-competitive route for international graduates and bureaucratic and off-putting for employers. Student numbers, from what were once key markets for Scotland, have fallen significantly, with double-digit decreases, since Tier 2 was introduced. New Zealand, Canada, Australia and America grow their international student numbers at the expense of Scotland, where our numbers stagnate at best.
4. The Migration Advisory Committee's recommendations, announced this January, are taking the UK further in the wrong direction. Increasing minimum salary thresholds will make Tier 2 even more restrictive, effectively rendering a significant proportion of international graduates ineligible to apply.
5. The global demand for overseas study continues. Scotland's universities have all of the assets needed to do well in this market with the exception of a competitive visa policy.

The Scottish Government's cross-party group has outlined a sensible proposal, with wide stakeholder buy-in, that would work for Scotland within the UK. We urge the UK and Scottish Governments to sit down together and make this into policy.

<p>1. International students make a significant and positive social, cultural, educational and economic contribution</p>	<p>Economic: The international student recruitment of Scotland's 19 higher education institutions generates £402.6million per year in fees and £494million in off-campus expenditure to Scotland's economy. Scotland faces skill gaps in the fields of science, technology, engineering and math and IT. We do not currently have enough home-grown talent to meet demand in the labour market. The Skills Investment Plans developed by Skills Development Scotland (SDS) for the engineering, life sciences and ICT and digital technologies, to name a few, cite shortages in "high-skill" personnel and the challenge of: <i>"increased competition to</i></p>
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	<p><i>source top talent” and the: “need to attract and anchor key skills... promoting Scotland globally as a life science career location of choice.”⁶</i></p> <p>We can, should and are doing more to address these skills gaps within our Scottish-domiciled population but that does not address the challenges in the short-medium term. A post study work visa in Scotland would.</p> <p>Social: Scotland has distinct demographic challenges that differ from the rest of the UK and which increased in-migration of high-skill people could help address. Between 1971 and 2012 Scotland’s population grew by only 1.5% compared to 15% in England. Scotland’s proportion of the population of working age is also untypically low and is forecast to fall by 4% during the period 2012 and 2037 whilst the number of people aged over 65 years is projected to rise by 59%.⁷</p> <p>Cultural: Scotland extends its stock of ‘soft power’ – it’s reach and the positive regard in which it is held - through the global connections built through the attraction and exchange of international students in higher education. More locally student integration reaches beyond campus walls and into the local community including cultural events held throughout the year and targeted outreach on the part of international students to schools, community groups and others.</p> <p>Educational: The presence of a significant number of international students contributes to the internationalisation of the curriculum, consideration of different world-views and critical-thinking as well as the promotion of foreign languages.</p>
<p>2. There is a broad consensus for the reintroduction of a post study work visa</p>	<ul style="list-style-type: none"> • In June 2015 160 different organisations in Scotland signed a statement of support for the reintroduction of a post study work visa.⁸ • This builds on an open letter signed by universities, their staff and student unions as well as key business and industry representative bodies in November 2014.⁹ • The Smith Commission, accepted by all five of Scotland's

⁶ Skills Development Scotland (2014) Skills Investment Plan Life, Sciences and Engineering.
<http://www.skillsdevelopmentscotland.co.uk/resources/skills-investment-plans/>

⁷ UK Government Scotland Analysis: Work and Pensions, April 2014

⁸ <http://news.scotland.gov.uk/News/Scotland-s-colleges-back-return-of-post-study-work-visa-1a9c.aspx>

⁹ <http://www.universities-scotland.ac.uk/index.php?mact=News,cntnt01,detail,0&cntnt01articleid=194&cntnt01origid=18&cntnt01returnid=23>

	<p>political parties, called for the Scottish and UK Governments to “<i>explore the possibility of introducing formal schemes to allow international higher education students... to remain in Scotland and contribute to economic activity for a defined period of time.</i>”¹⁰</p>
<p>3a. Tier 2 is restrictive and anti-competitive</p>	<p>The big drop in recruitment from India was an immediate and one of the most obvious impacts of the change in policy. Within a year of the policy change the recruitment of students from India by Scottish universities fell sharply – a 26% drop in one year. This free-fall has continued. Scotland has seen a 60% drop in Indian student numbers in Scotland between 2010/11 and 2013/14. A survey undertaken by UKISA points to the importance students from India, in particular, put on the ability to stay and work in the host country for a period after study.</p> <p>The negative impact of the Tier 2 visa is shown most acutely in the Indian market but it is not the only nationality of students to be adversely affected by the policy. Scotland has seen a 44 per cent decline in Pakistani students and a 22 per cent decline in Nigerian students studying in Scotland since 2010/11.¹¹ These countries used to be our key markets.</p> <p>Overall international student numbers are only just sustained by growing demand from China. Over-reliance on one market is a high-risk strategy going forward. There was a 0.7 per cent decrease in total international student numbers to Scotland between 2011/12 and 2012/13). A small handful of institutions are responsible for maintaining modest growth in student numbers but the majority have not been able to meet their recruitment targets for the last few years.</p> <p>A survey found that around half of all international students see the option of working in the UK for a short period as attractive¹², the imposition of further restrictions on Tier 2 would only serve to exacerbate this downward trend in student recruitment</p>

¹⁰ Smith Commission (2014) Item 96(2) page 28.

¹¹ HESA Student record 2010/11-2013/14.

¹² NUS (2014), Submission to the APPG on Migration Inquiry into the PSW route, available at: <http://www.nusconnect.org.uk/resources/open/international/NUS-Submission-to-the-All-Parliamentary-Group-on-Migration-Inquiry-into-the-Post-Study-Work-Route/> (accessed 26 September 2014)

<p>3b. Tier 2 is currently one of the least competitive routes visas for graduates in English-language speaking countries</p>	<p>The UK's Tier 2 route is one of the strictest set of conditions and so one of the least attractive visas available to international graduates. The US, Canada, Australia and New Zealand – the major English-language speaking competitors – all offer far more attractive visa routes.</p> <p>The result is that international students are choosing those countries, over Scotland and the UK, in their droves. Take the USA as an example, in 2013/14 the number of international students going there increased by 10% with the number of Indian students increasing by nearly 30%. In the same year Australia increased its international student recruitment by 8%. Over the last six years from 2008 Canada has increased its international student numbers by 83 per cent.</p> <p><u>Examples of a more competitive post-study work visa elsewhere:</u></p> <ul style="list-style-type: none"> • Currently international graduates only have four months to pursue employment in the UK, with a minimum salary of £21,800, if they are to progress onto a Tier 2 visa. • International graduates in Canada & New Zealand don't have to have a job offer to secure a post study work visa – they can use an interim job search visa for 12 months. • The UK sets minimum salary thresholds – potentially about to increase. Neither Canada nor New Zealand specify a minimum salary. • Australia has a 'Post-Study Work' visa that allows graduates from higher education institutions to live and work in Australia for up to four years. • Canada has a 'Post-Graduation Work Permit' which allows international students to work in Canada for up to three years after their studies. • The USA allows international STEM students to remain in the country and work after they have graduated for 17 months.
<p>3c. Tier 2 is highly bureaucratic and off-putting for employers as sponsors</p>	<p>Currently, the rules surrounding employment under Tier 2 are often prohibitively restrictive and bureaucratic for employers. To employ a non-EEA student employers have to become a Tier 2 sponsor at a significant expense and with considerable resource implications, especially for smaller businesses.</p> <p>The disproportionate impact on smaller businesses may present a real disincentive in employing non-EEA graduates. In an SME-dominated economy, like Scotland, the cumulative effect of companies subsequently failing to recruit to graduate-level roles, especially where there are current skills shortages and where a potentially large talent pool of international students may exist, such as in the STEM-based industries - is likely to have a detrimental impact on our international competitiveness as a</p>

