The Committee will meet at 9.00 am in the Robert Burns Room (CR1).

1. The Scottish Government's proposals for an independent Scotland - citizenship and immigration: The Committee will take evidence, in a round table discussion, from—

   Professor Robert Wright, Department of Economics, University of Strathclyde;

   Gary Christie, Acting Chief Executive, Scottish Refugee Council;

   Professor Alison Phipps, and Sarah Craig, Co-Convenors, Glasgow Refugee Asylum and Migration Network (GRAMnet);

   Peter Grady, Legal Officer, the Office of the United Nations High Commissioner for Refugees (UNHCR) (Representation to the United Kingdom);

   Clarissa Azkoul, Chief of Mission, International Organization for Migration (IOM) UK.

2. Annual report: The Committee will consider a draft annual report for the parliamentary year from 11 May 2013 to 10 May 2014.

3. Scottish Government's proposals for an independent Scotland - membership of the European Union (in private): The Committee will consider a draft report.
The papers for this meeting are as follows—

**Agenda item 1**

PRIVATE PAPER  EU/S4/14/13/1 (P)
SPICe briefing  EU/S4/14/13/2
Written submissions  EU/S4/14/13/3

**Agenda item 2**

Draft report  EU/S4/14/13/4

**Agenda item 3**

PRIVATE PAPER  EU/S4/14/13/5 (P)
IMMIGRATION AND CITIZENSHIP IN AN INDEPENDENT SCOTLAND

This paper provides background information for the European and External Relations Committee on the current constitutional position on citizenship and immigration policies, before outlining the Scottish Government’s proposals for its approach to citizenship and immigration policies in an independent Scotland as set out in Scotland’s Future¹.

Additionally the paper sets out the written evidence received by the Committee ahead of its evidence session on 15 May 2014.

Context

Immigration and nationality are reserved under Section B6, Schedule 5 of the Scotland Act 1998. Section B6 includes the following reserved areas:

“Nationality; immigration, including asylum and the status and capacity of persons in the United Kingdom who are not British citizens; free movement of persons within the European Economic Area; issue of travel documents.”

As a result immigration and asylum are issues reserved to Westminster; however policies in these areas impact upon devolved responsibilities, such as access to health, education and social work.

SCOTLAND’S FUTURE

The Justice, Security and Home Affairs chapter of Scotland’s Future includes sections on immigration and citizenship. Matters of asylum are included in the immigration section of the chapter. The next section of this paper goes on to outline the Scottish Government’s proposals for immigration and citizenship in an independent Scotland.

IMMIGRATION

The section on immigration in Scotland’s Future begins with an explanation from the Scottish Government of why it thinks independence will be beneficial for Scotland. It states:

“One of the major gains from independence for Scotland will be responsibility for our own immigration policy…

...Scotland has a different need for immigration than other parts of the UK. Healthy population growth is important for Scotland's economy. One of the main contributors to Scotland's population growth is migrants who choose to make Scotland their home.

¹ Scotland's Future: http://www.scotland.gov.uk/Publications/2013/11/9348
In future our enhanced economic strategy will also do more to encourage young people to build their lives and careers within Scotland and to attract people to live in Scotland.

Scotland’s differing demographic and migration needs mean that the current UK immigration system has not supported Scotland’s migration priorities. The current Westminster approach is strongly focused on reducing the overall number of migrants and introducing caps for certain categories of skilled individuals.”

An aspect of the UK Government’s immigration policy which the Scottish Government specifically highlights is the decision in April 2012, to stop the post-study work visa scheme, which allowed recent graduates to work or set up a business in the UK for 24 months. The Scottish Government commits in Scotland’s Future to reintroducing the post-study visa scheme in the event of independence, stating there are over 30,000 international students studying in Scotland from more than 150 countries. In total 11% of all Scotland’s students come from elsewhere in the EU and a further 10% come from elsewhere in the world.

In Scotland’s Future, the Scottish Government states it will meet its international obligations and play a responsible role on the world stage. Linked to this, the Scottish Government states that Scotland will:

“demonstrate our respect for international law, human rights and social justice in offering asylum to those seeking a place of refuge from persecution, war, natural disaster or other major crises. Scotland already plays its part in efforts to provide a home for refugees as part of the UK and will do so as an independent country.

The asylum process in an independent Scotland must be underpinned by an emphasis on robust, fair, socially-responsible and thorough decision-making, with clear adherence to human rights and equality principles and to the rule of law.”

In terms of the Scottish Government’s priorities for action in the area of immigration and asylum, Scotland’s Future pledges to welcome people who wish to come to work and live in Scotland. There is also a commitment to the Common Travel Area with the rest of the UK and Ireland whilst stressing that the flexibility in the system would allow Scotland to have its own “controlled and more flexible immigration system”.

Whilst stressing that as a member of the European Union (EU), Scotland would remain open to all EU nationals exercising their treaty rights, Scotland’s Future proposes the introduction of a points based approach to manage immigration for non-EU migrants:

“This Government will take forward a points-based approach targeted at particular Scottish requirements. The system will enable us to meet the needs of Scottish society with greater flexibility, for example by providing incentives to migrants who move to live and work in more remote geographical areas, assisting with community sustainability, or adding new categories of skills.

We plan to lower the current financial maintenance thresholds and minimum salary levels for entry, to better align them with Scottish average wages and cost of living. This will open up greater opportunities for key skilled individuals from overseas who

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3 Scotland’s Future page 269 http://www.scotland.gov.uk/Publications/2013/11/9348/11
4 The CTA provides for passport-free travel between Ireland and the UK for Irish and British citizens,
could play important roles in our society and economy and fill vital vacancies in
individual businesses.\(^5\)

Written evidence provided to the European and External Relations Committee generally
welcomed the Scottish Government’s proposals on migration in Scotland’s Future. For
example, the International Organisation for Migration (IOM) wrote:

“\(^5\)IOM welcomes the proposals related to immigration, most notably the development
of a controlled, transparent and efficient immigration system, with a points-based
system supporting migration of skilled workers and suitable for the needs of
Scotland.”

The Scottish Government’s commitment to the Common Travel Area (CTA) with the \(rUK\)
and Ireland was welcomed by the Glasgow Refugee and Migration Network (GRAMNet)
though it did suggest that “as a consequence of this [membership of the CTA], there would
be limited room for the Scottish Government to pursue an entirely separate immigration or
asylum policy, some differences would be possible”.

Dr Scott Blinder, from the Migration Observatory at the University of Oxford addressed the
proposal to introduce a points system for non-EU migrants. He wrote:

“it is important to note that migration to Scotland in the past decade has been driven
to a significant degree by migration from within the EU. In 2011, less than half (47%)
of international migrants to Scotland were nationals of non-EU countries. Also in
2011, people born in the EU comprised 42.8% of Scotland’s resident non-UK-born
population, a share that is growing. Polish-born residents alone made up 15% of the
total non-UK born population residing in Scotland (an increase from 1.3% of
Scotland’s migrant population in 2001). Thus, a points-based system or other entry
visa policies will only be directly relevant for slightly more than half of the international
migrants coming to Scotland, if present trends continue.”

GRAMNet also addressed the proposed points based system for non-EU migrants writing:

“We are cautious about how the points based system plays into the language and
practice of ‘managed migration’, as research suggests that this inevitably leads to the
stratification of rights. That said, experience gained from the Fresh Talent Initiative,
as well as differences in Irish migration policy, demonstrate that some differences in
migration policy are compatible with the CTA. Good quality social housing, schools,
health and other public services, which promote integration into local communities,
should form essential parts of the incentives to live in more remote areas. Financial
incentives should be avoided as this could impact on the way migrants are viewed by
locals and create tension. Good social housing in these areas should also be open to
locals for the same reasons. An even-handedness is important.”

The Migration Observatory commented in detail on how an immigration policy could
address geographical and skills requirements in an independent Scotland stating that
international migration to Scotland has been geographically concentrated with the majority
of international migrants coming to Scotland settling in one of three locations: Edinburgh,
Glasgow, or Aberdeen. According to the Migration Observatory:

\(^5\) Scotland’s Future page http://www.scotland.gov.uk/Publications/2013/11/9348/11
“From mid-year 2011 to mid-year 2012, 62% of all overseas immigrants to Scotland came to one of these three places, while the other 29 Scottish council areas each attracted less than 5% of overseas immigrants in 2011-12.”

On the related issue of skills requirements across Scotland and how that links to managed immigration the Migration Observatory wrote:

“Economic models suggest that the economic gains from migration are greater if foreign-born workers are “complements” rather than “substitutes” for domestic-born workers, by bringing different skills and doing different sorts of work. In Scotland, non-UK born workers have a different profile from UK-born workers.”

