

**LABOUR MIGRATION IN THE UNITED KINGDOM POST
BREXIT: ITS POLICIES AND REFORMS**

***MIGRACIÓN LABORAL EN EL REINO UNIDO POST BREXIT:
POLÍTICAS Y REFORMAS***

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ABSTRACT

This chapter analyses the British labour migration laws post Brexit inclusive of the European Union Settlement Scheme. The intricacies of the migration rules are explored and explained, leading the reader to understand the complex points-based system. An evaluation follows of the various employment routes' visas with a mention of safe and legal routes. Its critical and theoretical conclusion accentuates the strengths and weaknesses of the contemporary British migration system.

KEYWORDS: Brexit, EU Settlement Scheme, Immigration Rules and points system, employment routes.

RESUMEN

El artículo analiza las leyes de migración laboral británicas posteriores al Brexit, incluido el Plan de establecimiento de la Unión Europea. Se exploran y explican las complejidades de las reglas de migración, lo que lleva al lector a comprender el

complejo sistema basado en puntos. Sigue una evaluación de las visas de las diversas rutas de empleo con una mención de rutas seguras y legales. La conclusión crítica y teórica acentúa las fortalezas y debilidades del sistema migratorio británico contemporáneo.

PALABRAS CLAVE: Brexit, EU Settlement Scheme, reglas de inmigración y sistema de puntos, rutas de empleo.

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I. Prologue

United Kingdom migration law derives from a number of sources. The foundation lies in the Immigration Act 1971 which gives the Secretary of State for the Home Department (Home Office) the power to lay down rules regulating the entry into, and stay in, the United Kingdom of persons requiring leave, including as to categories of stay and the duration and conditions of leave in those categories. The Immigration Act 1971 which consolidated previous migration laws is still in force and remains the fundamental basis of British immigration law. This Act provides for the control of immigration in the United Kingdom of people of all nationalities, deportation orders, appeals against immigration decisions and confers the right of abode on certain categories of persons.

In addition to the 1971 Act the current body of law comprises the Immigration Rules and Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020.¹ The 2020 Act repeals all domestic legislation which provides for freedom of movement, as well as freedom of movement - related legislation, and paves the way to a new points- based system in which non-EU/EEA and EU/EEA nationals are treated the same way.

The immigration concept covers *inter alia* deportation, asylum seekers, illegal immigrants, family settlements and other matters. Considerations of space allow only for a discussion on immigration relating to employment and labour and matters connected

¹ Chapter 20 which makes provision to end rights of freedom of movements of persons under retained EU law and to repeal other related EU law relating, to confer power to modify retained direct EU legislation related to social security co-ordination, and for connected purposes.

with employment and labour which touch upon education, visitors, students, families of workers and those on the Afghanistan, Ukraine, and Hong Kong schemes.

Bearing this in mind, the structure of this chapter will comprise a discussion, an analysis and evaluation of the following. Brexit, the European Union Settlement Scheme, the Immigration Rules with an examination of their status and complexity. There will follow a detailed discussion on the points-based system, the tradeable, non-tradeable conundrum, and the shortage occupational list for skilled workers in 2022/23. The employment routes visas will then feature with an analysis of each of these. They include skilled workers. Health and care workers, global talent and eligible award workers, university graduates, innovators and start-up workers, global business mobility workers, intra-company transfer and graduate trainee workers, sportsmen/women, youth mobility scheme, high potential workers, and seasonal workers. Under the safe and legal routes banner, the Ukraine Schemes, the victims of human trafficking and slavery route will be analysed as well as the Hong Kong and Afghanistan resettlement schemes. Something will feature on lower skilled workers and other current and future routes and non-routes. Finally, conclusions will be drawn from the chapter's immigration theme.

II. Brexit

The United Kingdom departed the European Union on 31st January 2020 and took over control of its own borders. This meant that the European Union's free movement of workers' rights policy ended and was replaced by a points-based system which attracts high-skilled workers who will contribute to the British economy, its communities and public services thus creating a high wage, high-skill and high productivity economy. This policy thus fosters the interests of the UK and prioritises the skills which the worker has to offer and not where the worker comes from, this being the EU policy of freedom of movement of workers.

The new system transforms the way in which migrants may enter the UK to work, study, visit and join their families. It also tightens the security at the border. From 1st January 2021 EU and non-EU citizens have been treated equally and there has been a reduction of migration figures which has given priority to those migrants with highest talents and skills such as academics, highly skilled workers, engineers, artists, architects, medical practitioners, nurses and so on. This policy has also had the effect of preventing unscrupulous employers from exploiting migrants. (a topic very close to this author's heart!²).

² See J. R. Carby-Hall, *The Treatment of Polish and other A8 Economic Migrants in the European Union Member States* (Volumes 1 and 2) published by the Bureau of the Commissioner for Civil Rights Protection of the Republic of Poland, Warsaw, 2008. The author was commissioned by the Commissioner to focus on a pan-European Union basis on "the exploitative practices meted at A8 economic migrants and make recommendations to counteract those practices." This work was published in two volumes in its Polish edition. This work has had an enormous legal impact in the European Union Member States.

Prior to analysing the Immigration Rules, their legal status and the points-based system, it is important to consider briefly the European Union Settlement Scheme which was agreed between the European Union (EU) and the United Kingdom (UK) prior to Brexit taking effect.

III. The European Union Settlement Scheme

This Scheme was set up by the British Government to transition the lawful basis of residence for some six million European Union citizens from European Union law to United Kingdom law. Upon Brexit occurring the residence rights of EU citizens living in the UK would be terminated thus making them into illegal residents. A new immigration status was therefore required to legalise their rights to settlement. Having examined the options³ open to the UK Government to achieve the legal settlement of EU citizens, it decided the chose what it called the “constitutive scheme” which meant the requirement by EU citizens residing in the UK to apply for a new status, namely the EU Settlement Status Scheme. An EU citizen who lived in the UK for five years or more and is able to show proof of residence⁴ would automatically have the permanently settled status known as an “indefinite leave to remain.” Such status applies not only to EU citizens but also to migrants from any other country in the world.

Under the EU Settlement Scheme (EUSS) EU citizens are eligible for settled status when they have lived in the UK for a continuous⁵ period of five years. Citizens who have not spent a continuous five-year period in the UK are usually granted pre-settled status. Thus, where an EU citizen has lived in the UK for less than five years, such person would have the pre-settled scheme status for a period of five years which requires the EU citizen to *re-apply* for settled or pre-settled status *before the end of the pre-settled status expires*, otherwise such person would be an unlawful resident. According to the Home Office there are approximately⁶ 2,159,770 EU citizens living in the UK who enjoy the pre-settled scheme status. A number of them for a variety of reasons⁷ will not think or know of the requirement that they would need to apply again for settled status under the EU settlement scheme to remain in the UK, failing which those persons would become unlawful residents under the provisions of the Immigration Act 1971 s. 24 which states that it is a

³ One of the options considered by the UK Government was the “Declaratory Scheme” whereby a new law would be passed declaring that the EU citizen was legally resident. The Government decided against that option because not all citizens would be able to show documentary proof of that status bestowed upon them.

⁴ The production, for example, of utility bills, tax returns, rents, employment contract, NHS contributions, ownership of residence, etc...

⁵ It should be noted that EU citizens can absent themselves from the UK for certain periods without breaking that continuity.

⁶ Source: Home Office figures as of 30th September 2022. The previous statistic was 2,151,273 as of 31st December 2021.

⁷ For example, a lack of understanding or ignorance of the scheme, forgetting to make a second application, lack of understanding of British laws, incapacity at the time of application, misunderstanding of the EU Settlement scheme. It is true that “*Ignorancia juris neminem excusat*” but the human element needs to be considered too!

criminal offence to knowingly remain beyond the time limited by the leave. EU citizens living in the UK automatically lose their rights to work, access housing, education, claims for benefits and could even be liable to deportation.

It is thus clear that, if EU citizens do not apply in time (i.e. before their pre-settled status expires) they lose all their rights. The Independent Monitoring Authority (IMA) set up under the provisions of the Withdrawal Agreement⁸ whose duty it is to investigate alleged breaches against EU citizens after Brexit, considered that the citizens' rights agreement only provided for loss of rights in limited circumstances, and this was not one of them. The IMA therefore was of the opinion that the Home Office policy was in breach of the Withdrawal Agreement. This concern was raised by the IMA to the Home Office in October 2021, but the Home Office did not agree. Legal action was taken by *inter alia* the IMO to clarify the law regarding those pre-settled status citizens of which there were 2.48 million EU etc... citizens as of 30th November 2021.

It was in those circumstances that the important British High Court case was heard on the pre-settlement issue. In the judicial review case of *The King on the application of the Independent Monitoring Authority for the Citizens' Rights Agreements (Claimant) and Secretary of State for the Home Department (Defendant) and the European Commission and the 3million Limited⁹(Interveners)* the IMA argued at the hearing that (a) contrary to how UK immigration law normally applies to others, pre-settled status holders do not lose their rights by not applying a second time for settled or in some instances pre-settled status and before their pre settled status expires and (b) there is no requirement placed on pre-settled status citizens to make a further application for settled status, as well as other rights because according to the Withdrawal Agreement they automatically acquire the right to permanent residence, including other rights of pre-settled status holders,¹⁰ when all conditions are fulfilled.

In response to the IMA's first pleadings, namely that pre-settled citizens do not lose their rights by not submitting a second application, the court held that applicants granted pre-settled status should not lose their rights of residency if they do not apply for settled status. This was based on the wording of Art. 13 (4) of the Withdrawal Agreement which makes it clear that the right of residence can only be lost in very special circumstances.¹¹ It will be recalled that there were over 2.4 million citizens who had pre-settled status, many of whom had not applied for settled status. In answer to the first pleading the court has made it absolutely clear that a person who enjoys residence rights under the conditions of the Withdrawal Agreement enjoys those rights during her/his lifetime so long as they

⁸ Withdrawal Agreement Art. 159.