	<p>whole</p> <p>This has been reinforced by the recent findings of Westminster's All Party Parliamentary Group on Migration (APPG) report from Feb 2015 which found that: <i>'the restrictive nature of Tier 2 (General) has prohibited some employers from being able to recruit skilled non-EEA graduates under this route.'</i></p>
<p>3d. Very few graduates meet the criteria for Tier 2 as it stands</p>	<p>The minimum salary threshold of £20,800 is an ambitious starting-salary for graduates, even in professional-level jobs. Over a fifth of graduates from Scottish universities who get professional-level straight away did not command salaries that exceeded £20,000.</p> <p>Since the introduction of Tier 2 in 2012, the decline in number of visas being issued has been twice as large as was predicted by the UK Government. It expected a decline of 49 per cent, which it thought would result in a potential loss of £1.2 billion in economic impact over four years UK-wide. In fact, the decline in international students switching from student visas to post-study work visas has been 88%. Unfortunately this data cannot be disaggregated for Scotland. However, we can say that if the number of students of Indian nationality in Scotland had remained at 2012 levels, the Scottish economy would have been £38.5 million better off last year alone.</p>
<p>4. The Migration Advisory Committee's recommendations for Tier 2 reform will make it harder still for international students to work in Scotland</p>	<p>Tier 2 is already relatively inaccessible to international graduates. The MAC's recommendations would close to the door to post study work opportunities to a far greater number of international graduates than is already the case.</p> <p>MAC is recommending that the salary threshold for new entrants to the labour market to £23,000, up from £20,800. The average starting salary for graduates of Scotland's universities is £21,255 and this is one of the highest averages in the UK. The average starting-salary for graduates in biological sciences, physics, computer science, architecture and business is not high enough to meet the new recommended salary threshold. A new salary threshold of £23,000 will be very difficult for international students to meet.</p>

<p>5. Student demand for overseas study is high</p>	<p>The British Council has estimated that there will be 3.85 million outbound mobile higher education students globally, up from 3.04 million in 2011. India and China contribute 35 percent of global growth to 2024. The major bilateral student flows in 2024, in terms of volume, will continue to be from China and India, to traditional host markets. But flows between Nigeria and the UK, Saudi Arabia and the US and UK, Pakistan and the UK, and Nepal and the US will be among the top ten fastest growing bilateral flows between 2011 and 2024.</p> <p>Scottish higher education has all of the essentials needed to compete effectively for this growing market: we exceed the global benchmark for international student satisfaction; our four-year degree and the quality assurances mechanisms are imitated internationally; and, our research is world-class. The weak link in the offer we can make to international students comes in the shape of UK immigration policy's restrictions on the attraction of talent. That is what prevents us from competing more effectively.</p>
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POST STUDY WORK VISAS

This briefing offers an overview of the main issues relating to post-study work visas in Scotland (PSWV). It reflects on the previous *Fresh Talent: Working in Scotland Scheme* as well as recent discussions on the reintroduction of a PSWV scheme for Scotland.

Post-Study Work Visa Schemes

Post-study work visas are a type of visa that is extended to nationals of foreign countries that have been in the country for a period of time pursuing tertiary (further and/or higher education level) education who wish to remain in the country for a period of time while they establish their careers post-study. They are directed specifically at graduates and others who are recognised as bringing needed skills and talent to the country. The motivation for developing such a scheme can differ by country depending on the cultural, social or economic issues the scheme is intended to address.

Given the different rationales for such schemes, they can be restricted to specific groups and circumstances. For example:

- Directing the visa only at those with who recently completed a particular programme of study e.g. those who have graduated from programmes in subjects recognised as experiencing skills shortages e.g. science, technology, engineering and mathematics (STEM).
- Restricting the visa only to those achieving specific qualifications e.g. a degree, Masters or PhD.
- Limiting the length of time that someone can remain in the country on a post-study work visa before having to either leave the country or move to another visa scheme.
- Putting restrictions on the type of activity that should be pursued to qualify for the post-study work visa, for example seeking opportunities to access relevant paid or unpaid work experience or developing a business idea for future self-employment.
- Limiting which educational institutions can take part in the scheme e.g. only those that offer recognised qualifications and/or those that are in receipt of public funding for post-compulsory education.

The extract below shows that in [Australia](#) there are two schemes running at present: one for those that have graduated from a degree level programme or higher; the other is open to those that have completed study at a level lower than first degree.

1. Post-Study Work Stream visa

This visa allows you and your family to live, work, travel and study in Australia for between two and four years if you have graduated from an Australian education institution within the past six months.

If you have a bachelor degree you can stay for two years. If you have a master's degree you can stay for two or three years. And if you have a doctorate you can stay for four years.

However, if your qualification is below that of a bachelor degree (eg: certificate III, diploma or graduate diploma) you do not qualify for this visa.

Also, you are not eligible for this visa if you applied for your first ever student visa before November 5, 2011.

2. Graduate Work Stream Visa

This visa allows you and your family to live, work, travel and study in Australia for 18 months if you have graduated from an Australian education institution within the past six months.

Unlike the Post-Study Work Stream visa, you are eligible for this visa even if your qualification is below that of a bachelor degree - eg: a diploma or trade-level certificate, and even if you applied for your first ever student visa after November 5, 2011.

However, your qualification must be in a field which is in demand. Australia has a shortage of skilled workers in several fields including types of engineer, medic, scientist and teacher. These occupations are listed on the [Skilled Occupation List](#). To qualify for a Graduate Work Stream visa you must pass a skills assessment in an occupation on the Skilled Occupation List.

You must find work in a field that is the same as, or closely related to, the subject in which you gained your qualification. For example, if you gained a bachelors degree in commerce, you cannot work as tradesman such as plumber.

In [Canada](#) there is one scheme that is open to those who graduate from a participating post-secondary institution:

To work in Canada after you graduate, you must apply for a work permit under the Post-Graduation Work Permit Program (PGWPP). If you want to stay in Canada as a permanent resident after you graduate, there are a number of programs available, each with its own requirements.

The [PGWPP](#) allows students who have graduated from a participating Canadian post-secondary institution to gain valuable Canadian work experience. Skilled Canadian work experience gained through the [PGWPP](#) helps graduates qualify for permanent residence in Canada through the [Canadian Experience Class](#) (CEC).

A work permit under the [PGWPP](#) may be issued for the length of the study program, up to a maximum of three years. A post-graduation work permit cannot be valid for longer than the student's study program, and the study program must be a minimum of eight months in length. For example, if you graduate from a four-year degree program, you could be eligible for a three-year work permit if you meet the criteria. If you graduate from an eight-month certificate program, you would be eligible for a work permit that is valid for no more than eight months.

Fresh Talent: Working in Scotland Scheme

Fresh Talent was a broad policy programme that was first introduced in Scotland in 2004. The policy was established in response to growing concern of a demographic shift taking place in Scotland - with a prediction of a future decline and ageing of the Scottish population that would be detrimental to the economic and cultural future of Scotland. There were also concerns about skills shortages in Scotland that required to be addressed through competitive measures that would draw a wider pool of skilled workers from an international market to live and work in Scotland.¹

Fresh Talent had five priority groups it sought to engage. These were:

¹ <http://www.gov.scot/Resource/Doc/152086/0040945.pdf> (2006);
<http://www.gov.scot/Resource/0047/00473583.pdf> (2015)

1. Graduates from programmes of higher education
2. People wishing to move to Scotland to take up employment
3. Entrepreneurs
4. Self-employed people
5. People of Scottish descent who may be attracted to living in Scotland

Much of the policy focus at the time of introduction went on Fresh Talent: Working in Scotland Scheme (FT WiSS).² FT WiSS was established to encourage non-EEA³ nationals to come to Scotland to take part in higher education and so encourage graduates to remain in Scotland to pursue their careers and establish their home here after completion of their studies.