The Migration Observatory drew attention to the Migration Advisory Committee (MAC), which has compiled a “shortage occupation list” for the UK as a whole (including Scotland), plus an additional list that is specific to Scotland. In its most recent iteration, the Scotland-only list included only a small number of occupations, which were focused on medical occupations. It is suggested that “a shortage occupation list could be used in conjunction with a points-based system to help select migrants who meet Scotland’s economic needs.” However, it is suggested that Scotland will need to ensure that its desire to attract high skilled workers does not lead to an over concentration of those migrants in the big cities. The Migration Observatory wrote that:

“Restricting high-skilled migrants’ opportunities to live where they would most like to live may then conflict with the general goal of attracting high-skilled migrants. It is possible to work to harmonise these policy goals if the tension or trade-off is noted and managed explicitly.”

On the issue of post-study work visas, the International Organisation for Migration wrote:

“IOM welcomes the issue of post-study work visa for international students to encourage talent from around the world to further their education in Scotland and also to contribute their skills to the economy once they graduate. This is important if Scotland wants to attract the best students in a globally competitive market.”

The Migration Observatory suggested that it would be important that the post-study visa scheme did not see post-study visa holders follow the existing patterns as this would only increase the concentration of highly-skilled migrants in the existing centres of populations: Edinburgh, Glasgow, and Aberdeen.

ASYLUM

Within the immigration section of Scotland’s Future, the Scottish Government also addresses its proposals for asylum policy in an independent Scotland. It states:

“An independent Scotland will have the opportunity for a new model of asylum services separate from immigration. We propose that a Scottish Asylum Agency should oversee asylum applications. The process will be both robust and humane, and we will continue Scotland’s present approach of promoting the integration of refugees and asylum seekers from the day they arrive, not just once leave to remain has been granted (as is the case in the rest of the UK). In an independent Scotland, we will close Dungavel, end the practice of dawn raids and inhumane treatment of

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those who have exercised their legitimate right to seek asylum. If a failed asylum seeker is a risk to the public, secure accommodation will be sought whilst steps are taken to remove them. If there is a need for forcible removals, these will be undertaken with respect for human rights. Independence will also afford the opportunity to address asylum seekers' access to employment, education and accommodation."

Written evidence provided to the European and External Relations Committee generally welcomed the Scottish Government's proposals on asylum in Scotland’s Future and in particular the proposal to create a Scottish Asylum Agency. On the creation of a Scottish Asylum Agency, the Scottish Refugee Council wrote:

“We believe it is perfectly feasible and our preferred option for such an agency to be created in the event of an independent Scotland. We believe that the best way to ensure asylum claims are assessed fairly and efficiently by professional and well-trained responsible authorities in an independent Scotland would be to establish such a small and separate agency.”

Whilst welcoming the Scottish Government’s proposals for a Scottish Asylum Agency, the Scottish Refugee Council stated that it thought some key questions still needed to be answered. These included:

- The extent of independence of the agency from government in an independent Scotland and oversight;
- The role of the agency in relation to the welfare and accommodation of asylum seekers, integration, resettlement, family reunion and statelessness;
- Remedies to challenge asylum decisions through tribunals and courts.
- Interaction with the Scottish Borders and Migration Agency.

GRAMNet suggested that the introduction of a Scottish Asylum Agency would “be a good way of ensuring that a more humane approach to asylum is achieved”. Linked to this GRAMNet commented on the current dispersal policy and suggested that:

“Dispersal policy has resulted in more than the “normal” number of asylum arrivals in Scotland. There is therefore space for a more humane policy to be pursued, partly because of the relatively low number of spontaneous arrivals in Scotland. A more humane policy could include Scotland participating in burden sharing of refugees, for example by negotiating a version of the current dispersal arrangements with the rest of the UK and/or other EU countries but this would require goodwill on the part of all negotiating parties. “

The International Organisation for Migration (IOM) also wrote that it supported a more humane approach to asylum seekers and refugees. Linked to this the IOM wrote that it “attaches importance to the orderly, humane, and cost-effective return and reintegration

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8 See evidence from Scottish Refugee Council to Home Affairs Committee paragraph 1.5 on requirement for in-country asylum claims to be lodged exclusively in Croydon. [http://www.publications.parliament.uk/pa/cm201314/cmselect/cmhaff/71/71vw32008_HC71_01_VIRT_HomeAffairs_ASY-82.htm](http://www.publications.parliament.uk/pa/cm201314/cmselect/cmhaff/71/71vw32008_HC71_01_VIRT_HomeAffairs_ASY-82.htm)
programmes for migrants who wish to return voluntarily to their respective countries of origin”.

The IOM also highlights the issue of human trafficking and the role that it is playing in contributing to a regional response to combatting trafficking in human beings.

The Scottish Refugee Council raised the issue of stateless people in its evidence to the Committee. It stated:

“Issues such as refugee resettlement and the right to and processes for family reunification of refugees are not considered in the paper. The Scottish Government does make a commitment to comply with international law and the “duty to avoid making people stateless”. However, it would also be necessary to examine how it would comply with international obligations to ensure legal status and rights for any stateless person living in or arriving in Scotland. However we estimate that this is only ever likely to be for a small number of cases.”

CITIZENSHIP

On the issue of citizenship, Scotland’s Future sets out the Scottish Government’s proposed policy in an area which it states is a “defining characteristic of an independent state”. The Scottish Government’s key policy in this area is that:

“At the point of independence, this Government proposes an inclusive model of citizenship for people whether or not they define themselves as primarily or exclusively Scottish or wish to become a Scottish passport holder. People in Scotland are accustomed to multiple identities, be they national, regional, ethnic, linguistic or religious, and a commitment to a multi-cultural Scotland will be a cornerstone of the nation on independence.”

We plan that British citizens habitually resident in Scotland on independence will be considered Scottish citizens. This will include British citizens who hold dual citizenship with another country. Scottish born British citizens currently living outside of Scotland will also be considered Scottish citizens.”

Scotland’s Future states that the Scottish Government will allow dual citizenship and states the Scottish Government’s expectation that the UK Government which currently allows dual citizenship for British citizens will allow dual UK/Scottish citizenship.

Scotland’s Future set out entitlement to citizenship in the table reproduced below.

<table>
<thead>
<tr>
<th>CURRENT STATUS</th>
<th>SCOTTISH CITIZENSHIP?</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>AT THE DATE OF INDEPENDENCE</strong></td>
<td></td>
</tr>
<tr>
<td>British citizen habitually resident in Scotland on day one of independence</td>
<td>Yes, automatically a Scottish citizen</td>
</tr>
<tr>
<td>British citizens born in Scotland but living outside of Scotland on day one of independence</td>
<td>Yes, automatically a Scottish citizen</td>
</tr>
<tr>
<td>AFTER THE DATE OF INDEPENDENCE</td>
<td></td>
</tr>
<tr>
<td>--------------------------------</td>
<td></td>
</tr>
<tr>
<td>Child born in Scotland to at least one parent who has Scottish citizenship or indefinite leave to remain at the time of their birth</td>
<td>Yes, automatically a Scottish citizen</td>
</tr>
<tr>
<td>Child born outside Scotland to at least one parent who has Scottish citizenship</td>
<td>Yes, automatically a Scottish citizen (the birth must be registered in Scotland to take effect)</td>
</tr>
<tr>
<td>British national living outside Scotland with at least one parent who qualifies for Scottish citizenship</td>
<td>Can register as a Scottish citizen (will need to provide evidence to substantiate)</td>
</tr>
<tr>
<td>Citizens of any country, who have a parent or grandparent who qualifies for Scottish citizenship</td>
<td>Can register as a Scottish citizen (will need to provide evidence to substantiate)</td>
</tr>
<tr>
<td>Migrants in Scotland legally</td>
<td>May apply for naturalisation as a Scottish citizen (subject to meeting good character, residency and any other requirements set out under Scottish immigration law)</td>
</tr>
<tr>
<td>Citizens of any country who have spent at least ten years living in Scotland at any time and have an ongoing connection with Scotland</td>
<td>May apply for naturalisation as a Scottish citizen (subject to meeting good character and other requirements set out under Scottish immigration law)</td>
</tr>
</tbody>
</table>

Written evidence provided to the European and External Relations Committee on citizenship came from GRAMNet and Professor Jo Shaw from the University of Edinburgh.

Professor Jo Shaw began her written evidence by stating that “Determining who has citizenship and what this means in terms of rights and obligations, is one of the most urgent tasks of any new sovereign state, and Scotland would be no different”.

