

## **Culture, Tourism, Europe and External Relations Committee**

### **Inquiry - Immigration**

#### **Written submission from the Law Society of Scotland**

##### **Introduction**

The Law Society of Scotland is the professional body for over 11,000 Scottish solicitors. With our overarching objective of leading legal excellence, we strive to excel and to be a world-class professional body, understanding and serving the needs of our members and the public. We set and uphold standards to ensure the provision of excellent legal services and ensure the public can have confidence in Scotland's solicitor profession.

We have a statutory duty to work in the public interest, a duty which we are strongly committed to achieving through our work to promote a strong, varied and effective solicitor profession working in the interests of the public and protecting and promoting the rule of law. We seek to influence the creation of a fairer and more just society through our active engagement with the Scottish and United Kingdom Governments, Parliaments, wider stakeholders and our membership.

The Society's Immigration and Asylum Sub-committee welcomes the opportunity to consider and respond to the Culture, Tourism, Europe and External Relations Committee of the Scottish Parliament's Immigration Inquiry. The Sub-committee has not commented on every proposal made by Dr Hepburn in her report "[Options for Differentiating the UK's Immigration System](#)" but have the following comments to put forward for consideration in response.

##### **Developing Scottish Migrant Integration & Reception Policies**

The proposal to codify the services and rights of migrants in Scotland seems logical. It seems likely that the provision of language and orientation classes could assist those migrating to Scotland to familiarise themselves with the country, in particular, asylum seekers who, by definition, have not left their country of origin through choice.

Codification would provide those advising migrants, including solicitors, with an authoritative reference point to determine which services are available and from which providers. However, although many public services are devolved (such as housing, health, education, children's services, and policing), there remains a limit on what can be achieved in this area without cooperation between the UK and Scottish Governments and local authorities in Scotland.

Information on housing, opening a bank account, and accessing free health care would need to be provided within the context of the UK wide legislation limiting access to such services for certain categories of migrant.<sup>1</sup> Likewise, initiatives aimed

---

<sup>1</sup> For instance the Immigration Act 2014, the Immigration Act 2016, and the Immigration (Health Charge) Order 2015

at encouraging migrants to stay in Scotland need to be considered in the context of the UK immigration system which is aimed at reducing net migration numbers. Given immigration policy remains a reserved matter, it is important that any Scottish integration policy is drafted in that context.<sup>2</sup>

In summary, developing a Scottish Migrant Integration and Reception policy and codifying existing arrangements would be broadly welcome. However it might be better placed to respond to Scotland's demographic and skills needs if accompanied by a clear and workable agreement or set of protocols between the UK and Scottish authorities.

### **International Outreach Activities in Immigration**

The Society cannot comment on the merit in expanding international outreach activities. However, as with a Scottish migration policy, UK wide legislation on immigration will need to be taken into account. Advertising Scotland as a welcoming country of destination will be ineffective if, when applicants apply to come to Scotland, they are faced with immigration rules that adopt a more restrictive approach with the aim of reducing net migration. As such, this proposal in isolation would only be capable of responding to Scotland's demographic and skills needs in a limited way.

### **Increasing Scottish Influence in UK Decision-Making**

Increasing Scottish influence in UK decision making could provide an effective means of ensuring that UK immigration policy responds to Scotland's demographic and skills needs. In particular, Scottish representation on the Migration Advisory Committee could be beneficial. Active review of the Scottish Shortage Occupation List would also be welcome to ensure the list genuinely reflects skills shortages in Scotland and can be updated and amended as necessary to meet the needs of the Scottish economy.

Developing distinct salary levels for Tier 2 occupations in Scotland might be an option that needs to be assessed more fully. At present Appendix J contains a list of Standard Occupational Classification codes and provides a required salary level for each. These provisions apply throughout the UK. However, for some occupations, the required salary level can be difficult to obtain in Scotland. Gross average salaries vary throughout the different regions of the UK and a more nuanced approach, which recognises the different salary levels in the different parts of the UK, could be explored to determine whether it is a workable approach. In 2016 gross annual pay in London was £31,476 compared to £22,918 in Scotland.<sup>3</sup>

By way of example, the required annual salary for a "new entrant" trainee solicitor in Appendix J is £24,700. The Law Society of Scotland's recommended salary for a first year trainee solicitor is £18,000 and is £21,500 for a second year trainee solicitor. Whilst some firms may offer a salary above this recommended rate, many do not. A

---

<sup>2</sup> Calls for a legislative consent motion to be laid before the Scottish Parliament during passage of the Immigration Act 2016 were refused as the UK Government maintained the Bill related to the reserved matter of immigration, despite the impact on devolved areas of law – see article on the Scottish Constitutional Futures Forum by Sarah Craig and Tom Mullen [here](#).