⁹ In the High Court of Justice King's Bench Division Administrative Court [2022] EWHC 3274 (Admin).

¹⁰ As for example social security benefits, health and safety at the workplace, etc.

¹¹ Article 13 (4) states "The host State may not impose any limitations or conditions for obtaining, retaining or losing residence rights on the persons referred to in paragraphs 1,2 and 3 other than those provided for in this. There shall be no discretion in applying the limitations and conditions provided for in this Title other than in favour of the person concerned."

continue to meet the relevant conditions, and especially not including a condition which provides for subsequent settlement or pre-settlement applications.

Regarding the second pleadings of the IMA, namely, how permanent residence under the Withdrawal Agreement is acquired and that there is no requirement on pre-settled EU citizens to make further applications for settled (or in some cases pre-settled) status. The European Commission argued that under Article 18 of the Withdrawal Agreement there is only one residence status, namely that of “beneficiary to which all the rights in Title II are attached.” In other words, there is only one type or kind of beneficiary provided for under the Withdrawal Agreement and all beneficiaries enjoy the identical rights. What the Home Office did was to provide two separate kinds of “beneficiary,” namely pre-settled and settled statuses, each of which has different rights.

With reference to the Withdrawal Agreement the Home Office argued that the right to acquire permanent residence should be interpreted as having the right to acquire that status following an application for permanent residence. It also argued that in EU Member States' jurisdictions there is a requirement for temporary residence holders to apply for permanent residence. Both of these arguments were explained and refuted¹² by the EU Commission. Lane J. during the High Court hearing accepted both the EU Commission's arguments.

Another of the Home Office arguments expressed during the hearing of this case was that during the negotiations and subsequently, the EU Commission both knew and understood that pre-settled status holders would have to apply for settled status Lane J. considered that the argument could certainly favour the defendant's cause but for one important issue. The court was charged with interpreting the Withdrawal Agreement provisions *simpliciter* using the Vienna Convention.¹³ This signifies that the court is not able to import requirements into the Withdrawal Agreement which do not exist therein, as for example the compulsion for a second application to be made by the EU citizen for permanent residence in the UK. In this respect Lane J. posited “If the defendant were right about what is contained in the new residence status, in the case of a person granted pre-settled status because they have not yet achieved the right of permanent residence, then the Withdrawal Agreement has failed to explain how that person is to apply for the right of permanent residence, and how the application is to be handled by the State concerned. That would be a remarkable omission.”¹⁴

The significance of this important case is such that the EU citizen who has a pre-settled status acquires permanent resident status as soon as the Withdrawal Agreement conditions in Art. 15 are met. There are no provisions whatsoever in the Withdrawal

¹² For example in the case of temporary residence holders having to apply for permanent residence the EU Commission explained that the requirement for replacing residence documents following a certain period of time is for the purpose of upgrading ID photos as people get older and has nothing to do with residents' rights expiring and having to apply to the granting of permanent residence.

¹³ Art. 31 of the Vienna Convention.

¹⁴ Source: [2022] EWHC 3274 (Admin) at para. 177.

Agreement which require the pre-settled status holder to apply for a second time for permanent residence.

Lane J. agreed with the IMA's arguments and held that¹⁵ "Having found for the claimant on both issues, the claimant is entitled to a declaration that the defendant's interpretation of the Withdrawal Agreement, the EEA EFTA Agreement and the Swiss Citizens' Rights Agreement is wrong in law and that the European Union Settlement Scheme is accordingly unlawful insofar as it (a) purports (as described in the court's findings on the first issue) to abrogate rights of residents arising under the Agreements in respect of those granted limited leave to remain, and (b) purports to abrogate the right of permanent residence in the manner described in the court's findings in respect of the second issue." The contesting parties were invited to agree an order to put into effect the court's judgement, whereupon Lord Murray, the Home Office Minister stated spontaneously that there would be an appeal to Lane J's judgment. Such appeal did not materialise however. The Home Office decided not to proceed with an appeal against the High Court judgment that it is unlawful for citizens to lose their rights if they failed to either apply for settled status or re-apply for pre-settled status before the expiry of their pre-settled status.

The Chief Executive of the IMA, Dr. Kathryn Chamberlain said¹⁶ "We are pleased that the Home Office has taken the decision not to proceed with the appeal, which we hope will ensure clarity for more than two million citizens in advance of the expiry of their pre-settled status. We have already begun discussing with the Home Office how the IMA will be engaged as part of the Home Office's work to make the necessary changes to the EUSS. We hope that being part of that process will ensure the IMA can monitor those changes as they are developed, and also ensure that they are sufficiently promoted among citizens."

IV. The Immigration Rules

In October 2020, the British Government laid out over 1100 pages on new immigration rules which form the basis of the new points - based immigration system. Most of these changes came into effect on 1st December 2020 and applied to non-European Union nationals. On 1st January 2021 these immigration rules became applicable to the EU citizens.

The Settlement and Pre-Settlement schemes for EU citizens already working and residing in the UK which came into operation in March 2019 has received millions of applications from EU citizens who wished to stay and work in the UK.

Certain key sectors in the employment market are being monitored where pressures exist and initiatives are brought forward for graduates, scientists, National Health Service

¹⁵ *Ibid.* para. 193.

¹⁶ Source: "IMA welcomes confirmation that Home Office will not pursue appeal in EU Settlement Scheme case." 16th February, 2023.

(NHS) workers and seasonal agricultural workers. In that manner the UK has full control over who enters the country.

1. The legal status of the Immigration Rules

The UK immigration points system is governed by the Immigration Rules. The current rules are contained in a House of Commons paper called HC 395. The rules have been amended on numerous occasions. They include provision for the entry and stay of persons coming for employment or study or as visitors or dependents of people resident in the UK.

The legal status of the Immigration Rules is uncertain for they are not contained in either statute or statutory instruments. Instead, the Immigration Act 1971 provides the Secretary of State of the Home Office with statutory powers to lay before parliament statements of the Rules or any changes to the Rules concerning the practice to be followed in the administration of the Immigration Act 1971 for regulating entry and stay in the UK. The Immigration Rules are believed to be a form of secondary legislation which decides the formal criteria on whether a person may gain entry into the UK or be allowed to stay. These criteria are specified in those Rules. The Immigration Rules are subject to less parliamentary scrutiny than if those rules were part of a Bill in Parliament or a ministerial regulation.

The power of the UK Government to change the content of the Immigration Rules as it thinks fit enjoys little parliamentary scrutiny and indicates that the substance of the points system is to replace the EU freedom of movement of workers' rights. Thus, eliminating that important EU right from the British laws.

2. The complexity of the UK Immigration Rules

The UK immigration laws and indeed the Immigration Rules which form an important part of these laws, have caught the complexity virus! The world of employment has become more complex with new technologies and new methods of work developing at an unrelentless pace. In tandem with that development, the immigration laws became more complex *per se* with repeated amendments which have resulted in those laws becoming incomprehensible, confusing and illogical. Lord Lloyd-Jones in the Supreme Court posited¹⁷ “As will be apparent from this judgment, the structure of both primary and secondary legislation in this field has reached such a degree of complexity that there is an urgent need to make the law and procedure comprehensible.” A former President of the Supreme Court Lord Neuberger said¹⁸ “...the updating service to deal with amendments and repeals is little short of lamentable with amendments and repeals sometimes not being recorded more than six years after the event.”

¹⁸ Source: Colin Yeo “How complex is UK Immigration Law and is this a Problem?” 24th January 2018. <https://freemovement.org.uk/how-complex-are-the-uk-immigration-rules-and-is-this-a-problem/>

V. The Points-Based System

1. An explanation

The points-based system was introduced on 1st January, 2021 and is led by the Home Office (on the advice of the Migration Advisory Committee) (MAC), to transform the operation of the border and immigration system.¹⁹

Improvements will follow with regard to the UK border which will include the introduction of Electronic Travel Authorities to ensure that those entering the UK have permission to do so in advance of travel.

The European Union free movement of workers policy has been replaced with the UK's Points-Based System so as to attract the most highly skilled workers, students and a range of other specialist work routes which include routes for global leaders and innovators.... and other routes to be discussed presently.

The British Government has not introduced a low-skilled route. The Government stated, "We need to shift the focus of our economy away from a reliance of cheap labour from Europe and instead concentrate on investment in technology and automation."

The British immigration system is a complex one. It provides a number of situations which include, *inter alia*, leave to enter and stay in the United Kingdom, deportation, penalties, stateless persons, EU/ EEA and Swiss citizens and family members, asylum seekers and so on. It is not proposed to deal with any of these. We shall concentrate solely on the employment routes, namely the immigration routes for skilled workers, global business mobility routes, global talent routes for people aged 18 and over, high potential individual route, innovator route and employment matters relating to these routes.

2. The points system explained in more detail

Before examining the routes system, the points system needs to be explained.²⁰ For skilled workers from around the world – from EU and non-EU countries, - to come to the UK through an employer-led system a total of 70 points is required to be eligible to apply. Some of those points are tradeable while others are not tradeable.

Upon the payment of a visa fee²¹ and depending of the category²² of the business as well as the immigration skills charge²³ all applicants, (which include both EU and non-EU

¹⁹ The reader is referred to "The UK's Points-Based Immigration System" Policy Statement Presented to Parliament by the Secretary of State by Command of Her Majesty, February 2020 at pp. 3 and 5.