To qualify for a post-study work visa through the Fresh Talent scheme, graduates were required to provide evidence that they had been living in Scotland for a considerable period of their time to pursue higher education. This could be demonstrated through successful completion / graduation from programmes of study at Higher National Diploma, first degree (undergraduate), Masters or PhD levels.

If eligible a non-EEA graduate from a Scottish institution had the right to remain in Scotland for a period of two years after graduation. Other conditions were applied to those seeking a visa under this scheme, notably:

- Successful completion of the relevant course of study within the previous twelve months.
- An intention to remain in Scotland to pursue employment.
- The ability to accommodate themselves and their dependents throughout the period of the visa.
- An intention to leave the UK on expiry of the visa unless successful in switching to another scheme or visa category.

As immigration was, and remains, reserved to the UK government, the granting of leave to remain in the UK (in Scotland) using the measures established through FT WiSS required the UK government to introduce regulations⁴ to allow the scheme to operate. It was the Home Office that assessed applications for post-study work visas under the Fresh Talent scheme and who managed all aspects of eligibility and administration of the scheme.

² <http://www.gov.scot/Resource/Doc/152086/0040945.pdf> (2006)

³ "EEA nationals" is the term that refers to nationals of the European Union and wider European Economic Area (Iceland, Norway and Lichtenstein). Included also are Swiss nationals. Swiss nationals are not members of the EU or EEA but as Switzerland is part of the single market, Swiss nationals are included in the broad coverage of EEA nationals.

⁴ *The Immigration (Leave to Remain) (Prescribed Forms and Procedures) (No.2) Regulations 2005* – which were updated in 2006 and 2007 before the scheme was subsumed into the UK scheme in 2008

Review of Fresh Talent

Given the relatively short time frame in which the Fresh Talent: Working in Scotland Scheme operated (starting in 2005 and being merged with the UK system in 2008) it is difficult to say whether the scheme was successful in its own right. A review of the scheme conducted by the Scottish Government and published in August 2008 highlighted the progress made in attracting students to study in Scotland using the FT WiSS as a lever for encouraging people to choose Scotland as their place of study. The report stated:

“FT WiSS has been a very innovative piece of policy making... it identified a clear rationale for government intervention and pulled together the necessary mechanisms, legislative and administrative, to deliver a policy tailored to Scottish requirements within a very short timescale.”

The review stated that over 8,000 students had been attracted to stay on in Scotland after graduation in less than three years. As there had not been any specified target in place on how many students the scheme should be able to retain after graduation it is recognised that there is no objective way of assessing if this was a success or not.

The review concluded that it was the potential to attract international students to Scotland that was the most effective element of the scheme. Scottish higher education institutions had been able to use the scheme to promote their institutions while also highlighting the advantages of living, studying and working in Scotland. More than this FT WiSS could also offer individual students the added incentive of the visa offer, marking Scotland out as offering something that was not available in other parts of the UK.

The picture of the success of the scheme was noted as being less clear once people had completed their studies and moved onto the FT WiSS visa. There were not any reliable statistics that would allow the Scottish Government to draw any firm conclusions about what those on the FT WiSS had done during the two years of post-study life, and what happened to them at the end of this period. The limited evidence that was available suggested similar outcomes to other graduates who stayed in Scotland to find work, which is that most find some sort of work but not necessarily the kind of work that would allow them to start on their chosen career paths.⁵

UK Post-Study Work Visa

The International Graduates Scheme (IGS) was a UK immigration scheme launched by the UK government on 1 May 2007. IGS allowed non-EEA nationals who successfully complete a relevant UK degree or postgraduate qualification to remain in the UK for a period of twelve months without the need for a work permit while they

⁵ <http://www.gov.scot/Publications/2008/08/15155422/0> (Chapter 13)

gained relevant post-study work experience or were setting up a business. The principle of the scheme was to retain skilled and educated graduates in the UK labour force.

IGS replaced the Science and Engineering Graduates Scheme (SEGS), which had launched in October 2004. SEGS had been established to allow international graduates who had successfully qualified from a UK educational institution with a degree in specific science and engineering subjects to work in the UK for a period of twelve months after graduation. In May 2006 SEGS was expanded to newly qualified graduates from all postgraduate level courses (in any subject area).

Between 2008 and 2010 the IGS and FT WiSS were replaced by the Tier 1 (Post-Study Work) visa, which was one of the points based visa schemes available for people that were required to have a visa to remain in the UK. An overview of the different Tiers in place now is provided at Annexe A.

A Tier 1 (Post-Study Work) visa operated across the UK from June 2008 until April 2012, at which time it was abolished by the UK government. The abolition of this scheme meant the end of any post-study work visa scheme across all countries in the UK.

On ending this scheme, the UK Government argued it was not necessary as its existence undermined the premise that student visas are for temporary migration rather than permanent settlement. The UK Government also raised questions about whether, at a time of concerns about UK graduate unemployment levels, it was appropriate to offer a visa of this type⁶

The UK government has argued that the current Tier 4 student visa, which includes a four month period on completion of studies where the graduate can legally remain in the UK, is a sufficient length of time for graduates to gain sponsorship from a UK employer. On doing so, the graduate would then transfer to a Tier 2 points based visa, while in employment.⁷

This compares with a two year leave to remain offer for those who had access to the Fresh Talent: Working in Scotland Scheme (between 2005 and 2008) and a one year leave to remain without visa requirements for those who had access to the Tier 1 (Post-Study Work) visa (2008 to 2012).

Data on Student Immigration

The UK Government does not record the geographical location within the UK that those who apply for leave to remain are residing. As such, there is no systematic data available on the numbers of people residing in Scotland that have accessed the different post-study work visa schemes that have been in operation in recent years.

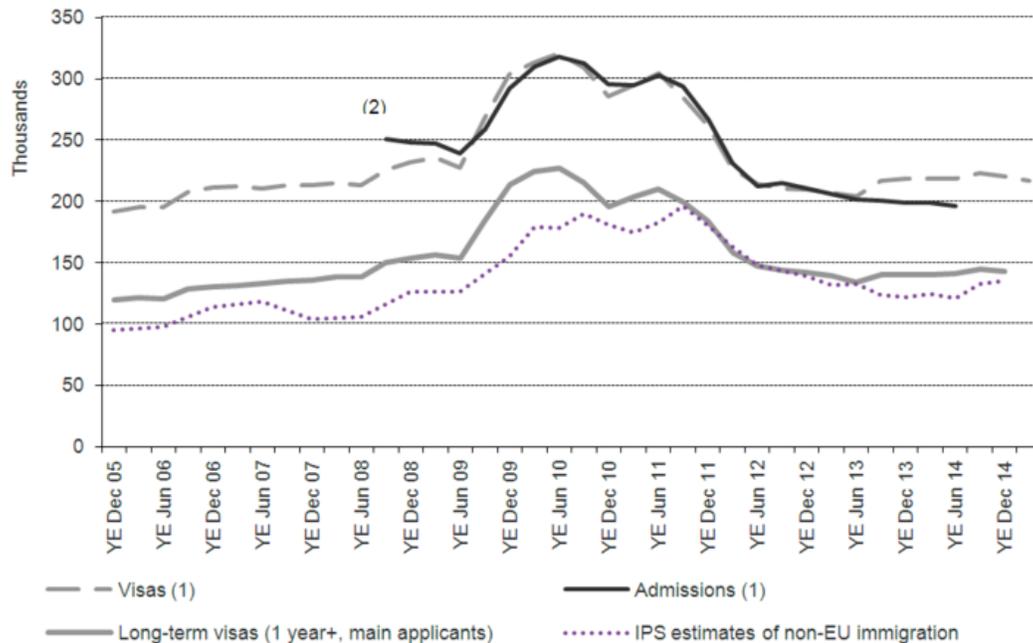
⁶ <http://www.gov.scot/Resource/0047/00473583.pdf> (page 11)

⁷ <http://www.gov.scot/Resource/0047/00473583.pdf> (page 11)

The UK Government does, however, publish data at the UK level on visa applications and the granting of visa applications under different categories.