GRAMNet welcomed the Scottish Government’s commitment to an inclusive model of Scottish citizenship but suggested that “migrants should not feel required to assume Scottish citizenship as a condition of belonging here”.

GRAMNet also agreed with the Scottish Government’s expectation set out in Scotland’s Future “that the UK Government’s normal rules about dual and multiple citizenship for British citizens will be applied in a rUK and Scotland situation. This would allow British citizens to hold dual British and Scottish citizenship.

Professor Jo Shaw drew attention in her evidence to the proposal that one way in which people might be naturalised as Scottish citizens would be the case of citizenship by connection. Scotland’s Future states that Scottish citizenship will be available to “citizens of any country who have spent at least ten years living in Scotland at any time and have an
ongoing connection with Scotland”. Commenting on this potential route to citizenship Professor Shaw wrote:

“one proposed route to naturalization is rather curious, and that is the case of ‘citizenship by connection’. A person may apply for naturalization as a Scottish citizen on the basis of ten years of prior residency, whenever that might have been and regardless of whether that residency is still subsisting. This possibility obviously operates in addition to ordinary naturalization for non-citizen residents, as ten years would be a longer residence period than is required by the UK at present (in practice six years except for those who are spouses or civil partners of UK citizens), and the White Paper indicates that in general Scottish citizenship rules will replicate or be more liberal than those of UK citizenship.

Despite the reference to requirements of good character and possible other requirements set out in Scottish immigration law, one has to wonder how broad this preference might be and whether it is normatively defensible. Ten years residence at any point in a person’s life without a requirement that this residence be subsisting at the time of application seems to be an arbitrary choice for a ‘connection’ to Scotland...

...All in all, this category of citizenship acquisition risks being arbitrary in character and perhaps little used. But if there isn’t really a demand for it, why does it feature in the White Paper when so little detail is otherwise provided about important categories of citizenship acquisition such as naturalization of lawfully resident non-citizens? It is also a category which could easily be subject to the deflection effects that are bound to exist in a European Union which protects the free movement and citizenship rights of its citizens. That is, persons may exploit the happenstance of residence earlier in their lives in order to obtain a passport that they intend to use not in order to reside in Scotland (or at least not for more than a minimum of time) but in order to reside and work in another state, most likely rUK.”

Two further issues raised by Professor Shaw in her evidence where that Scotland’s Future does not address the way in which a person may lose citizenship in an independent Scotland and what relationship there would be between citizenship and voting rights.

On citizenship and voting rights, Professor Shaw highlights the question of whether expatriate citizens will get to vote in Scottish Parliamentary elections and whether Irish and Commonwealth citizens living in Scotland will be entitled to vote in Scottish Parliamentary elections as they are currently eligible to do in Westminster elections. Professor Shaw wrote:

“for Irish and Commonwealth citizens the right to vote in Scottish Parliament elections is a natural consequence of their having a universal suffrage in the UK – a situation which some regard as a historical anomaly. What is more, of course, UK citizens can vote in elections to the Irish Dail. What becomes of these rights is both an interesting question and one which Irish citizens, in particular, might feel especially strongly about.”

A final issue raised by GRAMNet in its evidence is to question whether there would be a living in Scotland /language test. GRAMNet writes:

“It is our view, based on research, that both ‘Life in the UK’ and language testing are highly problematic and often discriminatory tools for integration and that the work of, for example, the integration networks and good support for English language learning
(TESOL and EAL) are vital. Nonetheless, there is evidence that citizenship ceremonies are valued.”

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European and External Relations Committee
13th Meeting, 2014 (Session 4), Thursday 15 May 2014

The Scottish Government’s proposals for an independent Scotland - citizenship and migration

Written evidence from witnesses

Background

1. At its meeting on 23 January 2014, the Committee agreed to hold a series of one-off evidence sessions on other aspects of the Scottish Government’s White Paper. The session today is the second of these one-off evidence sessions, and focuses on the ‘Scottish Government’s proposals for an independent Scotland - citizenship and migration’.

2. Three of the witnesses have submitted written evidence (see the Annexe). Those who have submitted evidence are:
   - Glasgow Refugee Asylum and Migration Network (GRAMNet)
   - International Organization for Migration (IOM)
   - Scottish Refugee Council

3. The Migration Observatory from the University of Oxford and Professor Jo Shaw from the University of Edinburgh were unable to attend, but have submitted written evidence which is also attached at the Annexe.

Jenny Goldsmith
Assistant Clerk, Committee
Written evidence from • Glasgow Refugee Asylum and Migration Network (GRAMNet)

The Scottish Government’s proposals for an independent Scotland’s citizenship and immigration policies.

Written evidence from Sarah Craig, Maria Fletcher, Dr Ima Jackson, Dr Gareth Mulvey, Professor Alison Phipps, academic members of Glasgow Refugee Asylum and Migration Network (GRAMNet), from University of Glasgow and Glasgow Caledonian University

Citizenship

• The inclusive model of citizenship

We are pleased to see an inclusive model of citizenship in the Scottish Government’s plans. However, the inclusive model of Scottish citizenship should not mean that citizenship would be thrust upon people. While some migrants apply for naturalisation in order to gain a more secure status in the host country, successful integration of migrants does not require citizenship, as long as other opportunities for access to citizenship or rights exist, and migrants should not feel required to assume Scottish citizenship as a condition of belonging here. Rules in migrants’ countries of origin vary and migrants should not be forced to give up their home country nationality in cases where those countries do not allow dual citizenship. Applying for Scottish citizenship should be optional, and not automatic.

• Citizenship for British citizens habitually resident in Scotland on independence and for Scottish Born British citizens living outside Scotland

No specific comments.

• Right to apply for citizenship on the basis of descent, demonstrable connection plus ten years residence, and a naturalisation option for migrants on qualifying visas

We have concerns about the situation of those with no ancestral links with Scotland, and we would therefore highlight the fact that migrants would want clear guidance on how the naturalisation option would work. Would similar qualifying periods of residence to those which apply under existing UK rules on naturalisation as a British citizen apply? Does the reference to a qualifying visa mean that people with limited (as opposed to indefinite) leave to remain can apply for citizenship in some circumstances? It is important to distinguish between ethnicity and civic-based notions of citizenship and rights of application.

1 The commentary represents the authors’ combined consideration of the issues for which evidence has been requested. GRAMNet does not take a single ‘view’ but works within the frameworks of academic freedom to foster debate.

• **Expectation that “normal” UK rules (which allow for dual or multiple citizenship for British citizens) would be extended to Scottish citizens**

We think that the Scottish Government’s expectation that the normal rules about dual and multiple citizenship would apply is correct, for two main reasons. Firstly, the alternative would result in deprivation of citizenship for any British citizen who opts for Scottish citizenship and we do not feel this would be to the benefit of either the rest of the UK or the Scottish Government. Secondly, deprivation of British citizenship for Scottish citizens would have implications for the operation of the Common Travel Area which would have to be considered, since it would involve treating Scottish citizens less favourably in this regard than Irish and British citizens. Dual citizenship has already been shown to work in the context of the Éire/Republic of Ireland and UK.

• **Other citizenship questions**

Migrants’ willingness to take up the option of applying for Scottish citizenship would also depend on factors beyond the control of the Scottish government. As noted above, we think that the UK Government would extend the “normal” rules which permit dual and multiple citizenship to those people who choose to apply for Scottish citizenship. We presume that the UK Government’s existing rules, which allow migrants to apply for naturalisation as British citizens, would continue to apply to migrants resident in Scotland. We note a concern in migrant communities that decisions relating to the adoption of citizenship are also related to the rules governing citizenship and the possibility of holding dual citizenship in home countries.

Would there be a living in Scotland /language test? It is our view, based on research, that both ‘Life in the UK’ and language testing are highly problematic and often discriminatory tools for integration and that the work of, for example, the integration networks and good support for English language learning (TESOL and EAL) are vital. Nonetheless, there is evidence that citizenship ceremonies are valued.

**Immigration**

• **Continuing in the Common Travel Area (CTA)**

Continuing in the CTA indicates the Scottish Government’s desire to cooperate with the rest of the UK and Ireland as regards immigration policy. While we acknowledge that, as a consequence of this, there would be limited room for the Scottish Government to pursue an entirely separate immigration or asylum policy, some differences would be possible, as past experience illustrates. The types of variations that have been compatible with membership of the CTA in the past include Irish policies which have deviated from those in the UK in relation to social security and housing support for

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3 See Written evidence to the Scottish Affairs Committee on the CTA between UK and Ireland from Professor Bernard Ryan: [http://www.publications.parliament.uk/pa/cm201213/cmselect/cmscotaf/139/139we02.htm](http://www.publications.parliament.uk/pa/cm201213/cmselect/cmscotaf/139/139we02.htm)

asylum seekers, as well as diverging entry requirements for migrants.\(^5\) Over the last fifteen years there have been variations in policies for migrants in Scotland compared with the rest of the UK, for example where functions have been devolved to the Scottish Parliament (in housing, health, education and support for families and children), where it has been recognised that a regional approach is appropriate (the Fresh Talent Initiative), or where long-standing institutional differences in Scotland prevail (legal aid and judicial review). In Northern Ireland, similar differences prevail.