²⁰ For more information on the points-based immigration system and to sign up for e-mail alerts visit GOV.UK/HiringFrom/HiringFromTheEU (<https://pbisemployers.campatgne.gov.uk/>) (Retrieved 2nd January 2023)

²¹ The fees vary and are kept under review and are thus subject to change. See for the current fees <https://www.gov.uk/government/publications/visa-fees-transparency-data> (Retrieved 2nd January 2023)

²² For the business categories see info.businesshelpdesk@homeoffice.gov.uk (Retrieved 2nd January 2023).

²³ See immigration skills charge <https://www.gov.uk/uk-visa-sponsorshipemployers/immigration-skills-charge> (Retrieved 2nd January 2023). This fee paid by a UK employers for each skilled migrant worker employed through the skilled worker or inter-company Transfer routes visa. The charge is intended to act as an incentive for UK employers to recruit resident workers and train them rather than migrant workers.

applicants) need to show (i) that they have a job offer from a Home Office approved licenced sponsor²⁴ which scores 20 points; (ii) that the job offer is at the required skill level which also attracts 20 points; and (iii) that they speak English at the required level which attracts 10 points. Each of those three requirements are mandatory and therefore not tradable. The total number of points on this mandatory platform is thus so far 50 points.

(iv) In addition to this, if the applicant earns more than the minimum salary threshold of £20,480 such applicant would be eligible to make an application and earn 20 points if the salary is £25,600 or above that figure. If the salary is between £23,040 and £25,599 the applicant will only receive 10 points which would not give the applicant enough points to qualify as the applicant would be 10 points short of the required number of points.

(v) However, if the applicant earns less than the minimum salary threshold of £20,480 the individual may still be able to succeed if (A) she/he demonstrates that the job offer is in a *specific shortage occupation category* (as designated by the MAC) which will award the individual 20 points, or (B) the individual has a *PhD in a STEM subject* (that is a PhD in science, technology, engineering and mathematics.) related to the job where the individual will also earn 20 points. In both these situations the individual will earn the required 70 points and thus qualify under the points system. (C) Where the individual has a PhD in a subject relevant to the job, but such job is not in the shortage occupation or under the PhD STEM categories, she/he will earn only 10 points and therefore may not qualify under the points system.

3. The tradeable, non- tradeable conundrum explained

Under the points scheme applicants are able to “trade” characteristics as for example their specific job offer and qualifications against a salary lower than the minimum salary or the “going rate” in their respective field.

Funds raised by the charge are used to support skills and training programmes in the UK. That charge is paid when sponsoring both EU and non-EU migrant workers.

²⁴ To be a licensed sponsor for entering the UK for work to sponsor migrants through the various routes, such potential sponsor should check that the migrant to be employed meets the UK requirements of coming to work in the UK. Eligible employees may be employed from anywhere in the world. The Home office proceedings take approximately eight weeks from the time of receipt of the application. Some of the immigration routes do not need sponsors, for example the Graduate and Global Talent route. There is therefore no need to obtain a licence to employ employees with an unsponsored visa. Nor is there a need to sponsor Irish citizens or anyone from the resident labour market with an existing right to work in the UK which includes settled and pre-settled status EU citizens and non-EU citizens enjoying the status of indefinite leave to remain in the UK. To qualify as a licensed sponsor the business must firstly not have unspent criminal convictions for immigration offences or certain crimes such as money laundering and fraud. In the second instance the sponsor needs to choose the type of skilled work licence which can be for general purposes or for the purpose of an ICT or both. Thirdly, choice of who will manage the sponsorship management business (SMS). The roles are (a) senior managing officer who is a senior or competent person who is responsible for the actions of staff and representatives who use the SMS. (b) Key contact, namely the key contact with UK visas and immigration (UKVI) and (c) level user who is responsible for day to day management of the licence using SMS. Such role can be filled by one or more persons. For a full guidance on becoming a sponsor or to begin a sponsorship application visit GOV.UK <https://www.gov.uk/uk-visa-sponsorship-employers> (Retrieved 1st January 2023).

4. Migration Advisory Committee (MAC) Shortage Occupational List for skilled workers, (SOL)

The Migration Advisory Committee²⁵ Shortage Occupational List²⁶ for skilled workers' shortages²⁷ is very lengthy. It comprises the Standard Occupation Classification Code, the job types on the shortage occupation list, the areas of the United Kingdom where there is a shortage²⁸ and the Annual salary. The list includes laboratory technicians, civil mechanical, electronics, electrical engineers, design development, production and process engineers, psychologists, medical practitioners, archaeologists, geophysicists. graphic engineers/designers, engineering professionals (not elsewhere classified), information technology, business analysts and communication professionals, biological scientists, biologists, biochemists, domiciliary and residential care and domiciliary care managers and proprietors, care workers, senior care workers, social workers, graphic engineers, chemical scientists in nuclear energy, actuaries, economists, statisticians, programme and software engineers, skilled musicians, dancers and choreographers (only if recognised by the United Kingdom industry body), artists, veterinarians, web design and development professionals, architects, quality control and planning engineers, arts officers, producers, directors, welders (only high integrity workers), pharmacists, physiotherapists, medical radiographers, occupational therapists, speech and language therapists, health professionals (not mentioned elsewhere), nurses and nursing assistants, paramedics, secondary education teachers, physical scientists in the oil and gas industry, physical scientists in construction related ground engineering industry – geophysicists, hydrogeologist, engineering geologists, health services, public health managers and directors.

It is interesting to note that all the above shortages relate to skilled workers' routes visas. We shall see later on²⁹ that there are no unskilled workers' routes visas available but unskilled workers may obtain visas if there is a shortage for unskilled workers recommended to the Government by the Migration Advisory Committee. The March 2023 budget³⁰ included measures which would make it easier for construction companies

²⁵ This committee makes recommendations to the Government by listing labour shortages which meet the needs of United Kingdom companies. These recommendations are normally accepted by the United Kingdom Government though they may be rejected. So far, as of July 2023, it is not thought that any such recommendations have been rejected by the Government.

²⁶ The shortage occupation list comprises occupations deemed by the United Kingdom Government to be in short supply in the United Kingdom labour market with such occupations afforded more eligibility criteria for sponsored work visa applications.

²⁷ Source: This issue is awaiting the Government's priorities regarding the skilled workers' route. See too <https://www.gov.uk/government/publications/migration-advisory-committee-annual-report2022/mac-letter-to-the-home-secretary-on-the-2022-annual-report-accessible> (Retrieved 14th March 2023).

²⁸ An examination of the Shortage Occupation List indicates that the majority of shortages apply to each of the four countries which compose the United Kingdom, namely Scotland, Wales, Northern Ireland and England. There is only Scotland which has a shortage of chemical scientists in the nuclear industry occupational code 2111.

²⁹ See p.23 *post*.

³⁰ Source: The Times, 16th March, 2023 page 4.

to hire foreign workers³¹ which permitted companies from July 2023 to employ foreign labour which is below the skilled workers' threshold of £25,600. Instead, employers will offer those unskilled workers salaries of £20,480.

There currently is also a great shortage of labour in the hospitality industry but the Migration Advisory committee has not, at the time of writing, prepared its report which is due in the Autumn of 2023.

It is important to note three matters connected to the shortage occupation list. Firstly, that the shortage occupation list is not a static one. Occupations included in such lists may be added to or removed as required. Regular consultation by employers is therefore strongly advised. In the second instance, employers need to be vigilant to avoid errors or issues when sponsoring workers on the shortage occupation list for such errors/issues may result in the Home Office suspending a licence or curtailing a foreign worker's visa. Thirdly, the advantages of the shortage occupation list need to be appreciated, these being *inter alia* lower visa application fees and the ability to take on a second occupation.

VI. The Employment Routes Visas³²

1. The skilled worker route visa³³

This route encompasses the majority of UK jobs eligible for overseas recruitment which provides accession from global talent.

Under this route, (and may the reader be reminded of what was said earlier) an employer who wants to employ someone from a foreign country needs to demonstrate that the prospective employee (i) has a job offer from a Home Office licence sponsor; (ii) the job offer is at the required skill level and (iii) the migrant speaks English at the required standard.

Furthermore, the job offered must meet the applicable minimum salary threshold. This threshold is the higher of either (i) the general salary threshold of £25,600 or (ii) a specific salary requirement for their occupation, known as the "going rate."

Applicants will be able to trade to receive the lower salary characteristics, as for example their *PhDs* against a lower salary or a job offer in a specific *shortage occupation* to get the required number of points.

2. Health and care route visa³⁴

The Health and Care route visa forms part of the Skilled Worker route and enables individuals to work in the UK in eligible health occupations with a job offer from the National Health Service, (NHS) the adult social care sector or organisations which

³¹ Such as plumbers, slaters, tilers, roofers, bricklayers, painters, joiners, carpenters and plasterers.

³² See "The UK's points-based immigration system: an introduction to employers (accessible version) Updated 25th February 2022.

³³ *Ibid.* at pp. 6–9.

³⁴ *Ibid.*, p.11.

provide services to the NHS. Applicants benefit from a lower application fee and are exempt from paying the Immigration Health Charge which applies to most other types of visa. To qualify for that route, a minimum of 70 points are required in the same manner as the skilled workers' route.

From 15th February 2022 and because of the shortage of social care workers,³⁵ they can apply online for a care and health worker visa. The conditions are that they need to be over 18 years of age and have qualifications as a carer and have a valid certificate of sponsorship issued by a Home Office approved employer who will sponsor the type of social worker needed, as for example in an individual home, a residential home or a day care centre. The social care worker has to be paid £20,480 or £10.10 an hour whichever is the higher. The carer needs to satisfy the £1,270 maintenance requirement, unless they are exempt which means that the sponsor would cover those costs. Carers need to meet the English language requirement to speak, understand and write in that language, unless they come from a country where English is spoken such as the Caribbean islands, St. Martin, Belize, the Falklands, Malta, Cyprus, Australia, New Zealand and so on. Finally, they need to have a clean criminal record certificate from their indigenous country.