<sup>3</sup> See SPICE Financial Scrutiny Unit Briefing, Earnings in Scotland 2016 (available [here](#)) at page 4.

foreign national hoping to enter the Scottish legal profession is likely to face difficulty finding a training contract with a salary of at least £24,700.

Scottish representation on the Migration Advisory Committee and the introduction of a Joint Ministerial Committee on immigration might assist with ensuring that these points are aired. However, the success of this proposal would depend on the UK Government taking account of Scotland's distinct circumstances in their policy making in this area. If they did, this proposal would allow UK wide immigration policy to respond to Scotland's particular demographic and skills needs.

### **Scottish Sectoral Agreements**

There appears to be support for the re-introduction of a Post-Study Work visa for Scotland as recognised by the Scottish Parliament's Devolution (Further Powers) Committee in February 2016.<sup>4</sup> Under the current rules, many feel that students may struggle to find employment with a Tier 2 sponsor which meets all of the requirements of the Immigration Rules before the end of their studies and, where this is the case, need to leave Scotland when their studies come to an end.

Having a restriction printed on Biometric Residence Permits restricting the individual to working only in Scotland may be an effective way to address the concern that those granted leave to remain in Scotland on the basis of a Scotland-specific immigration category do not relocate to other parts of the UK.

Temporary work permits for seasonal migrants could theoretically be administered in various ways, including through new sub-categories within Tier 5 of the Points Based System which already allows for certain categories of workers to come to the UK on a temporary basis (such as charity workers, domestic workers, and religious workers).

Whether a 'European Talent: Working in Scotland' scheme would be necessary or desirable will depend on the outcome of the ongoing negotiations between the UK Government and EU Commission regarding the rights of EU citizens in the UK after the UK leaves the EU. As the House of Lords European Union Committee recently highlighted:

"...in the event that the UK Government does not secure a UK-wide agreement that adequately reflects Scotland's specific needs, there is a strong political and economic case for making differentiated arrangements for Scotland.

The Scottish economy has particularly pressing needs, including its reliance on access to EU labour, which is acute in sectors such as health and social care, agriculture, food and drink, and hospitality. We also note Scotland's demographic needs, and its reliance upon EU migration to enable its population (and in particular, that of working age) to grow. Scotland's more

---

<sup>4</sup> See 'Welcome to Scotland? A Report on Post-Study Work Visas', Devolution (Further Powers) Committee, SP Paper 915, 2<sup>nd</sup> Report 2016 (session 4), published 13 February 2016 (available [here](#)).

sparsely populated regions are disproportionately reliant both on EU migration and EU funding.”<sup>5</sup>

As such, when it comes to EU migration, there may be scope for bespoke arrangements to be made for Scotland as part of the process of leaving the European Union. If bespoke arrangements were agreed, clarity about how such differentiated measures would fit with/alongside the existing immigration framework should be included in EU withdrawal legislation.

### **Devolving Administrative Aspects of Immigration**

This proposal, in its present form, may be problematic in practice. It is unclear what is meant by a “work permit”, what type of applications a Scottish Work Permit Office would actually be processing, and whether they would be empowered to make decisions on behalf of the Home Secretary (which would require further powers to be devolved).

Certificates of Sponsorship for Tier 2 visas are issued by the applicant’s employer. Certificates of Acceptance of Studies for Tier 4 student visas are issued by the educational institution. Once a certificate has been issued, applications for the visa are made to the Home Secretary.

It is unclear whether this proposal envisages devolution of the process of issuing Tier 2 and Tier 4 licences to employers and educational institutions or whether it envisages devolution of decision making on applications for visas from Tier 2 and Tier 4 migrants.

Paragraph 271 of the report provides an indication of how this proposal may operate in practice:

“Thus, students applying to study at a Scottish University would send the relevant documentation (application, sponsorship agreement) to a Scottish Work Permit office in the first instance. Upon approval by the Scottish Work Permit office, applicants would then apply for a visa”

If it remains necessary to make the application for the visa after processing by the Scottish Work Permit office it is not clear what function this office would be performing. This would not simplify or streamline the process; it would appear to add a further layer of bureaucracy to an already complex system.

If the Scottish Work Permit office is part of the Home Office (rather than a part of the Scottish Government) and is therefore able to make decisions on applications, this could work. However, it is not clear how this would reduce decision making timescales, unless suitable local investment and local decision-making autonomy accompanied such measures.

---

<sup>5</sup> “Brexit: devolution”, House of Lords European Union Committee, 4<sup>th</sup> Report of Session 2017-19, HL Paper 9, 19 July 2017, at paragraphs 205 – 206 (available [here](#))

## **Scottish Visa Sponsorship Schemes**

The introduction of Scottish visa sponsorship schemes would allow the immigration system to respond to Scotland's distinctive needs. However, the current Points Based System is not designed in such a way so as to allow for regional variations within existing visa categories.