- **A points based system for non-EU migrants targeted at Scottish requirements, with regional incentives to live and work in remote areas**

We are cautious about how the points based system plays into the language and practice of ‘managed migration’, as research suggests that this inevitably leads to the stratification of rights. That said, experience gained from the Fresh Talent Initiative, as well as differences in Irish migration policy, demonstrate that some differences in migration policy are compatible with the CTA. Good quality social housing, schools, health and other public services, which promote integration into local communities, should form essential parts of the incentives to live in more remote areas.\(^6\) Financial incentives should be avoided as this could impact on the way migrants are viewed by locals and create tension. Good social housing in these areas should also be open to locals for the same reasons. An even-handedness is important.

- **Lowering of current financial maintenance thresholds and minimum salary thresholds, better aligned with Scottish wages**

Current financial maintenance and minimum salary thresholds for migrants reflect averages in London and SE England, and it would be in the interests of many regions in the UK if current thresholds could be lowered or varied. As mentioned above, social support would be necessary to promote integration. The permitted occupations list in Scotland has been different in the past and could be again.\(^7\) We take the view that the lowered thresholds should apply to family migration as well as to economic migration.

- **To create a separate Scottish Asylum Agency to oversee asylum applications**

This proposal is presented as part of the Scottish Government’s desire to pursue a more humane asylum policy. Arguably, Scotland has pursued aspects of a more humane asylum policy since dispersal. While the legitimacy of dispersal policy is questionable, because it has required asylum seekers to live in hard-to-let housing in Glasgow (and elsewhere) on a no choice basis, over time its image has changed to the extent that a properly supported dispersal policy now provides some evidence of the potential for a

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\(^5\) See note 2 above. There is no evidence of the CTA restricting Irish policy except in relation to decisions to join Schengen.


\(^7\) The recommendation from Migration Advisory Committee in 2008 (MAC) was for there to be two shortage occupation lists UK and Scotland. The existence of two lists demonstrates the recognition of differing needs. Shortage occupation lists from UK Government: https://www.gov.uk/government/collections/migration-advisory-committee-recommended-shortage-lists
targeted regional asylum policy to succeed. Dispersal policy has resulted in more than the “normal” number of asylum arrivals in Scotland. There is therefore space for a more humane policy to be pursued, partly because of the relatively low number of spontaneous arrivals in Scotland. A more humane policy could include Scotland participating in burden sharing of refugees, for example by negotiating a version of the current dispersal arrangements with the rest of the UK and/or other EU countries but this would require goodwill on the part of all negotiating parties.

Having a separate Scottish Asylum Agency would be a good way of ensuring that a more humane approach to asylum applications is achieved. When disputes about asylum decisions arise, specialist skills are required in order to resolve them fairly. It is important to recognise that, while asylum decision making requires specialist skills, specialism is a separate issue from ensuring that asylum cases are accorded equivalent procedural safeguards to those which other cases enjoy. Treating asylum cases differently in this respect could lead to lower (rather than higher) standards of decision making. Experience of the tribunals system in the UK over the past decade suggests that immigration and asylum decision making benefits when it is dealt with as part of the same administrative justice scheme as other cases. Such an approach would also ensure that the principles of equality and fairness, mentioned elsewhere in the White Paper, also apply in relation to immigration and asylum decision making. In sum: it is our view that a separate asylum agency is important and feasible. We have concerns about access to justice and would want to see this detailed, with decision making and appeals carefully built in.

Other points

Following a yes vote, and assuming Scotland’s continuation in the CTA, the question whether the EU would give Scotland the same flexibility privileges as the rest of the UK as regards Schengen and Common European Asylum System (and AFSJ more widely) would arise. It would appear to be in the interests of the rest of the UK (and Ireland) to support a negotiating position that enables Scotland to retain identical opt-out/opt-in arrangements in these areas. This will need to be negotiated within the time frame envisaged by the Scottish Government. The related but separate issue of the exercise of these EU opt-in/opt-out arrangements by a future independent Scotland would need to be handled with care. Prior discussion and agreement with rUK would be desirable and in many instances necessary.

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8 See evidence from Scottish Refugee Council to Home Affairs Committee paragraph 1.5 on requirement for in-country asylum claims to be lodged exclusively in Croydon. http://www.publications.parliament.uk/pa/cm201314/cmselect/cmhaff/71/71vw32008_HC71_01_VIRT_HomeAffairs_ASY-82.htm
Written evidence from International Organization for Migration (IOM)

Scottish Government’s proposals for an independent Scotland: citizenship and immigration

The International Organization for Migration (IOM) is an intergovernmental organization established in 1951, committed to the principle that humane and orderly migration benefits migrants and society. The Organization acts to help meet the operational challenges of migration, advance understanding of migration issues, encourage social and economic development through migration, and work towards effective respect for the human rights and well-being of migrants. IOM’s mandate allows it to work with migrants, refugees, displaced persons and others in need of migration services or assistance. With over 460 offices worldwide and numerous ongoing projects and programmes, IOM is in a strong position to offer advice to governments, and bring best practices from experience in other countries.

According to Article 1 (c) of the IOM Constitution, one of the purposes and functions of the Organization is “to provide […] advisory services on migration questions and other assistance as is in accord with the aims of the Organization.” The IOM Strategy, adopted by the IOM Council in 2007, further provides that “the Organization will focus on inter alia enhancing humane and orderly management of migration and the effective respect for the human rights of migrants in accordance with international law.” In 2004, IOM’s Member States endorsed the consolidation of the International Migration Law and Legal Affairs Department, in order to streamline and strengthen IOM’s involvement in International Migration Law. In this respect, IOM carries out research, information dissemination, training and capacity building activities. Among its capacity building activities in legal areas, IOM regularly responds to governments’ request to review national legislation on immigration and emigration in light of the existing international and regional standards. Given this specific expertise, IOM welcomes the opportunity to provide comments on the Scottish Government’s proposals for an independent Scotland’s citizenship and immigration policies, as detailed in the Scottish Government’s White Paper.

Chapter 7 Justice, Security and Home Affairs

IOM welcomes the proposals related to immigration, most notably the development of a controlled, transparent and efficient immigration system, with a points-based system supporting migration of skilled workers and suitable for the needs of Scotland. It is recommended to offer an easier route towards settlement for those wishing to do so and different kinds of settlement options. Labour migration programmes can complement the points-based system by allowing for temporary lower-skilled migrants to support seasonal labour requirements.

IOM has a vast experience of projects relating to labour migration, enhancing governments’ capacity to better manage skilled migrant flows (for example a project facilitating labour migration from Mauritius to Canada and Italy). Under this programme, IOM delivers end-to-end services, from recruitment of skilled migrants, documenting and processing, travel arrangements, health screening, pre departure orientation, preparation for employment, to return to country of origin upon completion of assignments.
IOM’s approach to labour migration is to foster the synergies between labour migration and development. Together with private sector stakeholders worldwide, IOM has facilitated the recruitment and employment of tens of thousands of migrant workers. Additionally, IOM provides direct assistance to protect victims of trafficking from abuse, slavery and forced labour. IOM has assisted more than 26,000 trafficked persons and exploited migrants since 1994. The IOM programme IRIS (International Recruitment Integrity System) is a consortium of international stakeholders committed to the fair recruitment and selection of migrant workers. IRIS is an international voluntary “fair recruitment” framework that will benefit all stakeholders in the labour migration process, involving labour migrants, employers, the recruitment industry and governments.

IOM welcomes the issue of post-study work visa for international students to encourage talent from around the world to further their education in Scotland and also to contribute their skills to the economy once they graduate. This is important if Scotland wants to attract the best students in a globally competitive market. IOM has vast experience supporting governments to prepare students in their countries of origin before departure with cultural orientation, visa and health checks.