Individuals applying for the social care worker visa online will normally use the skilled worker application and therefore state that they are applying under the skilled worker scheme.

This job application being in the shortage occupation list enjoys reduced application fees, there is a 50% reduction to the £232 fee for a visa for those wishing to work for three years in the UK and £464 for those who wish to work for over three years. Social care workers are also exempt from the National Health Service (NHS) fee which migrants have to pay to qualify them to use the NHS facility. Furthermore, they enjoy a speedier response from the Home Office to their application which is normally three weeks.

Successful candidates may bring their dependent relatives provided they are eligible, and the visa reduction fee applies to the dependents as well.

Whether this route proves to be permanent or temporary remains to be seen. The Health and Care Visa offers a pathway to settlement in the UK and the visa lasts for 5 years.

3. The global talent route and the eligible award route visas³⁶

These routes enable the highly skilled individuals who can achieve the required number of 70 points, to enter the UK without a job offer:

- (i) if they are endorsed by a recognised UK body approved by the Home Office.

³⁵ Care workers and home carers include care assistants, care workers, carers, home care assistants, home carers and support workers (in nursing homes). They do not include private households, and individuals cannot sponsor under the Immigration Rules.

³⁶ "The UK's points-based immigration system" *op.cit.* pp.9 and 10.

(ii) Applicants can also work in the UK on a Global Talent visa if they have won an eligible award or prize identified by the Global Talent endorsement bodies as demonstrating exceptional talent.

(iii) An employer does not need to be a licensed sponsor to employ a migrant under the Global Talent route.

(iv) This route is designed to attract recognised global leaders and promising individuals in science, humanities, engineering, the arts and digital technology. Top scientists and researchers can benefit from a quicker endorsement process as part of the fast-track STEM scheme.

(v) The current list of British approved endorsing bodies includes the following. The Royal Society (for science and medicine); The Royal Academy of Engineering (for engineering); the British Royal Academy (for humanities); Research and Innovation (for science and research); Tech nation (for digital technology) and The Arts Council England (for arts and culture).

(vi) Applicants for the Global Talent: Prestigious Awards are eligible to apply without the need to obtain an endorsement. The prestigious awards include, *inter alia*, winners of the Nobel Prize, Booker Prize, ICMA Lifetime Achievement Award, International Chopin Piano Competition, Grammy award, Kyoto Prize, Queen Elizabeth Competition voice first prize, violin first prize, Piano first prize, cello first prize, Tony award, etc...

4. The graduate route visa³⁷

This route enables international students who have been awarded their degree to stay in the UK and work or look for work at any skill level for two years, or three years for doctoral students. This route is an unsponsored one which means that an employer does not need a sponsor licence to hire someone with a graduate visa. Individuals cannot extend their visa, however they can switch to a different visa, for example a skilled work visa once they have found another suitable job. This unsponsored route needs to earn 70 points which are earned by the following three requirements. namely (i) the successful completion of the degree course; (ii) the qualification resulting from the degree and (iii) the degree must be awarded by a British university. There is no English language requirement under this route because of the fact that it is obvious that the student has been taught in the English language and that she/he understood the course content.

5. The innovator and start-up routes visa³⁸(until 12th April 2023.) Replaced thereafter by the innovator founder route visa

Until 13th April 2023 the Innovator applicants were required to demonstrate that their business had the potential to grow and add value to the UK economy. It was designed to attract entrepreneurial talent and innovative business ideas. Innovators were experienced industrialists and needed to have at least £50,000 to fund their business. The innovative,

³⁷ *Ibid.* p.10.

³⁸ *Ibid.*, pp.10 and 11.

viable, scalable business venture needed to earn 70 points by fulfilling the following four requirements. (i) The applicant had a genuine, original business plan which met new or existing market needs and/or created a competitive advantage. (ii) The plan had to be realistic and achievable based on the applicant's resources. (iii) The applicant had, or was actively developing, the necessary skills, knowledge, experience and market awareness to run the business successfully. (iv) There was evidence of structured planning and potential for job creation and growth in national markets.

Start-ups are for individuals setting up an innovative business for the first time. They also required 70 points at least to qualify. The requirements were fourfold. (i) The business had to be innovative, viable, scalable (25 points), (ii) The applicant had not previously established a business in the UK (25 points). (iii) The applicant had knowledge in the English language (10 points). (iv) The applicant had the necessary financial requirement (10 points).

Both of the above were routes for settlement thus allowing individuals' family dependants to settle in the UK. This has all changed and replaced by the Innovator Founder Route with the start up route visa having been closed down as from 13th April 2023. The reason why the start-up route is mentioned is that this route is closed to new applicants but remains open to those who were accepted to work under that route prior to that date. Much of the requirements under the original Innovator route still remain and are therefore transferred to the Innovator Founder Route visa but the requirement for a £50,000 fund has been removed from that date. This new route requires that the individual sets up and runs an innovative business in the UK which must be something different from anything else on the market, that the individual meets all the eligibility requirements and what is new in this route is that the business or business idea has been endorsed by an approved body (known as the endorsing body).

6. The global business mobility route visa³⁹

This route is for workers who are transferred by the businesses they work for abroad, to undertake a role in the UK as part of a structured graduate training programme of a temporary duration, as senior or specialist worker graduate trainee, UK expansion worker, service supplier or secondment worker, with clearly defined progression towards a managerial or specialist role within the firm.

The Global Business Mobility Route requires a 60 or 40 points qualification requirement as follows. (i) sponsorship (20 points). (ii) Job at appropriate skill level (20 points) and (iii) Salary at the required level (20 points). Service suppliers and secondment workers only require 40 points, namely (i) sponsorship (20 points) and (ii) job at appropriate skill level (20 points).

New Regulations came into being on this route on 1st January 2023.⁴⁰ Sponsors of this route are exempt from paying the immigration skills charge if the following conditions

³⁹ *Ibid.* pp. 9 and 10.

⁴⁰ Source: <https://www.legislation.gov.uk/si/2022/391/contents/made> (Retrieved, 1st January 2023).

are observed. Firstly, if the assignment of the certificate of sponsorship is dated on or after 1st January 2023. Secondly, if the worker is assigned in the UK business by an EU-based business within the same group. Thirdly, if the worker is an EU national or non-citizen Latvian.⁴¹ Fourthly, if the assignment is for six months or less in accordance with the certificate of sponsorship dates. In this manner, sponsors enjoy a saving where intercompany transfers of short duration take place.

7. Intra-company transfer and graduate trainee route visa⁴²

The Intra-Company Transfer route allows multinational companies to facilitate temporary moves into the UK for key business personnel through their subsidiary branches, subject to ICT sponsorship requirements being met. This route needs applicants to be in roles skilled to graduate level equivalent and subject to a different minimum salary threshold from the main Skilled Worker route. 60 mandatory points are required to qualify for this route namely, (i) sponsorship (20 points), (ii) job skill level (20 points) and (iii) salary (20 points).

The Inter Company Graduate Trainee Route is for workers who are being transferred by the business they work for to undertake a role in the UK as part of a structured training programme. It should be noticed that each is a separate route.

Neither of those routes are routes for settlement but dependents of the candidate are allowed to reside in the UK on a temporary basis.

8. Expansion worker route visa

An expansion worker visa allows the worker to come to the United Kingdom to set up a branch of an overseas business which has not started trading in the United Kingdom yet. The worker must be employed by the overseas business as either a senior manager or a specialist employee.

To be eligible (i) a certificate of sponsorship from the overseas employer is essential; (ii) the individual must have worked for the employer outside the United Kingdom; (iii) and perform a job which is on the list of eligible occupations; (iv) and be paid the minimum eligible salary required for the job. An expansion worker's stay is for twelve months after the start of the job on the certificate of sponsorship or the time given on the certificate of sponsorship plus 14 days. An extension of the visa is possible for a further twelve months with a maximum stay of two years. If the worker has spent time on another visa, she/he may not be able to stay on the expansion visa for as long. She/he can only stay in the United Kingdom for five years in any six-year period if the worker spent time on any of the following visas namely the graduate intra company trainee visa; the intra company graduate transfer visa and the five Global Business Mobility Visas.⁴³

⁴¹ To be noticed is that the EEA countries are excluded, namely, Norway, Iceland and Lichtenstein as is Switzerland which does not form part of the EEA but is part of the single market.

⁴² *Ibid*, p. 10.

⁴³ These include the graduate trainee visa, the secondment work visa, the senior or specialist worker visa, service supply visa and the United Kingdom expansion worker visa,

The partner and children can apply to join and stay in the United Kingdom as dependants of the expansion worker if they are eligible.

9. The creative route visa⁴⁴

A creative worker is a person who is able to make a significant contribution to the UK's cultural life as for example a musician, dancer, artist, entertainer, a fashion model etc...The creative route allows them to enter the UK. Technical and support staff are allowed to travel under this route if their employment is directly related to the work being undertaken and they have a prior working relationship with the creative worker.

This route is not a route for settlement. Applicants in the creative industry may enter the UK for short term contracts or engagements for a maximum of twelve months initially with an extension to a maximum of two years if they are still working for the same sponsor.

There are certain eligibility rules which must be followed by applicants who (i) must have a confirmed job offer and a certificate of sponsorship by a UK employer licensed by the Home Office. Such certificate must be valid for three months from the date assigned to the sponsor. (ii) Such person must make a unique contribution to the labour market by being internationally renowned. (iii) The creative artist must be paid at least the minimum salary set out by EQUITY, PACT, or BECTU (except for models, circuses, and musicians). (iv) The creative artist needs to have enough funds to support her/himself while in the UK which is usually £ 1,270 (unless exempt).