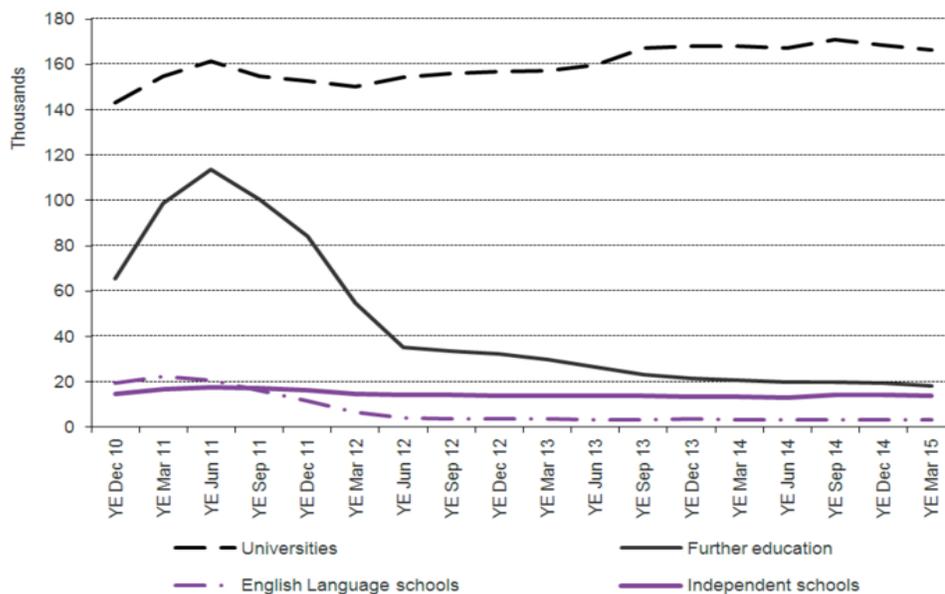
Looking firstly at UK trends in the last ten years in the granting of all categories of study visa (shown in Figure 1) there was a significant increase in student visas in the UK during the period when the post-study work visa schemes, including FT WiSS, IGS and then Tier 1 (Post-Study Work) were in operation, and a decline when these schemes ended.

Figure 1: Long term trends in student immigration to the UK, 2005 to 2014⁸



As Figure 2 shows, a downward trend in student visa applications in the period December 2010 to March 2015 has hit the further education sector hardest, while visas to those studying at higher education level have remained relatively stable in this period.

⁸ <https://www.gov.uk/government/publications/immigration-statistics-january-to-march-2015/immigration-statistics-january-to-march-2015> (see section 4.2 of this web page)

Figure 2: study related sponsored visa applications by sector

Data on those that had been on a Tier 1 (Post-Study Work) visa that have been granted leave to remain on a new visa category are shown at Table 1. This indicates that, at UK level, the majority of applications that are granted are for those moving to one of the other work visa schemes, with smaller numbers moving to a study or family related visa category. Interestingly, there were significantly fewer extensions of leaves to remain among those who had been on a Tier 1 (Post-Study Work) visa in 2012 than in other years.

Table 1: Grants of an extension of stay by current category, previously on Tier 1 (post-study work), 2011-2014⁹

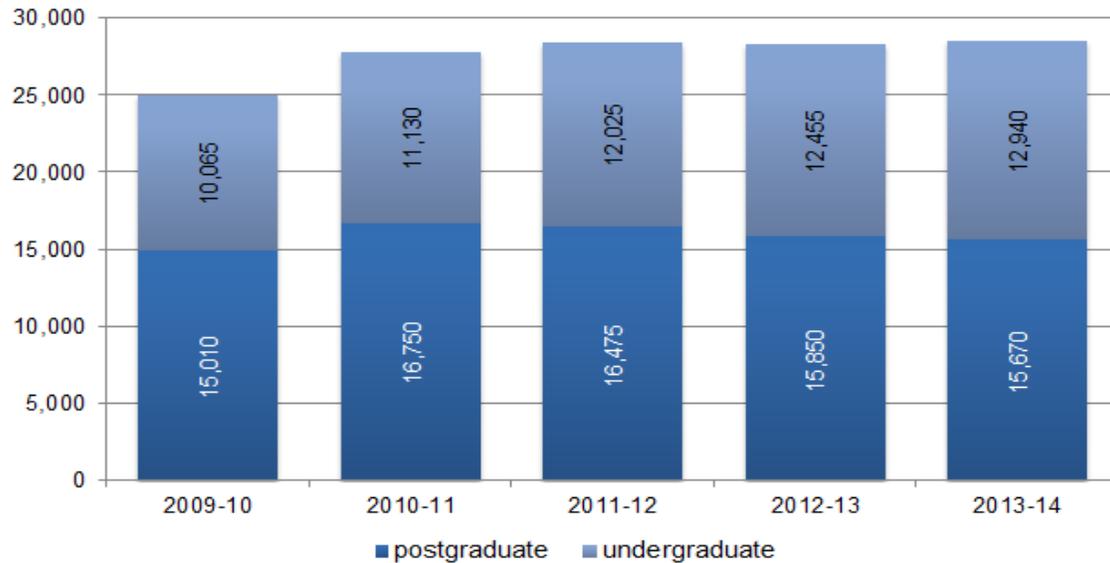
Year	Previous category	Total of all granted extensions of leave to remain	Total work	Total study	Total family	Total other
2011	Tier 1 - Post-Study	14,284	11,374	1,311	1,409	190
2012	Tier 1 - Post-Study	8,951	5,918	1,487	1,423	123
2013	Tier 1 - Post-Study	15,441	10,542	2,271	2,541	87
2014	Tier 1 - Post-Study	14,621	9,151	3,765	1,437	268

Looking at data on the number of international students taking part in higher education institutions in Scotland in the period academic year 2009-10 to 2013-14, Figure 3 shows an increase in the overall international student numbers at Scottish institutions between 2009-10 and 2010-11, although little change since then.

⁹ <https://www.gov.uk/government/publications/immigration-statistics-january-to-march-2015/immigration-statistics-january-to-march-2015> (paragraph 9.2)

Numbers have continued to be higher for postgraduate study than for undergraduate level study.