Under the current points system, the points are only part of the system and, in fact, there is a list of requirements for a candidate to meet. If the requirements are not met, the application will not be approved. They cannot build up points in another area in order to be successful.

For instance, the requirements for entry clearance as a Tier 1 (Investor) are contained in paragraph 245EB of the Immigration Rules. This paragraph lists six requirements for the visa, only one of which refers to an ability to earn a given number of points (in this case 75 points under paragraphs 54 to 65-SD of Appendix A). In accordance with Table 7 in Appendix A an applicant will earn 75 points where the applicant has "...money of his own under his control held in a regulated financial institution and disposable in the UK amounting to not less than £2 million; and has opened an account with a UK regulated bank for the purposes of investing not less than £2 million in the UK." The assignment of 75 points to these two additional requirements is arbitrary; an applicant either will or will not meet the requirements described. All requirements of paragraph 245EB must be met before an application for entry clearance can be granted.

Other categories, such as Tier 2 (General), are more reliant on the accumulation of points. For instance, points are earned for passing the Resident Labour Market Test or benefiting from an exemption from the test (30 points), earning an appropriate salary (20 points), meeting the English language requirement (10 points), and having sufficient funds to cover maintenance (10 points). However, as with Tier 1 (Investor), the points are irrelevant as the rules only allow for one method of accumulating the required points. An inability to meet the English language requirement (leading to a deficiency of 10 points) cannot be corrected by earning an additional 10 points in another area (such as earning a higher salary). Furthermore additional requirements are contained in paragraphs 245HB(a), (g), (h), (l) and (q), none of which lead to an award of points however which nonetheless must be met before the application can be granted.

In light of the above, it would be difficult to incorporate incentives for applying through regional schemes, such as an ability to gain additional points for moving to Scotland or for obtaining sponsorship from the Scottish Government, into the current categories of the Points Based System. The system does not allow for dispensation of certain requirements (such as permitting a lower salary or a lower financial threshold for the maintenance requirement) where other desirable attributes (such as a willingness to work in a certain region) are present. In order to ensure the system was workable, there would need to be separate categories within the Points Based System which apply specifically to Scotland, for instance a Scotland specific Post Study Work visa as discussed in the section on Scottish Sectoral Agreements section above.

Alternatively, there could be alterations to other sections of the rules (which are not concerned with points allocation) to create separate provisions for Scotland. An example of this is the Scottish Shortage Occupation List. In terms of reducing income requirements/monetary thresholds for migrants moving to Scotland, this could be done by introducing a Scotland specific Appendix J (which contains the required salaries for Tier 2 migrants) as outlined in the Scottish Sectoral Agreements section above. However, this approach would not allow for the type of extensive variation envisaged by this proposal. In order for this to be achieved, new sub-categories within the Points Based System would need to be created.

This proposal appears to envisage a system where the Scottish Government would issue certificates of sponsorship which would then enable applicants to apply under one of the Scotland specific categories of the Points Based System. Certificates of Sponsorship are currently allocated to employers who then assign a certificate to a particular applicant. It is unclear how a Scottish Government Certificate of Sponsorship would interact with the existing scheme. Scotland specific sub-categories of the Points Based System could operate without the additional hurdle of obtaining a second certificate of sponsorship from the Scottish Government. It is already necessary for employers to specify a place of work on a Certificate of Sponsorship so distinguishing Scottish certificates from certificates issued for the remainder of the UK would not be problematic. Employers are also required to select a visa category when allocating a Certificate of Sponsorship; this would enable employers to select a Scottish sub-category where appropriate.

Restrictions are placed on the number of Certificates of Sponsorship available for Tier 2 (General) applicants applying from abroad. If the Scottish Government were empowered to decide how many restricted Certificates of Sponsorship to issue each month, this would allow it to have control over the number of Tier 2 migrants coming to Scotland.

In summary, creating a system of Scottish sponsorship within the current Points Based System could allow immigration policy to respond to Scotland's specific skills and demographic needs, however it may be difficult to incorporate such a system into the existing categories of the Points Based System due to the nature of the rules, which are not as reliant on accumulation of points as the name suggests.

Creating additional categories for Scotland, with their own requirements and points allocation, could be simpler and more desirable. For instance categories such as Tier 1 (Post Study Work – Scotland) could be re-introduced under Tier 1 and Tier 2 (General – Scotland) could be introduced under Tier 2. This would be similar to the fourth proposal in the report: Scottish Sectoral Agreements. In relation to the process of issuing Certificate of Sponsorship to employers, to be allocated to applicants, the current system would not need to be changed significantly in order to accommodate Scotland specific sub-categories within the current Points Based System.