10. Sporting route visa⁴⁵

This route is for elite sportspeople or qualified coaches recognised at the highest level internationally. The aim is to develop UK sport at the highest level.

International sportspeople need to have a confirmed job offer and their employment must be sponsored by a UK employer licensed by the Home Office. They therefore need a valid certificate of sponsorship for the job. In addition, they must have an endorsement from the relevant governing sports body. They must be able to speak and understand English (if applying to stay in the UK for 12 months and over). The sportsperson needs to have personal savings to cover UK living expenses which would normally be £ 1,270 unless the employer sponsors the sportsperson whereupon the sponsor must complete the "sponsor certifies maintenance" section of the certificate of sponsorship.

The sportsperson can stay in the UK for three years, but the visa may be extended as long as such person remains eligible. This route is open to settlement in the UK after five years. A sportsperson's family and dependents also qualify to join such person.

⁴⁴ *Ibid.* p.11.

⁴⁵ *Ibid.* p.11.

11. Youth mobility scheme route visa⁴⁶

British employers have the benefit of this scheme. The UK has arrangements in place with eleven countries⁴⁷ and territories to enable approximately one thousand young people aged from 18 to 30 years old⁴⁸ to enter the UK to work and travel each year for a maximum of two years. In addition, British Overseas Citizens, British Overseas Territories' citizens and British nationals overseas may also apply but only if they have no dependants and have not already benefited under this scheme. In all cases applicants must be between 18 to 30 years old and are allowed to live and work for two years. They must have savings of £2,530.

12. High potential individual route visa

This route is open to recent graduates of top global universities who want to work or look for work in the UK following the successful completion of an eligible course of study equivalent to a British bachelor's degree or above. The applicant needs to acquire 70 points to be eligible. 50 points are awarded to the candidate for fulfilling the global university's list degree requirement, 10 points are awarded for the English language requirement and a further 10 points are awarded for the financial requirement.

This route grants the candidate permission to stay in the UK for at least two years. To qualify, the individual must have been awarded a qualification from an eligible overseas university in the last five years. If the individual has a PhD or another doctoral qualification such as DSc, D.Litt or LLD such person is enabled to have an extended stay in the UK for three years. Ecctis⁴⁹ must confirm that it meets or exceeds the standard of a UK bachelor or doctoral degree. The time limits cannot be extended but a switch may be made to a different visa route as for example the skilled worker visa route.

The individual can, with a visa, work in most jobs, look for work, be self-employed, do voluntary work, travel abroad, and return to the UK.

⁴⁶ *Ibid.* pp.10 and11.

⁴⁷ Namely, Australia (with a maximum allocation of 35,000 places); Canada (with an allocation of 8,000 places); Monaco (with an allocation of 1,000 places); New Zealand (with an allocation of 13,000 places); San Marino (with an allocation of 1,000 places); and Iceland with an allocation of 1,000 places. There are four countries whose applicants must be selected by the Youth Mobility Ballot Scheme before they may apply for a Youth Mobility Scheme visa. These include Hong Kong, Taiwan and South Korea (each of which have a maximum of 1,000 places); Japan, with an allocation of 1,500 places) and India which has a maximum allocation of 3,000 places and enjoys a selection process called "The India Young Professional Scheme". Source "Youth Mobility Scheme. Version 20.0 Published for Home Office Staff 28th February 2023.

⁴⁸ With the exception of New Zealand where the age limits are 18 to 35. Who are allowed to work in the United Kingdom for three years as from 29th June 2023.

⁴⁹ Ecctis is a gold- standard provider of solutions and services in international education, training and skills, and in the development and recognition of globally portable qualifications. It is an internationally trusted and respected reference point for qualifications and skills standards. Ecctis operates official recognition services behalf of the UK Government. UK ENIC is the UK National Information Centre for global qualifications and skills. Formerly UK NARIC following the United Kingdom's departure from the European Union, the NARIC national agency function is now known as UK ENIC.

This route is unsponsored and is not a route for settlement. A dependent partner and children can also apply to join the high potential individual and stay in the UK if eligible. The visa fee for each person, namely the worker and each member of his/her family, is £715 and in addition there is a health surcharge for the use of the National Health Service.

13. Scale-up route visa⁵⁰

This new route launched in August 2022 allows for foreign workers enjoying exceptional or top talent to come to the United Kingdom with their families with the objective to perform an eligible job for a fast-growing United Kingdom business⁵¹ for a minimum of six months.⁵² Such a scale-up worker must have a confirmed job offer from an approved scale-up business⁵³ for at least six months, have a certificate of sponsorship by the employer detailing the role offered to the scale-up worker, have a job offer to perform a job which is on the list of eligible occupations and be paid a minimum salary in the new job. There is the usual requirement for the scale-up worker to speak, read and write English. The scale-up worker can stay in the United Kingdom for two years. An extension of the two-year visa can be made on its expiry as many times as is wished by three-year tranches at a time so long as the eligibility requirements are met. The visa cost is £715 and in addition there is the healthcare surcharge for each year of their stay in the United Kingdom.⁵⁴

The scale-up worker must work in the sponsored work for at least six months. Such worker can leave the sponsored job after six months to study, take no additional work, becoming self-employed, carry out voluntary work, travel abroad and return to the United Kingdom, and apply to settle permanently⁵⁵ after a five year stay and meet the other eligibility requirements.

A scale-up worker cannot apply for most social benefits or the state pension or work as a professional sportsperson, as, for example a sports coach.⁵⁶

⁵⁰ United Kingdom businesses which experience impressive success are eligible to sponsor talented persons, from engineers to architects, to doctors, to scientists, programmers, economists, investment advisers, research and development professions, to support their growth and thus contribute to boosting the British economy.

⁵¹ The OECD and the United Kingdom Government calls scale-up businesses as being those companies which have been growing over three consecutive financial years at an annual rate of above 20% in terms of turnover and number of employees. They need to have a minimum of ten employees three years before they applied for a Sponsor License.

⁵² During the first six months of a scale-up worker's stay such person cannot change employer unless the individual applies to update the visa. Such worker does not need to update the visa if he/she starts a different, eligible job with the same employer.

⁵³ The United Kingdom currently records some 34,000 companies which meet the criteria of of a Scale-Up Company. The UK Scale-Up Company list includes Worker and Temporary Sponsors. It includes information on the category of workers which they sponsor as well as their sponsorship rating. In order to issue a certificate of sponsorship, scale-up companies need to show an A-rating on the list of approved United Kingdom sponsors.

⁵⁴ That is for each member of the family.

⁵⁵ Known as "indefinite leave to remain."

⁵⁶ Regarding the Scale-Up Visa the Minister for Safe and Legal Migration said "Rapidly growing businesses, like small enterprises, tech and financial services, need the right level of support to go to the next level. Through our Scale-up visa, we're enabling businesses to focus on their growth and innovation

14. Seasonal workers route visa (temporary work)⁵⁷

An individual may apply for a Seasonal Workers' visa to work in horticulture⁵⁸ for up to six months in any twelve-month period. The pilot scheme has been quadrupled to 10,000 workers. One can no longer apply to carry out poultry work,⁵⁹ drive a heavy goods vehicle (HGV) to transport food or work in a pork butchery.⁶⁰

The migrant needs to have a valid sponsor reference number from a UK sponsor⁶¹ who is an approved scheme operator, be 18 years of age or over, and have enough money to support her/himself in the UK. Normally the sum of £ 1,270 needs to be available (unless exempt). The applicant will be exempt if the sponsor is able and willing to cover the cost of £1,270 for the first month. Furthermore, the applicant needs to provide a valid passport or other type of travel document which shows the migrant's identity and nationality. The migrant must be informed of the role he has to play in his job which must be within the horticulture or poultry production fields.

As for the sponsorship certificate, it is mandatory that it should include the following information. Firstly, the migrant's name, job description and the salary which needs to fulfil three requirements, namely (a) that the migrant will be paid a minimum of £10.10 per hour worked; (b) in the case of a sponsored butcher, game/bird dresser, poultry processor, trusser or sticker in poultry production and, poulterer, such person has to be paid at least £25,600 a year *pro rata* and (c) a sponsored poultry production migrant must receive at least 30 hours paid employment each week.

In the second instance, the date when the job starts must be no more than three months from the date when the seasonal visa application was made. Thirdly, written confirmation that the migrant will be paid the minimum hourly rate of £10.10. Fourthly, confirmation

by giving them more freedom to bring in the diverse skills and experience they need, making them more attractive on an international stage. By supporting our high-growth tech, financial services and small businesses we are ensuring the UK remains a global hub for emerging technologies and innovation while enhancing productivity across the economy – creating jobs, growth and prosperity across Britain.”

⁵⁷ Source. “The UK’s points-based immigration System” *op. cit.* at p. 11.

⁵⁸ To pick fruit, flowers, and vegetables. The horticulture industry is very wide and includes glass and field fruit and vegetables. mushrooms, strawberries, raspberries, black currants, blueberries and other soft fruit grown in fields, glass houses and polytunnels apples, plums and other orchard fruit trees, cherries, apricots, vines and bines both twining and climbing flexible stems, bulbs and cut flowers, pot plants, ornamental nursery plants as for example roses, shrubs, Christmas trees and other ornamental nursery stock, perennials, annuals, exotic plants grown indoors, nurseries, poultry catcher/handler, food operative and much more

⁵⁹ Although seasonal visas have been allocated for seasonal poultry workers from 2022 to 2024 in relation to the Good Food Strategy. Poultry production includes bird/game dressing, killer and plucker, poultry processor, food operative, poultry packer, butcher, poulterer, poultry vaccinator and so on. The 2000 places have already been awarded during the period 2022 to 2024 and for the time being there will be to more awards.