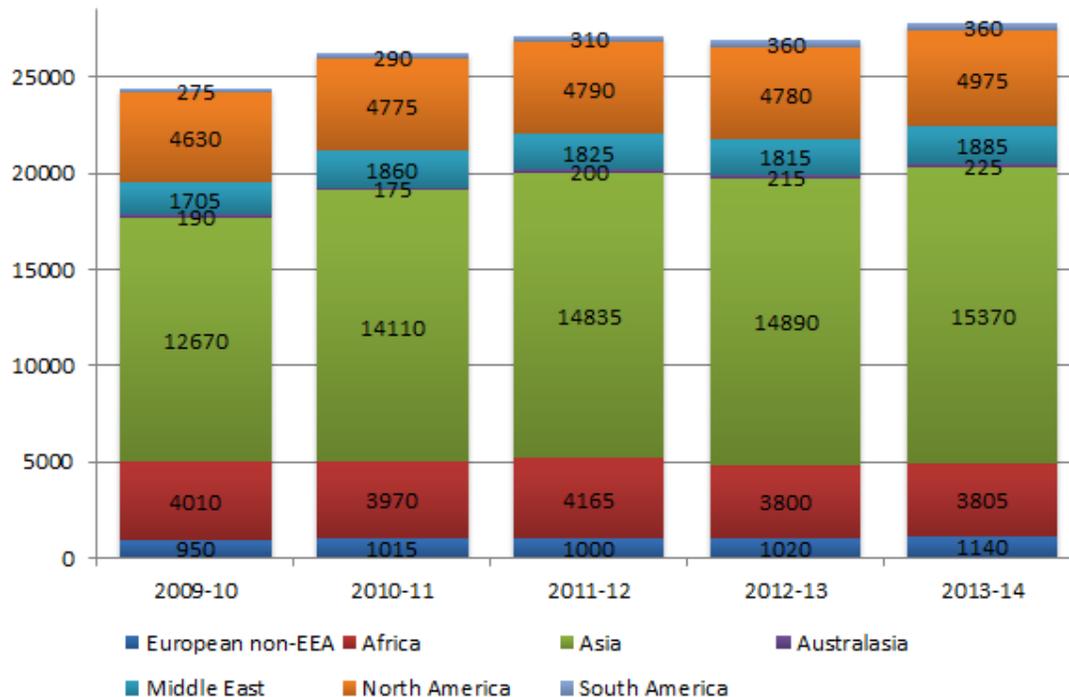
Figure 3: Number of international students at Scottish higher education institutions, by level of study, 2009-10 to 2013-14¹⁰



Looking at where people are coming from to study in Scotland, Figure 4 shows that students from Asia represented the largest intake of international students at Scottish higher education institutions in this five year period. With numbers increasing slightly each year, China represents by far the largest proportion of students from Asia at both undergraduate and postgraduate level. The next largest student populations are those from North America (mainly from the USA or from Canada) followed by students from Africa (Nigeria having the largest number).

¹⁰ This illustration is drawn from data published by the Higher Education Statistics Agency (HESA) that is held in SPICe. It was analysed by SPICe to inform this briefing. Data from earlier than 2009-10 is not available and data for 2014-15 onward are not yet published.

Figure 4: All international students at Scottish higher education institutions, 2009-10 to 2013-14¹¹



As pointed out at Figure 2 above, it is the college / further education sector that has seen a larger decline in students from outside the UK coming to Scotland to study than is the case for higher education institutions.

The report: [Connecting Scotland: how Scottish organisations engage internationally](#), published by the European and External Relations Committee in September 2015 referred to evidence from colleges that attracting international students to Scotland was extremely resource intensive, so many had reduced their efforts on this front. Figures on recent trends in numbers of EU, European (non-EU) and international (non-EEA) students provided by Colleges Scotland (see Table 2) show that colleges have seen a significant decline in student participation, particularly among EU and European students, but also among international students¹²

¹¹ This illustration is drawn from data published by the Higher Education Statistics Agency (HESA) that is held in SPICe. It was analysed by SPICe to inform this briefing. Data from earlier than 2009-10 is not available and data for 2014-15 onward are not yet published.

¹² For a discussion of PSWVs, the trends that are most interesting are those for international students. Some of those defined as from “Europe” may also be affected by visa restrictions as those from countries outside the EEA who would also need a visa to study in the UK / Scotland.

Table 2: Numbers of non-UK students at Scotland's colleges, 2009-10 to 2013-14

Student Type	2009/10	2010/11	2011/12	2012/13	2013/14	% Change between 09/10 – 13/14
EU	2223	951	760	682	565	- 75%
Europe	122	565	32	42	23	- 81%
International	2414	2388	1879	1837	1850	- 23%

While there were various reasons that colleges had reduced efforts to attract international students to study in Scotland (e.g. ensuring that sufficient language proficiency was achieved to allow effective educational participation) the Committee heard evidence that the removal of the PSWV offer had been an important factor in the reduction in international student numbers at Scottish colleges. Perth College was cited as having built a working partnership with India that resulted in 200 students a year studying aircraft engineering. Through this partnership, Indian students would work in Scotland for two years after completion of their degree, so contributing to the Scottish economy while pursuing further learning to gain the necessary aviation licence to work as an engineer in India. The ending of the post-study work visa scheme was a direct challenge to that partnership:

All of a sudden... in July one year, the UKVI¹³... said that it wanted an additional £3,000 deposit from Indian families. In other words, the families had not only to vouch for their children being able to pay their fees and to afford to live in Scotland for the years that they were studying but to put in a £3,000 bond. It was a step too far, and those who were in the pipeline dropped out.

The result is that the college “will not have any progressing or new international students in 2016-17”.¹⁴

The offer of extended leave to remain attached to successful completion of studies at a Scottish educational establishment could offer a competitive advantage to Scottish colleges and higher education institutions to attract international students to choose Scotland over another country. The Committee heard that the absence of any such incentive acts as a significant barrier to efforts to attract students to study in Scotland.

In light of the trends in student numbers, both higher education institutions and colleges expressed a clear wish to see a mechanism in place that would allow

¹³ UK Visas and Immigrations Department, previously called the UK Borders Agency.

¹⁴ <http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/93051.aspx#a3>

students to stay in Scotland after their studies in order to contribute to the Scottish economy and “enhance our global standing.”¹⁵

Smith Commission report

As part of the consultation to inform the Smith Commission report on devolution of further powers to the Scottish Parliament, there were submissions made that highlighted the need to consider the reintroduction of a post-study work visa for Scotland. These submissions suggested the need to reconsider a scheme for Scotland similar to Fresh Talent¹⁶.

For example, the Scottish Government in its written submission setting out proposals for further devolution noted:

“A specific issue of concern to Scotland’s higher education establishments is post–study work visas, which were abolished by the UK Government in 2012... The Scottish Government believes that reductions in migration to Scotland for formal study have been at least partly caused by the end of the post–study work visa. Responsibility for some immigration powers would give Scotland the opportunity to reintroduce the post–study work visa and attract talented individuals from around the world to Scotland.”¹⁷

Colleges Scotland’s submission added:

“The post–study work visa encouraged international students to come to Scotland as the ability to stay, and work, is an important factor when choosing a place to study. The demographic patterns over recent years, and the varying impact of migration, are not uniform across the UK. As such, there is logic in having a different approach in different parts of the UK... International students enrich the experience of Scottish learners by providing a more diverse pool of learners, with a broader global perspective. The cultural exchange benefits everyone as well as helping to promote Scotland.”¹⁸

In response to these submissions, the Smith Commission report included as one of its “additional issues for consideration” (issues not requiring legislative change) a recommendation that the Scottish and UK Governments work together to:

“...explore the possibility of introducing formal schemes to allow international higher education students graduating from Scottish further and higher

¹⁵ <http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/93051.aspx#a3>

¹⁶ See for example the submissions from: [Universities Scotland](#); [University and College Union](#); and the [University of Strathclyde Student Association](#) – as well as those from the Scottish Government and Colleges Scotland quoted in this briefing.