IOM has long-standing experience in providing pre-departure migrant orientation and training to facilitate integration of migrants. IOM also provides a platform for dialogue, and furnishes stakeholders with relevant evidence and international good practices to encourage the development and implementation of innovative solutions to migrant integration. A recent pilot project implemented by IOM with EC funding was on the integration of migrants through volunteering, an initiative which sought to establish and strengthen mechanisms for engaging migrants in community volunteering. Participating countries were Ireland, Austria, the Netherlands and UK, and one of the outcomes was a toolkit to assist organisations interested in engaging migrant volunteers and promoting diversity and enhancing cultural awareness through volunteering.

Asylum seekers and refugees

IOM also supports Scotland’s humane approach to asylum seekers and refugees. Through its resettlement of refugees programme activities, IOM collaborates with UNHCR and with receiving countries and provides documentation, operational and logistics support for refugees worldwide, including those that are coming to Scotland under the Gateway programme. IOM recommends a more in-depth cultural orientation pre-departure programme for refugees, to ensure that they are better prepared and smoother arrival. This will help them to have a more successful integration into their new society.

In this regard, IOM attaches importance to the orderly, humane, and cost-effective return and reintegration programmes for migrants who wish to return voluntarily to their respective countries of origin, and works to enhance cooperation among EU Member States on assisted voluntary return and reintegration (AVRR) and in so doing, implements pre-departure and post-return measures aimed at fostering the sustainable reintegration of migrants in their countries of origin. Providing a voluntary return option is an integral part of any comprehensive immigration/asylum system and preference should be given to voluntary over forced return where possible.
Another area of IOM expertise is in the field of human trafficking. IOM contributes towards a regional response to trafficking in human beings through multi-agency cooperation among expert international organizations, non-governmental organizations, law enforcement agencies, judicial authorities, relevant actors in the business sector as well as countries of origin, transit and destination. Supporting the establishment of effective and efficient national and transnational referral mechanisms is another of IOM’s main regional interventions in this area.

In the UK, as in many countries, there is a knowledge gap among frontline professionals of the realities of human trafficking, the indicators of VoTs and the National Referral Mechanism (NRM). In order to deal with the growing issue of human trafficking, IOM has developed ‘An Introduction to Human Trafficking’ training course focusing on an overview of trafficking, UK centric issues and referral and return. This training has been provided to members of the Metropolitan Police, local authorities, NGOs, the Roman Catholic Church, organisations working with London’s rough sleepers, the UK Home Office and many more. Through this training, IOM hopes to see increasing numbers of front-line professionals equipped to tackle this growing issue.

International Organization for Migration (IOM)
6 May 2014
Written evidence from Scottish Refugee Council

The Scottish Government’s proposals for an independent Scotland: citizenship and immigration

Introduction

- Scottish Refugee Council is an independent charity which provides advice, support and information to refugees in Scotland. We also advocate for the fair treatment of refugees and increase public understanding of refugees.

- In January 2013 Scottish Refugee Council launched the report: Improving the Lives of Refugees in Scotland after the Referendum: An Appraisal of the Options. The report sets out our principles for a humane and just asylum system based on our extensive experience in providing services to refugees in Scotland for more than 25 years and advocating for refugees rights in Scotland, in the UK and Europe. They are consistent with the Refugee Convention and European legislation relating to refugees and human rights instruments and principles. They also reflect the underpinning obligations, values and principles of the Scottish Parliament and the Scottish Government.

- The report reflected these principles through three potential constitutional settlements, independence, the status quo and increased powers to Scotland, and produced a series of considered policy options for each across six areas of asylum policy: access to the territory and asylum procedure; assessing the asylum claim in a fair and efficient asylum process; the reception and integration of people seeking asylum; refugee integration; responsibility-sharing; and return.

- A full report and executive summary are available on our website.

- Our report was offered as a contribution to the debate on constitutional change that is being afforded by the referendum on independence for Scotland.

- Scottish Refugee Council has stated throughout in all engagement in the referendum debate that we take and continue to take a neutral stance on the outcome of the referendum. As our report concludes, the outcome of a world-class or not fit for purpose asylum system is not dependent on any particular constitutional architecture but on the policies, legislation and practice that are in place.

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This note focuses mainly on the proposals concerning asylum in the White Paper.

**Current competences in relation to asylum**

Under the current constitutional settlement, immigration and nationality are reserved matters under schedule 5 of the Scotland Act 1998, as such the UK Government through the Secretary of State for the Home Department (SSHD) and Home Office exercises power across a range of policy areas which impact on the protection, welfare and integration of refugees. These include access to the territory, determining asylum claims, providing welfare and accommodation to asylum seekers who would otherwise be destitute; granting immigration leave and citizenship; detention and removal. Human beings however are not ‘reserved’ and the Scottish Government meanwhile has executive competence in a range of areas of social policy, welfare and justice functions which primarily impact on the reception and integration of people seeking asylum and refugees in Scotland. However the Scottish Government also exercises competence in areas which interact significantly with the asylum process such as child welfare and protection and the provision of legal representation.

**Asylum proposals in the White Paper**

The main stated principles in relation to asylum are that: “An independent Scotland will have an inclusive approach to citizenship and a humane approach to asylum seekers and refugees”. And the “Asylum process in an independent Scotland must be underpinned by an emphasis on robust, fair, socially responsible and thorough decision-making, with clear adherence to human rights and equality principles and the rule of law” The language of human rights, equality and values used to describe the asylum system mirrors much of the language from our own report. These are important principles to guide the development of any future policy.

Scottish Refugee Council is supportive of the policies in relation to asylum outlined in the White Paper:

- The creation of an asylum decision-making body, the ‘Scottish Asylum Agency’, separate from a border management and immigration agency, the ‘Scottish Borders and Migration Agency’;
- Improvements to the inhumane treatment of those who have claimed asylum and those that have been refused asylum – the Scottish Government propose to close Dungavel, the only current UK immigration detention and removal centre in Scotland, but leave the potential for secure accommodation.

• The continuation of the current policy position, adopted by successive Scottish Governments since 2002, of the policy of refugee integration from day one of arrival;

Positively, in the view of Scottish Refugee Council, the White Paper states that: “We will demonstrate our respect for international law, human rights and social justice in offering asylum to those seeking a place of refuge from persecution, war, natural disaster or other major crises.”

This statement suggests potentially a greater net of protection than is offered under current UK Government policy, the 1951 Refugee Convention and the EU Qualification Directive.

Issues such as refugee resettlement\(^\text{12}\) and the right to and processes for family reunification of refugees are not considered in the paper. The Scottish Government does make a commitment to comply with international law and the “duty to avoid making people stateless”\(^\text{13}\). However, it would also be necessary to examine how it would comply with international obligations to ensure legal status and rights for any stateless person living in or arriving in Scotland. However we estimate that this is only ever likely to be for a small number of cases.\(^\text{14} \text{15}\)

**Scottish Asylum Agency**

Scottish Refugee Council welcomes the proposal, in the event of an independent Scotland, to create a Scottish Asylum Agency. In response to the publication of the White Paper in November we stated that:

“Significantly, the Scottish Government is clear to distinguish between immigration and asylum and would separate decisions made on asylum by creating a separate Scottish Asylum Agency. This is important because asylum decisions are not like other immigration decisions. They are about life and death. The UN High Commissioner for Refugees (UNHCR) states that decisions on asylum claims require specialist knowledge

\(^{12}\) The Scottish Government has however recently committed to resettling refugees from Syria under the UK Government’s scheme (announced on 29 January 2014 to resettle hundreds vulnerable Syrian refugees including women and children at risk of sexual violence, torture survivors, including those needing medical care.


\(^{14}\) The 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness are the key legal instruments in regulating the status of stateless people around the world and the prevention and reduction of statelessness, respectively.

\(^{15}\) A recent UNHCR/Asylum Aid joint study stated that due to the way data in which stateless persons are recorded and presented “it is impossible to provide an accurate estimate of the total number of stateless persons in the UK”. Nevertheless, the study identified around 150 to 200 people each year who claim asylum and are recorded as being stateless by the Home Office. This trend has not changed since the study was completed; until September 2013 there were 173 stateless asylum applicants\(^\text{15}\). Given that Scotland receives around 10 per cent of all asylum applicants, it could be estimated that approximately 15-20 stateless persons arrive in Scotland every year.
and should not be treated in a mechanical or routine way. Scottish Refugee Council agrees and has long argued that a skilled and independent agency is needed."

We believe it is perfectly feasible and our preferred option for such an agency to be created in the event of an independent Scotland. We believe that the best way to ensure asylum claims are assessed fairly and efficiently by professional and well-trained responsible authorities in an independent Scotland would be to establish such a small and separate agency.

Equally, we argue in our report that in the event of Scotland remaining in the UK and the UK Parliament and UK Government retaining legislative and executive competence for asylum then an agency dealing only with asylum and asylum determination should be established.