⁶⁰ Temporary work – Seasonal worker applications must be submitted from outside the United Kingdom. Seasonal visa applications must be made at the earliest three months before the date on which the migrant is due to start work. There is no time limit for applications made by workers in the edible and ornamental horticultural industry.

⁶¹ A certificate of sponsorship is a reference number which can only be used on one occasion with a validity of three months from the day it is assigned to the applicant. That reference number holds information about the job. It is not a certificate as such or a paper document.

that the Certificate of Sponsorship was not used on a previous occasion or was refused or withdrawn by the sponsor or by the Home Office. Finally, confirmation that the job complies with the Working Time Regulations and if applicable, the Agricultural Wages Order rate.

If the migrant has a child during his stay in the UK, that child or children do not automatically have British citizenship. Nor may a seasonal worker have a permanent job or take a second job which is not described in the certificate of sponsorship. The migrant cannot receive public funds or bring into the UK family members. The migrant must therefore carry out only the job described in the certificate of sponsorship or study (for jobs which need an Academic Technology Approval Scheme certificate.)

There have been significant shortages of agricultural workers in 2022 and employers have been calling to additional workers to be recruited. The Government has agreed to raise the cap on Seasonal Workers' route visas from 30,000 to 45,000 in 2023 with an additional 1,000 if required.⁶² So long as employers demonstrate that they comply with welfare standards and pay workers the minimum number of paid hours per week.

The report of the Independent Chief Inspector of Borders and Immigration for the agricultural sector was critical of certain practices⁶³ which the Home Office agreed to remedy.⁶⁴ They included (a) the setting up of a dedicated team to monitor how the immigration aspect of the seasonal workers operate in practice and introducing training and guidance, developing specialist staff and using advanced intelligence to counter exploitation and abuse of this route; (b) To review the Seasonal Worker route by April 2023; (c) To prepare a document which outlines the Home Office roles and responsibilities units which deal with the Seasonal Workers route by July 2023; (d) To publish a roadmap relating to communications and engagement by April 2023.

VII. Safe and Legal Routes.

The United Kingdom has a proud history of helping those in need. The points-based system is intentionally flexible to take certain circumstances into account. Implementation of the new routes has provided the UK with the building blocks to respond effectively and thus introduce safe and legal routes. Permission to stay in the United Kingdom is granted in four situations, namely under the Ukraine Schemes, the Victims of Human Trafficking and Slavery/Modern Slavery Routes, the Hong Kong British Nationals (Overseas) Route and the Afghan Citizens Resettlement Scheme.

⁶² Source: <https://www.gov.uk/government/news/government-provides-boost-to-horticulture-industry-with-certainty-over-seasonal-workers> (Retrieved 3rd January 2023).

⁶³ Source: <https://www.gov.uk/government/publications/an-inspection-of-the-immigration-system-as-it-relates-to-the-agricultural-sector-may-to-august-2022> (Retrieved 3rd March 2023).

⁶⁴ <https://www.gov.uk/government/publications/response-to-an-inspection-of-the-immigration-system-in-the-agricultural-sector> (Retrieved 3rd March 2023).

1. The Ukraine schemes

The Ukraine Schemes: The Ukraine Family Scheme and Home for Ukraine Scheme was launched on 18th March 2022 to enable Ukrainian nationals who are given permission, to enter and stay in the United Kingdom. The schemes which are fully digital and constitute one of the fastest implemented and biggest visa programmes in United Kingdom history. The Ukraine Extension Scheme was launched on 3rd May 2022 allowing Ukrainian citizens three years permission to remain with full access to work, study and receive public funds. Such extension is required to take into account the needs of citizens affected by the war in Ukraine. This extension of the eligibility period will assist Ukrainian nationals who travelled to the United Kingdom without making an application to one of the Ukraine Schemes and who were granted six months' leave outside the rules at the border, as well as other Ukrainians who arrived with permission to enter and stay. Both categories of persons are eligible to extend their stay in the United Kingdom under the Ukraine Extension Scheme. The new rules also introduce a new requirement to apply to the Ukraine Extension Scheme by 16th November 2023. This deadline is intended to encourage people to apply for leave under the schemes to ensure that they maintain lawful immigration status. As of 25th November 2022⁶⁵ 230,000 Ukrainian nationals completed successfully the application process of the Ukraine schemes.⁶⁶

2. Victims of human trafficking and slavery route

Permission to stay for victims of human trafficking and slavery establishes a route for a person who is a victim, who is not a British citizen and who is in the United Kingdom without permission to stay, to be considered to stay. This new route was opened on 30th January 2023.

To qualify, such persons must be served with a positive conclusive grounds decision as defined by the Nationality and Borders Act 2022⁶⁷ and must not be of British nationality. Such persons must not have permission to stay in another category in the United Kingdom, they must physically be in the United Kingdom and apply for an extension under this route as a victim of trafficking, slavery or modern slavery.

The Secretary of State will grant permission if he/she considers it necessary under the Act⁶⁸ of assisting a person or persons in their recovery from a physical or psychological harm arising from the exploitation, enabling persons to seek compensation with regard to the exploitation or enabling a person to co-operate with a public authority in connection with an investigation or criminal proceedings in connection with the exploitation.

⁶⁵ Source: "New plan for immigration: legal migration and border control" at para. 17. (November 2022 Gov. UK) <https://www.gov.uk/government/publications/new-plan-for-immigration-legal-migration-and-border-control-stretagy/new-plan-for-immigration-legal-mig...> (Retrieved 7th March 2023)

⁶⁶ There were 52,200 individuals for the Ukraine family Scheme and over 135,600 for the Homes for Ukraine Scheme.

⁶⁷ Nationality and Borders Act, 2022 s. 69 (1).

⁶⁸ Nationality and Borders Act, 2022 s. 65 (2) (a) to (c).

Temporary permission to stay will not be granted if the individual can be compensated or his needs are met in another country and would be reasonable to do so in the circumstances,

Children of confirmed victims of human trafficking or slavery are eligible to temporary permission to stay in the United Kingdom if the parents meet the aforementioned requirements.

3. Hong Kong British nationals (overseas) route

The United Kingdom introduced a bespoke route for Hong Kong British nationals and their families using a digital application process and innovative identity verification capabilities. This recognised the United Kingdom's historic commitment to the people of Hong Kong who wished to retain ties with the United Kingdom.⁶⁹

4. Afghan citizens resettlement scheme

This scheme provides 20,000 women, children and men at risk with a safe and legal scheme to resettle in the United Kingdom. The initial aim of resettling 5,000 individuals through this scheme in the first year will be exceeded.⁷⁰

Furthermore, the British Government proposes to implement commitments made during the passage of the Nationality and Borders Act 2022 including for Hong Kong armed forces, for Chagossians (British Overseas Indian Territories) and reforms to the nationality laws to tackle unfairness.⁷¹

VIII. Lower Skilled Workers

It is noticeable that no route for lower -skilled workers is provided. It is the British Government's objective to reduce migration in the UK by an overall reduction in migration numbers, to terminate free movement of workers and not create a route for low-skilled workers. Businesses will have to adapt and adjust to the end of the free movement concept. Businesses need to move away from a reliance on the migration system as an alternative to investment in staff retention and concentrate in productivity and wider investment in technology and automation. Even in the current absence of a route for lower-skilled workers from outside the EU, it is estimated that 170,000 recently arrived non-EU citizens in lower-skilled occupations. This supply will continue to be available. Furthermore, the Youth Mobility route⁷² can provide employers with further ongoing flexibility to employ individuals into lower-skilled jobs.

⁶⁹ Over 92,000 British nationals' overseas visas were granted between 31st January 2021 to 31st March 2022. para, 25.

⁷⁰ Source: "New plan for immigration: Legal migration and border control" (Gov,UK) 25th November 2022 p. para 26.

⁷¹ Source: "New plan for immigration: Legal migration and border control" (Gov.UK) 25th November 2022 para. 28.(Gov.UK).

⁷² See p. 15 above.

The European Union Settlement Scheme⁷³ is, - in spite of delays, - working satisfactorily. Millions of applications have been made to the scheme from EU citizens already at work in the UK. They are both welcomed and wanted to remain in that country to continue to make important contributions to its economy and society. There are among them lower-skilled workers who enjoy unrestricted rights to work thus providing employers with flexibility to meet labour market demands.

IX. Other Current and Future Routes and Non- Routes

The UK continues its *visitor route* with simplified rules and guidance. EU citizens will continue to be treated as non- visa nationals which means that they may stay in the UK for six months in any one year without a need to obtain a visa. EU citizens will ultimately be able to use e-gates subject to keeping that policy under review. Nor are there any changes to the arrangements to the Common Travel Area.⁷⁴

A future system will also deliver on commitments⁷⁵ in line with *existing and future trade agreements*, for temporary service suppliers. In line with existing and future trade agreement individuals will achieve the required points if they meet the requirements for the specific routes.

The rules for family reunion, border crossing checks and asylum do not form part of the points system. They will however remain integral to the transformation of the UK's new immigration system programme.

For *self-employed persons* there will be no dedicated route. The Government states that⁷⁶ “We recognise that there are several professions where there is a heavy demand on freelance workers. They will continue to be able to enter the UK under the innovator route and will in due course be able to benefit from the proposed unsponsored route. The UK ... attracts world class artists, entertainers and musicians and will continue to do so in the future. The UK's existing rules permit artists, entertainers and musicians to perform at events and take part in competitions and auditions for up to six months. They can receive payment for appearances at certain festivals or up to a month for a specific engagement without the need for formal sponsorship or a work visa.”

⁷³ See pp.1–5 above.