¹⁷ <https://www.smith-commission.scot/wp-content/uploads/2014/10/Scottish-National-Party-submission.pdf> (page 26)

¹⁸ <https://www.smith-commission.scot/wp-content/uploads/2015/01/B00231.pdf> (page 2)

education institutions to remain in Scotland and contribute to economic activity for a defined period of time”¹⁹

Recent Developments

In May 2015 the Devolution (Further Powers) Committee published its interim report offering commentary for the new UK Government on “the current package of measures being proposed for further devolution and where these can be improved.” The report notes concerns highlighted by the National Union of Students that the issue of post-study work visas had not been discussed by the UK Government in any of the work being done to take forward the proposals in the Smith Commission report, focusing principally on the draft clauses for development of new legislation for Scotland. Universities Scotland further highlighted that the Scottish Government had “put work in hand with Universities Scotland and other stakeholders to design a new [post-study work visa] scheme... but its implementation is dependent on UK Government agreement.”²⁰

The UK Government has recently made a statement in response to the additional issues raised in the Smith Commission report – those that did not require legislative changes. On the issue of post-study work visas, the statement said: “the UK has an excellent post-study work offer for graduates of Scottish universities seeking to undertake skilled work in the UK after their studies”. It then pointed to the available visas through the points based system – for example, Tier 2 visas for those entering graduate level skilled jobs that pay an appropriate salary; Tier 1 visas for graduate entrepreneurs; and the option to move to a Tier 5 visa while pursuing professional training or an internship before pursuing a career overseas. It also highlights the Doctoral Extension Scheme open to PhD students, allowing leave to remain in the UK for one year at the end of their PhD studies in order to find work.²¹

The statement said that the current schemes on offer are “precisely the type referred to in the report of the Smith Commission.” In short:

“The Smith Commission did not recommend that the two Governments discuss the reintroduction of the former Tier 1 (Post-Study Work) visa, and there is no intention to do so.”

The BBC reported on 15 January 2016 that all political parties in Scotland were united in “condemnation” of this decision. The article goes on to quote a Home Office

¹⁹ https://www.smith-commission.scot/wp-content/uploads/2014/11/The_Smith_Commission_Report-1.pdf (paragraph 96.2)

²⁰ http://www.scottish.parliament.uk/S4_ScotlandBillCommittee/Reports/dfpr-15-03w-rev.pdf (pages 112-113)

²¹ This is a scheme that started on 6 April 2013. It is designed to give PhD students that are almost finished their PhD or other doctoral level study at a recognised UK higher education institution an additional 12 months of Tier 4 (General) immigration permission to look for or start work in the UK <http://www.ukcisa.org.uk/International-Students/The-next-stage/Working-after-your-studies/Doctorate-Extension-Scheme/>.

spokesman as saying that there were no plans to reintroduce the previous scheme as it “undermined the UK’s work migration routes and damaged the reputation of our education system”²²

The Secretary of State for Scotland, David Mundell MP, in his oral evidence to the Scottish Affairs Committee²³ on 19 January, as part of its inquiry on post-study work visas, stated that the UK Government has not ruled out the introduction of a post-study work visa in the future. Mr Mundell outlined the position of the UK Government in the following terms:

“With regards to post-study work visas, the statement did not set out a new position but reiterated the view that had been previously expressed by the UK Government to this Committee and to the Scottish Government. The Smith Commission agreement was clear that the possibility of introducing formal schemes to allow international higher education students graduating from Scotland in further and higher education institutions to remain in Scotland and contribute to economic activity for a defined period should be explored. As I said in the written ministerial statement, the UK Government believe that such schemes already exist and indeed, as the Prime Minister said, are world-beating. The UK and Scottish Governments have had a number of meetings to discuss this issue. Scotland Office Ministers and officials have regular discussions with further and higher education institutions and representatives of organisations like Universities Scotland. Should this Committee or others have suggestions that they feel would improve these schemes, we will, of course, look carefully at them and it is on that basis that I look forward to this Committee’s report.”

It is not easy to identify any studies that have been conducted to analyse the impact of current visa schemes on opportunities for skilled graduates who have arrived in the UK to study and then remain in the UK to find work.

In June 2015 the UK Government asked the Migration Advisory Committee to review the Tier 2 visa scheme with a view to reducing the number of non-EEA migrants coming to the UK through this scheme. The group published its report in December 2015 in which it made a number of recommendations as to how the scheme could be changed to reduce the numbers of people eligible. The recommendations focused on:

- Setting higher minimum salary thresholds for those on Tier 2 visas; with a differentiated salary threshold between new graduates and experienced workers.

²² <http://www.bbc.co.uk/news/uk-scotland-scotland-politics-35323046>

²³ Available here

<http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/scottish-affairs-committee/poststudy-work-schemes/oral/27144.html>

- Introducing an Immigration Skills Charge whereby sponsoring employers pay an up-front fee (recommended £1,000 for each year the person is employed in the UK) for every sponsored employee.
- Moving those on a Tier 2 (Intra-company Transfer) visa for third party contracting to a separate visa route with a higher salary threshold (£41,500)

The report noted, in making these recommendations, that the Committee could not estimate exactly how many people would be affected by the proposed changes, and that some of the reductions in the use of Tier 2 visas could result in increased applications for visas through other routes.²⁴

Given the lack of any detail on how many people in Scotland are on the Tier 2 visa and how the proposed changes, if implemented, would impact on these workers, it is not possible to estimate the effect of these proposals on non-EEA nationals working in Scotland on a Tier 2 visa.

²⁴ A copy of the Executive Summary of this report can be found [here](#)

ANNEXE A

The five tier visa system consists of the following²⁵:

Tier 1: This visa category is for 'high-value migrants' from outside the EEA and covers entry of entrepreneurs, investors, and those very few people who come under the 'exceptional talent' visa.

Tier 2: This category is for 'skilled workers' from outside the EEA with a job offer in the UK. It includes skilled workers who are transferred to the UK by an international company, skilled workers where there is a proven shortage in the UK, ministers of religion and sportspeople.

Tier 3: This category was designed for low-skilled workers filling specific temporary labour shortages. The current UK government has not allocated any visas under this scheme; meaning it is not possible to apply for a visa in this category.

Tier 4: This category is for students aged over 16 from outside the EEA who wish to study in the UK. Applicants must have a place at a registered UK educational establishment before they can apply.

Tier 5: This category contains six sub-tiers of temporary worker including creative and sporting, charity, religious workers, and the youth mobility scheme which enables about 55,000 young people every year to work in the UK on working holidays. The visas are awarded to young people from countries that have reciprocal arrangements with the UK.

²⁵ <http://www.workpermit.com/uk/uk-immigration-tier-system.htm>

Devolution (Further Powers) Committee

4th Meeting, 2016 (Session 4), 28 January 2016

Parliamentary Scrutiny of Inter-governmental relations in Spain: Report on the fact-finding visit to Spain

Purpose

1. This note provides Members with a report (see Annexe) on the recent fact-finding visit on parliamentary scrutiny of inter-governmental relations in Spain. Specifically, the fact-finding visit involved meetings held in the Parliament of Andalusia and the Cortes Generales in Madrid.

Action/recommendation

2. Members are invited to comment on the report.

**Clerking Team
January 2016**

ANNEXE

Report on Fact Finding Visit to Madrid and Seville: 10-11 December 2015**Purpose**

1. This report summarises the key findings from a recent fact finding visit to the Parliament of Seville and the Cortes Generales in Madrid. The purpose of the visit was to gain an improved understanding of the operation of inter-governmental relations within Spain, from a 'federal' level parliament and a 'regional' parliament, with a particular emphasis upon the means via which legislatures within Spain scrutinise these relationships.
2. We wish to express our thanks and gratitude to the people whom we met in Madrid and Seville. In particular, we wish to express our thanks to Maria Roso from the Parliament of Andalusia and Fernando Galindo Elola-Olaso of the Congress of Deputies who organized the visit.
3. We are also grateful to our adviser, Professor Nicola McEwen of the University of Edinburgh and to Dr Sandra León of the University of York for this assistance in the preparation of briefing material in advance of the visit.