Further details have not been published by the Scottish Government on its asylum proposals. Some key questions to be answered would include:

- The extent of independence of the agency from government in an independent Scotland and oversight;
- The role of the agency in relation to the welfare and accommodation of asylum seekers, integration, resettlement, family reunion and statelessness;
- Remedies to challenge asylum decisions through tribunals and courts.
- Interaction with the Scottish Borders and Migration Agency.

The UK Government has recently published its own analysis of the potential impact of Scottish independence and the Scottish Government proposals on borders and citizenship. However we note that little reference is made to refugees.

Naturalisation for refugees
Detailed policy in relation to naturalisation is not detailed and would be left to future legislation in the event of an independent Scotland. Scottish Refugee Council’s position is that upon been recognised by the state as refugees, refugees should be granted secure residence status, conferring them rights similar to those of nationals. Refugees should be allowed to choose whether they wish to acquire the citizenship of the state and barriers should not be put in their way if they choose to do so.17

Gary Christie
Acting Chief Executive
Scottish Refugee Council
15 May 2014

17 For further details on refugees and citizenship see:
Proposals for an independent Scotland’s citizenship and immigration policies

These comments aim to, first, provide evidence relevant to the policy proposals on immigration in the White Paper, and second, highlight the trade-offs at stake in pursuing policy options that the White Paper sets out. The comments below focus specifically on the following White Paper proposal:

For non-EU nationals: “to develop and operate a controlled, transparent and efficient immigration system. This Government will take forward a points-based approach targeted at particular Scottish requirements. The system will enable us to meet the needs of Scottish society with greater flexibility, for example by providing incentives to migrants who move to live and work in more remote geographical areas, assisting with community sustainability, or adding new categories of skills.”

Note that the Migration Observatory does not does not make policy recommendations or wish to comment on the merits of pursuing the goals for migration policy set out in the White Paper, nor does it take a view on the relative merits of Scottish independence.

General fit with aims

In principle, points-based systems can be used to select migrants on a variety of criteria—including specific skills as well as more general qualifications. Such systems can also be used to provide incentives for migrants to settle in particular geographic locations that might not otherwise attract many migrants, as has been done in Canada. Such systems might also be able to provide incentives for migrants to “[assist] with community sustainability” in whatever way that is defined. However, goals regarding skills and geography are in tension with one another, as detailed below.

Scope of policy: Non-EU migration

This policy proposal will apply to non-EU migrants (or potential migrants) in particular. This holds for any proposal in any EU member state that concerns entry visa policies, since freedom of movement within the EU precludes regulation of migration through such means. In this light, it is important to note that migration to Scotland in the past decade has been driven to a significant degree by migration from within the EU. In 2011, less than half (47%) of international migrants to Scotland were nationals of non-EU countries. Also in 2011, people born in the EU comprised 42.8% of Scotland’s resident non-UK-born population, a share that is growing. Polish-born residents alone made up 15% of the total non-UK born population residing in Scotland (an increase from 1.3% of Scotland’s migrant population in 2001). Thus, a points-based system or other entry visa policies will only be directly relevant for slightly more than half of the international migrants coming to Scotland, if present trends continue.

Geographical concentration of migrants

It is worth noting that international migration to Scotland has indeed been geographically concentrated. The majority of international migrants coming to Scotland have come to one of three locations: Edinburgh, Glasgow, or Aberdeen. From mid-year 2011 to mid-year 2012, 62% of all overseas immigrants to Scotland came to one of these three places, while the other 29 Scottish council areas each attracted less than 5% of overseas immigrants in 2011-12. In terms of non-UK-born residents, the populations of Aberdeen, Edinburgh, and Glasgow were all more than 12% non-UK-born in 2011 Census data, while all other locations were below 10% (Dundee was next at 9%). And in raw numbers of migrants, again Edinburgh (75,698 non-UK-born residents), Glasgow (72,607), with Aberdeen (35,436) and Fife (20,693) in third and fourth position.

It is not unusual to see a small number of major cities attract a large share of a nation’s migrants. For example, in 2012 an estimated 30% of international migrants to England came to London.

Skills

Migrants can and often do bring different sets of skills to national economies. Economic models suggest that the economic gains from migration are greater if foreign-born workers are “complements” rather than “substitutes” for domestic-born workers, by bringing different skills and doing different sorts of work. In Scotland, non-UK born workers have a different profile from UK-born workers. For example, 26% of the non-UK-born workforce in Scotland are in professional occupations (e.g. chemists, electrical engineers, pharmacists), compared to 20% of the UK-born workforce. The non-UK born are also more concentrated in elementary occupations (e.g. farm workers, cleaners, car park attendants), with 18% of the non-UK-born workforce employed therein, compared with 10% of the UK-born. (This does not mean that there are more migrants than UK-born individuals in these occupations, but rather that employees in these occupations are a larger proportion of the migrant workforce than of the UK-born workforce.) Meanwhile, UK-born workers in Scotland are more concentrated among “Managers, Directors and Senior Officials” (e.g. managers in construction, office managers) and among “Sales and Customer Service Occupations” (e.g. importers and exporters, sales assistants) relative to non-UK born workers.

However, this does not address the question of what skills are needed in Scotland, which might be considered to require more specific, tailored research. The Migration Advisory Committee (MAC), which conducts research and advises the UK government on migration issues, has addressed this question. It compiles a “shortage occupation list” for the UK as a whole (including Scotland), plus an additional list that is specific to Scotland. In its most recent iteration, the Scotland-only list included only a small number of occupations, which were focused on medical occupations.

The shortage occupation list is a means to ensure that restrictions on migration do not prevent the UK from admitting individuals who bring needed skills to the country’s workforce. As the MAC notes, “Employers can apply to bring in workers from the outside

of the EEA without going through the RLMT [Resident Labour Market Test] if the vacancy to be filled is in an occupation on the Tier 2 shortage occupation list.”23 More generally, a shortage occupation list could be used in conjunction with a points-based system to help select migrants who meet Scotland’s economic needs.

In addition, any policy based on skills will have to define, implicitly or explicitly, what skills are relevant. Educational qualifications and income are often used as indicators of skills for individuals; some policies classify particular occupations as highly-skilled as well. A key decision point is whether to tie admissions very closely to the labour market, for example by restricting highly-skilled labour migration to those with a job offer in hand, or to take into account “human capital” by admitting individuals with high levels of education or other qualifications who lack a job offer in Scotland.

The UK’s immigration policy currently has very limited scope for migrant admissions on “human capital” grounds that are not tied to a job offer. Other countries have more scope, and use a range of indicators. For example, countries such as Canada, Australia, and New Zealand use indicators that include a job offer, presence of close relatives, appropriate language skills, previous work experience or education in the country, and characteristics of a spouse/partner if relevant. Age and income are also frequently used indicators of human capital in migration policy.24

**Geographic objectives vs skills-based objectives**

One trade-off to highlight is the possible tension between policy objectives based on skills and those based on geography. To attract highly-skilled migrants to Scotland, all else being equal, it makes sense to offer relatively open access for the highly-skilled, while minimising restrictions on those individuals’ rights and privileges. However, without incentives or restrictions based on geography, highly-skilled migrants will be likely to follow the existing pattern of being drawn to the larger cities where economic and other activities are most concentrated. Restricting high-skilled migrants’ opportunities to live where they would most like to live may then conflict with the general goal of attracting high-skilled migrants. It is possible to work to harmonise these policy goals if the tension or trade-off is noted and managed explicitly.

For example, the White Paper also proposes a Post-Study Work visa programme. Such a visa would be available to international students upon graduation, and would enable them to extend their stay in Scotland to look for work. This policy is based on (one definition of) skills. However, if PSW visa holders follow the existing patterns, it would only increase the concentration of highly-skilled migrants in the existing centres of these populations: Edinburgh, Glasgow, and Aberdeen.

**National needs vs distribution of impacts**

The White Paper frames immigration policy objective in terms of national-level interests, drawing a contrast between Scotland’s needs and existing UK immigration policy. In addition to the national level, however, it is important to consider the disparate impacts of immigration policy on different people and groups within a given country. For example,

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MAC analysis of migration policy impact assessments notes that while immigration inevitably increases total GDP, these gains might be concentrated among migrants and may not leave the pre-existing population better off on a per capita basis.\(^{25}\)

There are additional policy trade-offs to consider, even when implementing policies that project to benefit the nation as a whole. For example, how should the interests of employers, who often advocate for more openness to immigration, be balanced against those of members of the existing workforce, who may in some cases face increased competition from migrants? Some evidence suggests that migration has generated small but real downward pressure on wages at the lower end of the income distribution in the UK.