⁷⁴ The Common Travel Area (CTA) is a long-standing arrangement between the United Kingdom, the Crown Dependencies (Bailiwick of Jersey, the Bailiwick of Guernsey and the Isle of Man) and Ireland which predates both British and Irish membership of the EU and is not a dependent on it. Under this arrangement, British and Irish citizens can move freely and reside in each jurisdiction and enjoy associated rights and privileges, including the right to work, study and vote in certain elections, as well as to access social welfare benefits and health services. A Memorandum of Understanding was signed by the Irish and British governments in May 2019 re-affirming the commitment to maintain the Common Travel Area For more details see <https://www.gov.uk/government/publications/memorandum-of-understanding-between-the-uk-and-ireland-on-the-cta> (Retrieved 8th March 2023).

⁷⁵ I.e., commitments which the UK takes in free trade agreements in respect of temporary entry and stay of business persons. These commitments typically cover business visitors, intra- company etc...

⁷⁶ Source: “The UK's Points-Based Immigration System – Policy Statement” February 2020 at p. 9. Paragraph 25.

The Government has introduced a single, consistent and firmer approach to *criminality* across the immigration system. It is applied to everyone entering the UK, wherever they are from. Currently, EU citizens are subject to different thresholds for criminality than those for the rest of the world. Existing UK rules for non- EU citizens are both stricter and more specific. The Government says that⁷⁷ “The application of the current EU policy test is less certain and predictable in practice than we would like.”

The *Electronic Travel Authority* (ETA) is a new requirement for people who do not need a visa to enter the United Kingdom or who are eligible for an electronic visa waiver.⁷⁸ It gives individuals permission to travel to the United Kingdom such permission being electronically linked to a person’s passport. It is a digital authorisation which allows an individual to board a carrier, whether by air, sea or land, travelling to the United Kingdom. People can visit the United Kingdom for up to six months for purposes of tourism, to visit family and friends, to study or for business purposes. or come to the United Kingdom for up to three months on the Creative Worker visa concession.⁷⁹ or transit in the United Kingdom. An Electronic Travel Authority is not required if the individual has a British or Irish passport, if the individual has permission to live, work or study in the United Kingdom or if the individual has a visa to enter the UK.⁸⁰ An application may be made online (which includes the provision of biometric details) or on the UK ETA app. The cost to obtain an Electronic Travel Authority has not been announced at the time of writing.⁸¹ The Electronic Travel Authority lasts for two years or until the expiry of the individual’s passport⁸² when the individual will have to apply for another Electronic Travel Authority.

X. Conclusions Drawn from the Immigration Theme

Eight conclusions may be drawn from what has been said on the Immigration system.

(i) The fact that new routes have been introduced for highly skilled workers,- whether they be under the skilled workers, global talent, graduate, innovative, global business

⁷⁷ *Ibid.*

⁷⁸ Source: <https://www.gov.uk/get-electronic-visa-waver> (Retrieved 20th March 2023).

⁷⁹ Source: <https://www.gov.uk/creative-worker-visa/creative-visa-concession> (Retrieved 14th March 2023)

⁸⁰ If a person is legally resident in Ireland and does not need a visa to enter the United Kingdom, she/he will not need an Electronic Travel Authority if such person is entering the United Kingdom from Ireland, Guernsey, Jersey or the Isle of Man.

⁸¹ This being 16th March 2023. Judging from the United States and Australian system the cost will be in the region of *circa* £17. The Electronic Travel Authority will be linked electronically to the passport applied for which means that the individual must use the same passport for travel.

⁸² A person can use it to make multiple visits to the United Kingdom and use the electronic passport gates if eligible or see the Border Force officer to enter the United Kingdom. <https://www.gov.uk/uk-border-control/at-border-control> (Retrieved 26th March 2023). If an Electronic Travel Authority is refused the person may apply for a Standard Visitor Visa <https://www.gov.uk/standard-visitor> (Retrieved 16th March 2023); Temporary Work – Creative Worker visa <https://www.gov.uk/creative-work-visa> (Retrieved 16th March 2023) to visit the United Kingdom as a creative worker or Transit visa <https://www.gov.uk/transit-visa> (Retrieved 16th March 2023).

mobility, intra company, expansion worker, creative, sporting, youth mobility, high potential, scale-up or agricultural routes, - to enter the UK constitutes a positive step towards selecting and retaining top talented workers in the country, this being an important post Brexit British government policy.

(ii) According to the Government, it intends to introduce further changes to the current Rules in its “New Plan for Immigration” which hopes to develop further the current migration system with the aim of achieving economic growth in the United Kingdom. As pointed out in this chapter, this policy will become operative from 15th November 2023 into 2024 with more countries to be added to the scheme.⁸³

(iii) The Office of Budget Responsibility (OBR) estimates that net migration⁸⁴ will stabilise at approximately 245,000 migrants *per annum* from 2026 -2027 onwards.⁸⁵ In September 2022 alone there were 504,000 migrants, - the highest ever, - who entered the United Kingdom. Of these, 30% of the visas issued were for study purposes, 20% for work purposes and 50% included Ukrainian and Hong Kong nationals and their respective dependants. It is interesting to notice that in 2021 when the post Brexit regime was introduced 800,000 visas were issued in the first year of operation. Only 50,000 visas were issued to European Union citizens who did not require a visa under the previous, (i.e. Brexit) regime because they exercised the principle of freedom of movement in all European Union States. Student visas were granted to 490,000 foreign students in 2022, which was a record high, with 129,000 visas granted to Hong Kong nationals and 210,000 to Ukrainians.

(iv) Immigration has both advantages and disadvantages. The advantages of immigration are numerous. They include the following: An increase the economic outlook, growth and living standards, the expansion of the labour force, the filling of skill gaps in the labour market, immigrants bring innovation and energy, the increase of cultural variety and diversity, failing schools and those with falling numbers can be transformed, boost to the local economy (paying Council Taxes) as well as national economy (contribution made by migrants to the public finances and revenue which include the payment of direct taxes (such as income tax and national insurance contributions) and indirect taxation (such as Value Added Tax (VAT) on the purchase of goods and services) and inheritance tax, migration is also good for the National Health Service (NHS) where they form an essential part of the healthcare force (which include doctors, nurses, cleaners, porters, ambulance drivers, and other people who look after the nation’s citizens such as reflexologists and other alternative medicine workers, Migration attracts potential

⁸³ From 15th November 2023 an Electronic Travel Authorisation for travelling to the United Kingdom will be needed by nationals of Qatar. From 22 February 2024 Electronic Travel Authorisation will be required from nationals of Bahrain, Jordan, Kuwait, Oman, Saudi Arabia and the United Arab Emirates. More countries will be added in due course.

⁸⁴ Net migration signifies the difference between the number of migrants entering the United Kingdom and the number of individuals leaving the country.

⁸⁵ Source: The Times 16th March 2023 at page 4.

entrepreneurs, deals the ageing population, provides a more flexible labour market, increased and demand for growth.

The disadvantages of migration are as numerous as the advantages. An important disadvantage is that if unending numbers of migrants occupy an area it may not only cause overcrowding but also have detrimental consequences on the local population, such as the displacement of jobs, unemployment and limited access to natural resources. There could be an increase in the rate of crime, health risks and climate change as, for example, an increase in the level of pollution. Pressures on public services and the infrastructure such as schools, healthcare and housing may ensue. Racial tensions and discrimination could occur. Language, racial and cultural barriers may come about. There could be a gender imbalance in the population because more men migrate usually, friction may develop between the local population and migrants in that the local population may see the migrants as a threat because of increased competition. Depression of wages may occur especially in lower paid jobs and exploitation may take place.⁸⁶ Workers willing to work in relatively low pay may allow employers to ignore productivity, training and innovation. Unemployment may arise if there are unrestricted numbers of incomes. Social problems for children left behind or growing up without a wide family circle may occur. Large movement of migrants may lead to security monitoring and facilitate organised crime and people trafficking.

In spite of its disadvantages, migration can be beneficial, - particularly to the richer countries, - for it contributes to cultural diversity, helps the health and care services of the National Health Service and increases the vitality of schools, particularly in the rural areas and is economically beneficial.

(v) The points-based system will provide significantly greater flexibility for skilled workers wishing to migrate to the UK. The requisite salary thresholds and skill levels will provide employers with greater scope to employ skilled migrants globally.

(vi) As of 31st January 2021, when Brexit came into effect, a migrant's journey to the UK may be put into a five- part wrapper.⁸⁷ The first part is the *planning to migrate*. Both EU citizens and non-visa nationals will not require a visa to enter the UK when using the visitor route. If, however they wish to apply to enter the country by use of another route, (for example to work or study) they will need to leave the UK within the six months visa-free period before making an application for permission to enter that other route. Such application needs to be made in advance of entry into the UK. Part two of this journey consists in *obtaining permission to enter* the country from the Home Office. Applications for visas by EU migrants need to be made online. Non-EU citizens will normally continue to visit Visa Application Centres (VACs) to enrol their biometrics. Part three entails *crossing the UK border*. Electronic gates can be used by migrants of certain countries

⁸⁶ See footnote 1 *ante*. See too Jo Carby-Hall "The Continuing Exploitation of Economic Migrants and other Vulnerable Workers" in *Essays on Human Rights. – A Celebration of the Life of Dr. Janusz Kochanowski*, Jo Carby-Hall (Ed) Ius et Lex, Warsaw, 2014 at pp. 94 - 134.

⁸⁷ *Ibid.* Annex A.

whereas migrants from other countries would need to see the Border Force officer. EU migrants will continue unilaterally to use the e-gates with the proviso that the UK will keep this policy under review. Citizens from Australia, Japan, Canada, South Korea, Singapore, New Zealand and the USA and since November 2022 citizens of Columbia, Guyana, and Peru have been made non-visa nationals who possess biometric passports, will continue to use e-gates to pass through the UK border either as visitors or with prior permission. The fourth part of the journey is to do with *living in the UK*. EU citizens are to use their online checking service to demonstrate their immigration status, their rights and entitlements, where permitted, when accessing work and services in the UK. For many EU citizens their status will automatically be available when seeking to access benefits or the NHS. Non -EU citizens will continue to use their physical documentation. Finally, when *leaving the UK* after leave has expired, or not leaving at all when required to, will impact a migrant's immigration status and would affect future interactions with UK immigration.