Spanish Constitutional Structure

4. The 1978 Spanish Constitution details the territorial organisation of the Spanish State. Section Two of the Constitution states-

“The Constitution is based on the indissoluble unity of the Spanish Nation, the common and indivisible homeland of all Spaniards; it recognises and guarantees the right to self-government of the nationalities and regions of which it is composed and the solidarity among them all”.
5. The territorial organisation of the State and in particular the competences of autonomous communities are set out in Part 7 of the Constitution. The powers devolved to autonomous communities across Spain vary with the most significant degree of devolution being devolved to the 'historic regions' of the Basque Country, Catalonia and Galicia. Each autonomous community's powers are set out in a 'Statute of Autonomy' which has been approved in each region as well as within the Spanish Parliament. Broadly speaking there are three forms of competences set out in the Constitution. Firstly, competences that are exclusive to central government. Secondly, competencies that are exclusive to autonomous communities and lastly, competencies that are shared.
6. Shared competencies tend to involve the central government setting the legal framework and autonomous communities being responsible for implementation. Alternatively, competencies between the two tiers of government can overlap resulting again in shared powers. Where a

competence is passed to an autonomous community but this power is not used then the power reverts back to the central government. In some instances, autonomous communities have not taken on responsibility for competencies devolved due to concerns at the financial implications of doing so. Provision also exists for the transfer of competencies from central government to autonomous communities. This process requires to be approved by the parliament of the relevant autonomous community and both Houses of the Spanish Parliament.

7. Alternatively, the central government can also legislate in devolved matters where this is considered to be 'necessary in the general interest'. Section 150(3) of the Constitution details this power in the following terms-

“The State may enact laws laying down the necessary principles for harmonising the rule-making provisions of Self-governing Communities, even in the case of matters over which competence has been vested in the latter, where this is necessary in the general interest. It is incumbent upon the *Cortes Generales*, by overall majority of the members of each House, to evaluate this necessity”.

8. In addition to the Constitution, the Spanish Constitutional Court acts as the key arbiter in interpreting the meaning of the Spanish Constitution particularly with regard to conflicts between central and autonomous community governments. Accordingly, the rulings of the Court since 1978 provide a further source of constitutional law regarding the distribution of competencies within the Spanish State.

Financial Arrangements

9. Whilst the Basque Country and Navarra have a financial structure approximating to full fiscal autonomy, for the remaining autonomous communities the structure of territorial finance is more restricted and is set out in Sections 156 to 158 of the Spanish Constitution. Specifically, section 156 of the Constitution states:

“Self-governing Communities shall enjoy financial autonomy for the development and exercise of their powers, in conformity with the principles of coordination with the State Treasury and solidarity among all Spaniards”.

10. The legal framework of territorial finance is set by national laws with autonomous communities having secondary tax powers. Therefore, the use of tax powers has to conform with national legislation and, for example, must not create fiscal barriers such as to the free movement of goods and persons within the Spanish State. In broad terms, autonomous communities account for around 35% of Spanish public spending and can obtain finance from three main sources. Firstly, autonomous communities obtain receipts from 50% of personal income taxes, from sales tax and from 58% of what are termed 'special taxes'. Secondly, revenue from 'devolved taxes' such as inheritance

taxes and lastly, financial receipts from the sales of assets and from sanctions and fines.

11. In addition, an inter-territorial compensation fund operates to provide a solidarity mechanism between regions of Spain. Broadly speaking this fund is allocated on the basis of population share although other factors such as island communities are also taken into account in determining the distribution of funds. Section 158 of the Spanish Constitution states that this fund has:-

“the aim of redressing inter-territorial economic imbalances and implementing the principle of solidarity, a compensation fund shall be set up for investment expenditure, the resources of which shall be distributed by the Cortes Generales among the Self-governing Communities and provinces”.

12. This fund is reviewed and agreed every four years. The funds allocated by the inter-territorial compensation fund are a source of considerable controversy within Spain. For some autonomous communities, such as Andalusia, distribution on the basis of population is the preferred basis for the distribution of funds. For others, such as Catalonia, wish to see an ‘ordinality’ principle incorporated into the fund whereby autonomous communities would maintain their position within the ranking of regions in terms of the distribution of monies.

13. The impact of the financial crisis of 2008 resulted in the territorial finance provisions of the Spanish Constitution being amended to provide the central government with a greater degree of oversight into the finances of public authorities including, autonomous communities. This amendment was pursued due to the level of public indebtedness of many public bodies, including autonomous communities, in Spain following the financial crisis. The amended section 135 of the Constitution is provided at Annex A to this paper.

14. For many autonomous communities this amended Constitution is perceived as also being a means via which the policy responsibilities of autonomous communities can be eroded. For example, this amendment required the Andalusian Government to lose its control over not-for-profit banks which due to changes in the definition of public debt were required to become limited companies and therefore their regulation became a responsibility of central government. The impact of the financial crisis combined with the on-going review of territorial finance and changes to the structure of financing has resulted in inter-governmental relations within the sphere of territorial finance having become a key site of conflict and tension in recent years.

Inter-governmental relations

15. There are a wide range of formal forums in which inter-governmental relations between autonomous communities and central government occur in Spain. In Andalusia, a range of bi-lateral and multi-lateral structures are used to seek to

resolve issues between the Andalusian and the Spanish Governments without the need for recourse to the Constitutional Court.

16. A range of bi-lateral Committees exist to consider and resolve issues in a wide range of policy areas, such as agriculture and energy, and form a key means for negotiation between the autonomous community and central government. Where legal issues are not resolved and there is the likelihood that a case may be taken to the Constitutional Court, a procedure has developed whereby a Bi-lateral Commission is established to consider the issue prior to a case being taken to the Court. These commissions have a central role in relation to territorial finance as whilst agreements are reached in a multi-lateral commission, termed the 'Financial and Political Council of the Autonomous Communities', these decisions have to be ratified in a bilateral commission.
17. This process has developed over time and is now followed in relation to all cases relating to legislative measures. Where the issue concerns a non-legislative measure, the Spanish Government can decide to take the case straight to the Constitutional Court whereas an autonomous community must first enter into the bi-lateral commission procedure before recourse to the Constitutional Court. The Commission will consist of a central government Minister, an Autonomous Community Minister and the Commission will be chaired by a Minister. The Andalusian Parliament will ensure that a parliamentary committee is tasked to scrutinise the work of a bi-lateral commission where this involves a change to legislation.
18. Upon the establishment of a Commission, documentation is published, and provided to the relevant legislatures, outlining the nature of the dispute and the position of the two parties. Frequently, technical working groups are established and the documentation produced by these groups are also published. Where any final agreement is reached, the text of the final agreement is also published and provided to the relevant legislatures. This process must be concluded within a timescale of nine months. **Generally speaking, there was a perception amongst those we met both in Madrid and Seville that the bilateral, negotiated approach had worked well in reducing the level of formal conflict which required recourse to the courts. Moreover, the process of being required to publish the nature of the issue and position of the relevant parties at the outset of a Commission being established and then the text of any final agreement was seen as being a key means of ensuring transparency around these processes.**
19. If agreement is not reached, then the government which has instigated the case must then decide whether to take the case to the Constitutional Court. It is important to note that cases brought to the Constitutional Court can be raised not just by governments or legislatures but also by political parties or more ad hoc groupings of politicians. At the current time, the Andalusian Government has 16 cases being considered by the Constitutional Court. This was considered, by Andalusian Government officials, to be a higher than normal number of cases which was considered to be a function of a perceived

're-centralising trend' on the part of the then Spanish Government arising from the amendment to the constitution on territorial finance, discussed above.