More broadly, migration will have different impacts on different parts of the pre-existing resident population. Employers compared with employees, workers in different sectors or industries, and residents of different communities may all have different perspectives, and experience a different mix of migration’s costs and benefits. Any aggregate benefits from migration will not necessarily be distributed evenly across Scotland’s various geographic, economic and social categories. There may also be trade-offs across time horizons, with long-term gains weighed against short-term adjustments. There are not necessarily right or wrong solutions to these trade-offs, but it is useful to acknowledge and debate possible trade-offs explicitly, and recognise that the concept of ‘Scotland’s needs’ stands in for a wide variety of actors whose needs and preferences may vary considerably.

Written evidence from Professor Jo Shaw, University of Edinburgh

Citizenship in an independent Scotland

1. Determining who has citizenship, and what this means in terms of rights and obligations, is one of the most urgent tasks of any new sovereign state, and Scotland would be no different. Of course, many of the historical precedents are of little assistance to determining how to remake the citizenship settlement across these islands (given the intricacies that already interconnect UK and Irish citizenship) in the event of a democratic vote in favour of a new state. None the less, previous experience with the establishment of new states – and indeed what happens after new states are established during the ebb and flow of political forces which lead to new governments being elected – does provide some useful guidance, and it is evident that that has informed some of the work of the Scottish Government in preparing the White Paper.

2. As the call for evidence notes, the White Paper does set out the bare bones of the Scottish citizenship regime, articulating in brief who would be the citizenry at the date of independence, and what might be the future citizenship regime enacted in the new polity’s foundational documents. What is proposed in the White Paper would in general fall within the mainstream of current European citizenship regimes as regards its balance of the principles of inclusivity and exclusivity. While the White Paper claims that the regime would be inclusive in character, in practice it is essential that any citizenship regime sets boundaries, to distinguish between those who are in and those who are out. The regime would be relatively inclusive, but some of the dimensions of inclusivity and exclusivity lie in the details of the regime, and its *modus operandi* (e.g. how discretionary; what level of judicial control, etc.) and these are matters that we cannot know at present, as they will be subject to debate and contestation in the event of a Yes vote.

3. One or two key points stand out for brief comment:

   a. Habitual residence will be the test for existing UK citizens based in Scotland at the time of independence to become automatically Scottish citizens. Likewise, any UK citizens born in Scotland but resident elsewhere will automatically have Scottish citizenship at the date of independence. This is suggested as the initial citizenship settlement, and it is an understandable approach for a new polity that cannot rely on any of the standard modes used for determining citizenship in new polities such as one based on the revival of a pre-existing polity and a reference back to an earlier citizenship regime (e.g. Latvia and Estonia) or one which uses ‘republican’ citizenship status in a federal state (e.g. in the new states of the former Yugoslavia). Clearly, where a polity already houses many residents who do not have the citizenship of the pre-break-up state, as in Scotland, a simple ‘habitual residence’ rule, as used in many of the new states carved out of the former Soviet Union will not work. Hence the prior requirement of UK citizenship.

   b. Most of the modes of acquisition after independence are also rather standard. We do not have a lot of detail, and so we do not know, for example, whether it
is proposed to use citizenship tests, such as a variant on the much derided Life in the UK test.

4. However, one proposed route to naturalization is rather curious, and that is the case of ‘citizenship by connection’. A person may apply for naturalization as a Scottish citizen on the basis of ten years of prior residency, whenever that might have been and regardless of whether that residency is still subsisting. This possibility obviously operates in addition to ordinary naturalization for non-citizen residents, as ten years would be a longer residence period than is required by the UK at present (in practice six years except for those who are spouses or civil partners of UK citizens), and the White Paper indicates that in general Scottish citizenship rules will replicate or be more liberal than those of UK citizenship.

5. Despite the reference to requirements of good character and possible other requirements set out in Scottish immigration law, one has to wonder how broad this preference might be and whether it is normatively defensible. Ten years residence at any point in a person’s life without a requirement that this residence be subsisting at the time of application seems to be an arbitrary choice for a ‘connection’ to Scotland. Indeed, a comprehensive survey of modes of acquisition of citizenship across 36 European states seems to suggest it would be a unique provision with no direct equivalent elsewhere, but perhaps closest in character to the socialization based modes of acquisition that exist in some states.

6. Is the suggestion that current UK citizenship laws are so restrictive or unwelcoming that there is large group of people who have in the past passed through the territory as children or adults, who have not acquired UK citizenship, but who have acquired a strong sense of ‘Scottishness’ and who would perhaps have acquired Scottish citizenship if it had existed? And what might be the additional requirements be which could prove that ‘connection’? Even if you could prove that you have a Scottish identity or feel Scottish, is this defensible in the context of an independence process that wants to downplay feelings as a basis for decision and aims to highlight instead the economic benefits of self-determination? Or perhaps the applicant might be required to pass certain financial tests (income or savings), in which case we would be looking at a case of investor citizenship with all the issues that this raises about whether citizenship should be for sale. All in all, this category of citizenship acquisition risks being arbitrary in character and perhaps little used. But if there isn’t really a demand for it, why does it feature in the White Paper when so little detail is otherwise provided about important categories of citizenship acquisition such as naturalization of lawfully resident non-citizens? It is also a category which could easily be subject to the deflection effects that are bound to exist in a European Union which protects the free movement and citizenship rights of its citizens. That is, persons may exploit the happenstance of residence earlier in their lives in order to obtain a passport that they intend to use not in order to reside in Scotland (or at least not for more than a minimum of time) but in order to reside and work in another state, most likely rUK. The fear of deflection effects does appear in the UK Government’s Analysis Paper on borders and citizenship.

7. Many other important issues are not dealt with in the White Paper. For example, the conditions under which a person may lose citizenship are often as important as those
under which he or she may acquire it. Deprivation of citizenship is an unfortunate – and arguably rather shameful – topic before the UK legislature at present. It would be important to know what approach to this question would be taken in a future Scotland.

8. Moreover, it is important to remember that citizenship settlements are always in flux. They are never totally stable, although it is obviously rare for the entire basis for a country’s citizenship regime to be revised, although Germany came quite close to this in 1990 when it enacted *ius soli* for second generation migrants. None the less, as the continuing contestation in Germany over what happens when that generation of *ius soli* children reach majority, where they have so far been forced to choose between German citizenship and any other citizenship they hold, even in stable and democratic polities these issues will often be at the centre of political debate. This seems to be especially the case where there are coalition politics. Germany again stands as an excellent example of a country where parties coming into coalition have put demands around citizenship law at the centre of the negotiations.

9. One last area of uncertainty needs to be highlighted, and this is the relationship between citizenship and voting rights. Question 617 in the White Paper suggests that after independence, there would be few changes to the voting system, except that the Scottish Government proposes bringing votes at 16 into the mainstream for Scottish Parliament elections also. Read at face value this suggests that there will be no external voting in a Scottish Parliament, and the same rules on the rights to vote of non-citizens would apply as do at present in relation to the (devolved) Scottish Parliament once it is a national or state Parliament. Rejecting expatriate votes might be a safe option for a small polity with a large diaspora of actual or potential citizens. External voting might have been easier to contemplate if the offer on external citizenship by descent were not as generous as it is. But as the recent Irish experience in the Constitutional Convention shows, arguments that external citizens – especially those who have recently been forced to leave in order to find work elsewhere – should be allowed to vote in domestic elections (in that case Presidential elections) will continually be raised by those who feel that their democratic rights are being limited in some way.

10. The issue of which residents should be allowed to vote is immensely complicated and cannot simply be dealt with via a simple ‘no change’ assurance. For at present, EU and settled Commonwealth citizens are able to vote (and stand for election) in Scottish Parliament elections. While EU citizens enjoy a privilege there which is not matched in any other EU Member State (and is not mandated by obligations under EU law), for Irish and Commonwealth citizens the right to vote in Scottish Parliament elections is a natural consequence of their having a universal suffrage in the UK – a situation which some regard as a historical anomaly. What is more, of course, UK citizens can vote in elections to the Irish *Dail*. What becomes of these rights is both an interesting question and one which Irish citizens, in particular, might feel especially strongly about. If a new Scotland does not have the same arrangements with rUK and Ireland as currently subsist across these islands, they might feel that they would not want to vote for independence because this would mean fewer rights than they have present, as for now they can also vote in Westminster elections. In earlier documents, as well as in the White Paper, the Scottish Government has focused on the importance of relations across these islands as intrinsic to making the independence
settlement work in practice, for all parties. But these are matters that will be subject to negotiation, and the outcomes of as yet hypothetical negotiations can never be clear. But whereas the White Paper makes clear what the Government sees as its main negotiating position on some hypothetical negotiations – specifically on the issue of membership of the European Union – it does not do so for the question of electoral rights.