20. In terms of multi-lateral structures, two main forums were discussed with us in the meetings we held. Firstly, the 'Conference of Presidents' brings together the Spanish Prime Minister and the Presidents of the 17 Autonomous Communities. This meeting has only met formally on three occasions since 2004. **The second forum that was considered to be of far greater importance in a 'multi-lateral setting' are structures termed 'sectoral conferences'**. Sectoral conferences bring together regional ministers from all 17 autonomous communities along with the relevant central government minister. Sectoral conferences are required to meet at least twice a year and at present there are 38 sectoral conferences in operation. The main functions of sectoral conferences are three-fold. Firstly, to agree on State-wide legislation that affects the competencies of autonomous communities, for example, education legislation. Secondly, to agree joint positions on European Union issues. Lastly, to approve and evaluate joint plans and programmes, termed 'collaboration agreements', where there is usually a combination of central government and autonomous community funding involved. Collaboration agreements are not binding but rather apply only to the autonomous communities that have endorsed them.
21. **It is important to highlight that many of the politicians, officials and academics we met with stressed the importance of informal contacts and relationships in 'oiling the wheels' of inter-governmental relationships.** In particular, relationships within political parties were of critical importance as were relationships which developed through participation in sectoral conferences, particularly relationships between participants from different political parties.

The Role of Parliament

22. With regard to the role of Parliament, the traditional mechanisms of scrutiny were mentioned at all of the meetings we held such as, parliamentary questions, plenary debates and Committee evidence sessions. At the meetings we held in the Parliament of Andalusia, the vertical networks within political parties between Madrid and Seville were cited as a key means of information flow. **However, the importance of the publication of information from bilateral commissions, at the outset of bilateral commissions and upon their conclusion, was cited as being a key means of undertaking scrutiny as were the minutes of meetings and information papers associated with the meetings of sectoral conferences.** For example, recent parliamentary scrutiny in the Andalusian Parliament of inter-governmental relations, cited during our meetings, related to scrutiny of the governmental response to refugees arriving on the Andalusian coast which had relied on documentation obtained from the Sectoral Conference on Justice.

23. In Madrid, there was a greater emphasis in stressing the role of autonomous community parliament's in scrutinising inter-governmental relations. Generally speaking the role of the Congress of Deputies was perceived as being less related to scrutiny of outcomes regarding inter-governmental relations and more focused on the role of the Congress in being able to challenge legislation passed by Autonomous Communities.
24. In the Senate, despite having a role as a Chamber with a degree of territorial representation in theory, the meetings we held indicated that in practice, Senators did not perceive a particular territorial or regional dimension to their work. This position was reflected in the Senate having an Autonomous Community Committee which tended to hold one meeting per parliamentary session reflecting the lack of a perceived role amongst Senators in being responsible for scrutiny of these issues or relevant actors in this area. **In this regard, the emphasis for scrutiny of inter-governmental relations in Spain appeared to lie primarily with autonomous community parliaments rather than with the national parliament.**

Ombudsman

25. Although not directly related to inter-governmental relations, a post that was frequently mentioned in the meetings we held, and which we considered to be of interest, was that of '**Defender of the People**' which is a position analogous to that of an Ombudsman. This post is established under section 54 of the Spanish constitution and is intended to protect the rights of individuals set out in the constitution.
26. This post is independent of government with both an 'Ombudsman' having been created at national level as well as by each autonomous community with appointment requiring to be ratified by a majority vote in the relevant legislature. In addition, the Ombudsman provides an annual report to Parliament whilst Parliament can require the Ombudsman to undertake reports on particular issues. The post does not involve oversight of legislation but rather relates to the application and implementation of laws and the operation of public services with regard to the rights of the individual. **A key power of the Ombudsman is the ability to raise an appeal with the Constitutional Court regarding an Act passed by the relevant government.**

Lessons Learned

27. The operation of inter-governmental relations in Spain clearly shares similarities with the position in the UK notably with regard to the importance of informal networks and the role of political parties as key conduits of information exchange between central and devolved institutions. The asymmetry of the Spanish political structure, the dominance of executives in inter-governmental relations and the means via which these structures have developed incrementally, and continue to do so, was also familiar.

28. However, the extent and scale of the formal inter-governmental structures, both on a bi-lateral and multi-lateral basis, marked a significant difference. In terms of the focus of our meetings in Spain, upon the role of legislatures in scrutinising these relationships, the ability of legislatures to fulfill this role was markedly superior to the position of the Scottish Parliament and indeed of legislatures in the UK generally. Whilst the traditional methods of parliamentary scrutiny were utilised in both the legislatures that we visited, **the ability to undertake effective scrutiny was greatly enhanced due to the availability of information regarding the purpose and content of inter-governmental meetings and agreements reached.**
29. In particular, we were struck by the availability of information regarding the work of bi-lateral commissions. **Given that these commissions deal with issues that are contentious between governments, the publication of information at the outset and conclusion of a dispute provided a key means of enabling parliamentary scrutiny to meaningfully take place and indeed aid transparency in general.**
30. In this regard, whilst we recognize the need for governments to have a shared private space in which to engage the transparency procedures in Spain clearly exemplify that such processes can still effectively operate whilst providing a substantive degree of information to legislatures and indeed the public in general. **Accordingly, the meetings we held in Spain reaffirmed our view that implementing the principles of transparency and accountability in the inter-governmental processes which will underpin the further devolution of powers proposed in the Scotland Bill is not only necessary but also eminently achievable.**

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Annex A – Section 135 of the Spanish Constitution – Amended 27 September 2011

1. All public administrations will conform to the principle of budgetary stability.
2. The State and the Self-governing Communities may not incur a structural deficit that exceeds the limits established by the European Union for their member states.

An Organic Act shall determine the maximum structural deficit the state and the Self-governing Communities may have, in relation to its gross domestic product. Local authorities must submit a balanced budget.

3. The State and the Self-governing Communities must be authorized by Act in order to issue Public Debt bonds or to contract loans.

Loans to meet payment on the interest and capital of the State's Public Debt shall always be deemed to be included in budget expenditure and their payment shall have absolute priority. These appropriations may not be subject to amendment or modification as long as they conform to the terms of issue.

The volume of public debt of all the public administrations in relation to the State' gross domestic product may not exceed the benchmark laid down by the Treaty on the Functioning of the European Union.

4. The limits of the structural deficit and public debt volume may be exceeded only in the case of natural disasters, economic recession or extraordinary emergency situations that are beyond the control of the State and significantly impair either the financial situation or the economic or social sustainability of the State, as appreciated by an absolute majority of the members of the Congress of Deputies.
5. An Organic Act shall develop the principles referred to in this article, as well as participation in the respective procedures of the organs of institutional coordination between government fiscal policy and financial support. In any case, the Organic Act shall address:
 - a) The distribution of the limits of deficit and debt among the different public administrations, the exceptional circumstances to overcome them and the manner and time in which to correct the deviations on each other.
 - b) The methodology and procedure for calculating the structural deficit.
 - c) The responsibility of each public administration in case of breach of budgetary stability objectives.
6. The Self-governing Communities, in accordance with their respective laws and within the limits referred to in this article, shall take the appropriate procedures for effective implementation of the principle of stability in their rules and budgetary decisions”.