11. I have discussed the legal and political implications of citizenship in an independent Scotland in more detail elsewhere.

15 May 2014
The Committee reports to the Parliament as follows—

Introduction

1. This report covers the work of the European and External Relations Committee during the Parliamentary year from 11 May 2013 to 10 May 2014.

Inquiries and reports

Scottish Government’s proposals on an independent Scotland’s membership of the European Union

2. In December 2013, the Committee took evidence on the Scottish Government’s White Paper on independence on issues relating to its remit. The Committee then launched a major inquiry in January 2014 on the Scottish Government’s proposals on an independent Scotland’s membership of the EU. The Committee held a number of evidence sessions on the proposals contained in the White Paper with academics, lawyers, practitioners and politicians and received written responses to its call for views.

3. The Committee’s inquiry focussed on a three key of areas: Scotland in the European Union; the road to membership and Scotland’s representation in the European Union; and small states within the European Union. The Committee expects to publish its findings prior to the summer recess in 2014.

European Union Structural and Investment (ESI) Funds

4. Building on previous years’ work, the Committee agreed to continue its work on EU funding, having previously scrutinised EU Structural Funds for the period up to 2013. This year the Committee focussed on the preparations for the new 2014-2020 programming period for the ESI funds. As part of this scrutiny, the Committee took evidence from European Commission officials in October 2013 on the new regulatory framework for the ESI Funds. It also held a round table session with key Scottish stakeholders and a Scottish Government official in November 2013 on the preparations in Scotland for the funding framework.

5. The Committee considered the on-going discussions on the Multiannual Financial Framework for 2014-20 (MFF) and the regulatory package for the ESI Funds which, in essence, sets out the conditions and processes upon which partners within Members States will receive funding in line with the EU funded
programmes. Concerns had been raised regarding the potential for delays in the agreement of the Partnership Agreement and the operational programmes and the extent to which this could have a detrimental impact upon the initiation of the programmes in Scotland. The Committee incorporated its conclusions and recommendations on this work into a letter to the Deputy First Minister in December 2013. The Committee will continue to monitor developments in this area closely throughout the coming year and plans to undertake fact finding visits at an appropriate time on the implementation of EU funded programmes across Scotland.

Scottish Government’s Draft Budget

6. As part of the annual budget process, the Committee scrutinised the Scottish Government’s proposals for the Europe and External Affairs (EEA) portfolio in the Draft Budget 2014-15.

7. In its report on the Draft Budget 2014-15, the Committee recognised the need for greater flexibility in the EEA portfolio budget and that this is linked to the level of underspend and miscellaneous transfers appearing within this portfolio. The Committee welcomed the efforts made to improve the transparency of the draft Budget and will continue to monitor this in future years. The Committee welcomed the Scottish Government’s continued commitment to international development spending and also recognised the work being done to co-ordinate the International Relations budget in the EEA portfolio with the Scottish Government’s wider work on climate change.

Scottish Government’s Country Plan for China and International Framework

8. The Committee completed its inquiry into the Scottish Government’s Country Plan for China and International Framework. In June 2013, the Committee published its findings and made a number of recommendations for the Scottish Government and Scottish Development International, and agreed to be kept updated on matters related to the development of Scotland’s relationship with China.

Foreign language learning in primary schools

9. Also in June 2013, the Committee published its findings on its inquiry on foreign language learning in primary schools. The report was published after a comprehensive three-phase inquiry involving primary school visits, oral evidence sessions and finally, a major conference held in May 2013 in the parliament, which was organised to hear the views of stakeholders on the evidence considered by the Committee and to help develop report recommendations. The Committee concluded its work by welcoming the Scottish Government’s proposals relating to the EU 1 + 2 initiative, which aims to enable all young people to learn two languages from primary one onwards, and made a number of recommendations and conclusions around funding, skills and resources and the importance of learning languages in schools.

EU Presidency evidence sessions
10. The Committee held an evidence session in October 2013 with the Lithuanian Ambassador to the UK on Lithuania’s priorities for its Presidency of the Council of the European Union and their relevance to Scotland. Also in October 2013, the Committee took evidence from the Croatian Ambassador on Croatia’s accession to the EU and the processes involved. In March 2014, the Greek Ambassador to the UK gave evidence to the Committee in on its EU Presidency priorities. The Committee has agreed to hold evidence sessions with the Ambassador of the Member State holding the new Presidency on a six-monthly basis on their priorities.

Scottish Government on EU issues
11. A key aspect of the Committee’s role is to scrutinise the Scottish Government’s engagement on EU issues. The Committee therefore sought to complement the EU Presidency sessions by taking evidence from the Cabinet Secretary for Culture and External Affairs on the current Presidency priorities and how they relate to Scottish Government priorities as set out in the Scottish Government’s Action Plan on European Engagement.

12. The Committee receives reports every six months from the Scottish Government on the Horizon 2020 programme for research and innovation, an area of major focus in previous years and of continuing interest for this Committee. The Committee also considers updates every six months on the transposition of EU documents, ensuring effective scrutiny of the Scottish Government’s progress in transposing EU directives within the required timescale and providing the opportunity to raise questions with the Scottish Government if there is a delay in transposition.

Anti-Trafficking
13. Anti-trafficking has been an on-going area of interest to the Committee and it agreed to follow developments in relation to this issue in the future. In September 2013, the Committee took evidence from the EU Anti-trafficking Coordinator, Myria Vassiliadou and agreed that it would return to this issue once the European Commission’s report on the transposition of the Anti-Trafficking Directive is published in 2015.

14. In addition, the Committee wrote to the Cabinet Secretary for Justice seeking further information on the Scottish Government’s involvement with the UK Inter-Departmental Ministerial Group (IDMG) on Human Trafficking and the extent to which the latter’s First Annual Report assesses the trends in the trafficking of humans and measures the results of anti-trafficking actions in relation to Scotland. The Committee also sought further information in relation to the UK Government’s intention to legislate in this area and the potential implications for Scotland. The Scottish Government responded to the Committee on both of these issues and the Committee will continue to keep a watching brief on these issues and, in particular, the Scottish Government’s input to the UK Government’s Modern Slavery Bill to ensure Scottish interests are taken into account during the development of the Bill.
Engagement and innovation

15. As stated, in January 2013 the Committee launched an inquiry into the Scottish Government’s proposals for an independent Scotland’s membership of the European Union. As part of its approach to evidence gathering, it produced a video and leaflet to publicise its call for evidence. In addition, the Committee produced a video of the evidence emerging from the sessions and sought stakeholders’ views on the evidence heard in advance of the final sessions with UK and Scottish Government Ministers.

16. The Committee enhanced its use of social media by launching its own Twitter feed and, as a result, has significantly increased its direct engagement with young people and those not previously engaged in the work of the Committee. This innovative approach to stakeholder engagement contributed to widespread coverage of the Committee’s evidence sessions in the press, with stakeholders actively disseminating transcripts of Committee EERC meetings via Twitter.

Scottish Parliament European Union strategy

17. This year, the Committee agreed to adopt a more streamlined approach to consideration of EU engagement and scrutiny whereby relevant committees were asked to report on both their engagement and scrutiny over the last year and their scrutiny priorities for the coming year. This provided the opportunity for Members to discuss these issues very comprehensively in the Committee’s annual Chamber debate on the Scottish Parliament’s committees’ EU priorities.

18. In the past, committees identified their priorities on the basis of the European Commission’s work programme (CWP) for the forthcoming year. This year, the Committee has sought to broaden the approach by inviting relevant committees to also consider the Europe 2020 Strategy and the Scottish Government’s Action Plan on European Engagement.

19. This new approach was welcomed by committees during this year’s annual EERC debate on the report in February 2014.

Subordinate legislation

20. The Committee considered two negative instruments which both related to EU regulation amendments required on the accession of Croatia to the EU and agreed not to make any recommendations on these instruments.

Equalities

21. The Committee continued to mainstream equalities issues throughout the parliamentary year as part of its ongoing work. This was highlighted particularly in the Committee’s foreign languages in schools inquiry where the Committee made recommendations to the Scottish Government regarding students requiring additional support needs and tuition in British Sign Language.
Meetings

22. During the reporting period, the Committee met 26 times and 18 meetings were held partly in private and two wholly in private. 36 items were taken in private, 13 to consider evidence sessions, 11 to consider draft reports, six for consideration of approaches to inquiries, four to consider the Committee’s work programme and two to consider candidates for the post of Adviser. All meetings were held in Edinburgh.