(vii) Migration concept is not a new phenomenon in the United Kingdom. It has a lengthy history. Famine in Ireland in the 1880s brought many immigrants to Great Britain. In the 1940s scores of migrants came from India, Pakistan and Bangladesh to escape the civil war and seek employment. In the 1950s migrants arrived from the West Indies seeking employment. In 1972 Ugandan Asians escaping political persecution sought refuge and employment in the United Kingdom. In 2004 onwards Eastern Europeans (particularly from Poland and Romania) arrived in the United Kingdom to seek employment as a result of European Union enlargement and the freedom of movement policy. Today, India is the most popular country from which migrants travel to the United Kingdom to seek work with significant migration from Pakistan and Poland.

(viii) The discussion above illustrates well the complexity of the United Kingdom's Immigration Rules. These need to be urgently addressed by the Government, for the reader is often unable to distinguish the wood from the trees. The Immigration Rules have been widely criticised for their poor drafting, for being long, complex and difficult to use.⁸⁸ Hundreds of thousands of decisions are made annually under the Immigration Rules. Decisions which can be lifechanging for migrants seeking entry or leave to remain in the United Kingdom and their families surely deserve greater attention, clarity and better treatment.

⁸⁸ See L.J. Heddon-Cave Barnards Inn 17th June 2021 "How Complex is UK Immigration Law and is it a Problem?"

The rule of law concept which dates back to time immemorial⁸⁹ demands that laws should be clear, concise and accessible. John Rawls⁹⁰ holds the opinion that there is an important connection between the rule of law and liberty in that the rules of a legal system have the purpose of “Regulating ...conduct and providing the framework for social co-operation. When these rules are just, they establish a basis for legitimate expectations.” However, Rawls goes on to state that “If the bases of these claims are usure, so are the boundaries of men’s liberties.”⁹¹ He then states that the concept of the Rule of Law requires “that the laws be known and expressly promulgated” and “that their meaning be clearly defined.”⁹² Where “statutes are vague and imprecise, what we are at liberty to do is likewise vague and imprecise. The boundaries of liberty are uncertain.”⁹³ The learned Lord Justice Haddon-Cave in his 2021 Gray’s Inn reading⁹⁴ having alluded to others who have expressed themselves on the rule of law turned his attention to complex legislation and singled out⁹⁵ “legislation which is born complex and then repeatedly amended to make it even more unintelligible. The most notorious example is immigration law which has been universally criticised by legal commentators and journalists alike.”⁹⁶

Referring to Lord Bingham who talked of the Rule of Law as being⁹⁷ “accessible and so far as possible intelligible, clear and predictable” the learned “Lord Neuberger, a former President of the Supreme Court of the United Kingdom referring to immigration law as being neither accessible, nor intelligible, unclear and unpredictable said⁹⁸ “One access aspect of the rule of law which is sometimes overlooked is access to the law itself, in other words access to statutes, secondary legislation and case law. It is of course a fundamental requirement of the rule of law that laws are clearly expressed and easily accessible. To put the point simply, people should know or at least be able to find out, what the law is.”

⁸⁹ Aristotle in the 4th century BC contrasted the rule of law from the rule of the individual and Montesquieu in the 18th century contrasted the legitimate authority of monarchs with the “caprice” of oligarchs, dictators, and the like. In modern times the rule of law has wider and various meanings. They include the following notions, namely, nobody is above the law, everyone is equal before the law, laws should not have retrospective effect, the laws are properly promulgated, equally enforced and adjudicated by an independent judiciary, supremacy of the law, certainty of the law, access to justice and judicial review, transparency, fair access to the courts when disputes arise, human rights, transparency, proportionality, The rule of law constitutes a framework which underpins fair, open and peaceful societies where both citizens and business can prosper.

⁹⁰ John Rawls, *A Theory of Justice*, The Belknap Press of Harvard University, Cambridge, Mass. at p.135.

⁹¹ *Ibid.* p. 235

⁹² *Ibid.* p. 238.

⁹³ *Ibid.* p. 239.

⁹⁴ “English Law and Descent into Complexity” Gresham College 17th June, 2021.

⁹⁵ *Ibid.* p. 6 paragraph entitled “Two Types of Complex legislation.”

⁹⁶ The case law is consistent stressing the urgent “need to make the law and procedure clear and comprehensible” as recently reiterated by the Supreme Court. *Robinson v Secretary of State of the Home Department* [2019] UKSC 11 per Lord Lloyd Jones. (This footnote is that of Lord Justice Haddon-Cave appearing as footnote 39 of his paper).

⁹⁷ The Right Honourable Lord Bingham of Cornwall, *The Rule of Law*, Penguin, 2010 at p. 127

⁹⁸ While addressing the Australian Bar Association in July 2017. Source: <https://freemovement.org.uk/how-complex-are-the-uk-immigration-rules-and-is-it-a-problem/>

As the Law Commission commented in its recent consultation *Simplifying the Immigration Rules*, a significant cause of complexity has been the prescriptive approach adopted by the Home Office which generates a need for frequent amendments in a cycle of “*detail begetting detail*.”⁹⁹

The Law Commission¹⁰⁰ published its report and consultation paper entitled *Simplifying the Immigration Rules* on 21st January 2019 where the Rules totalled 1,100 pages. The Report recommended a complete redrafting of the Immigration Rules aiming at creating simplified and more easily accessible Rules which offer increased legal certainty and transparency for applicants. The recommended changes included (a) improvement to how the rules are structured, drafted and maintained, (b) twice yearly updates to the Rules, (c) the introduction of the evidence required from migrants because the over-detailed approach has led to an increased number of amendments to the Rules making them more difficult to follow. By reducing the level of detail and prescription there would be a reduced need for frequent amendment.

In its policy paper entitled *New Plan for Immigration: legal migration and border control*¹⁰¹ the Government talks of simplification¹⁰² “To ensure our customers can navigate the system easily, get what they need and understand how to comply to our rules, we have simplified our Immigration Rules and implemented the recommendations of the Law Commission. This will cut through complexity and make the rules clear, consistent and accessible, to encourage those who have the skills or talent that will benefit the UK and crack down on illegal migration and remove those who abuse our hospitality by committing criminal offences.” Furthermore “The new rules have been structured so the requirements of each route are generally in one place, making them easier to find. The rules have been written in plain English, so they are easier to understand for those using the system.” What is also interesting is that the Home Office is working with the Law Commission to consolidate the immigration legislation to make the legal system easier to navigate and understand for users.¹⁰³ Work began in January 2022 but still has a very long way to go before the preparation of a draft consolidation Bill together with its tables of Origins, Destinations and Notes required by the Parliamentary Joint Committee on Consolidation of Bills.¹⁰⁴

⁹⁹ Simplification of the Immigration Rules (2019 Law Commission Consultation Paper No. 242. Ch 5. (This footnote is that of Lord Justice Haddon-Cave appearing as footnote 40 of his paper) The Lord Justice in footnote 41 of his paper quotes the philosopher, scholar and theologian William of Ockham (1287 – 1347) as saying “entities should not procreate themselves.”

¹⁰⁰ <https://www.lawcom.gov.uk/project/simplifying-the-migration-rules/> (Retrieved 9th March 2023)

¹⁰¹ Updated to 25th November 2022.

¹⁰² *New Plan for Immigration: legal migration and border control* at page 9. Paragraphs 29 and 30.

¹⁰³ Recommendation 21 of the Law Commission stated “Building on the Law Commission’s review of the Immigration Rules the Home Secretary should request that the Law Commission extend the remit of its simplification programme to include work to consolidate statute law. This will make sure the law is much more accessible for the public, enforcement officers, caseworkers, advisers, judges and Home Office policy makers.”

¹⁰⁴ Source: <https://committees.parliament.uk/committee/171/consolidation-c-bills-joint-committee/> (Retrieved 21st March 2023).

In the Government's policy paper on new plans for immigration¹⁰⁵ the Secretary of State sets out the vision of the border and legal migration system for the future. Hopefully that vision will assist in meeting the clarity, certainty and boundaries of liberty required by the rule of law. The Secretary of States said "Over the next few years we are bringing in more improvements...to our legal migration system...our flagship permission to travel scheme will mean that it is easier to come...to the UK but harder for those we do not want to come here. Electronic Travel Authorisation will enable us to tackle problems upstream and we will know more about those who use the system to come here."

Upon closer examination of the current Immigration Rules, although there has been some small improvement regarding clarity and simplicity, the rules do not show much movement towards that direction. They remain unclear, confusing complicated and, at times, illogical with a certain lack of transparency. There is still a great deal of work to be done to reach the desired high standards sought after. It is hoped that in future years these and other plans will materialise and thus observe in part or wholly some closeness to the rule of law principle.

The epitome of what has been said throughout the chapter, is that a tug of war is in evidence on the United Kingdom migration issue. On the one hand the British migration policy is such as to limit migration figures and on the other hand the encouragement of growth policy features strongly. The Government is thus grappling with addressing skills shortages and at the same time it has a policy to bring down net migration. There is therefore - a strong element of conflicting growth. The British Government wants to maintain tough immigration controls and at the same time wants to encourage financial growth. The popular English idiomatic proverb is applicable to this situation. "The government cannot have its cake and eat it too."

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¹⁰⁵ See "New Plan for Immigration: legal migration and border control" Presented to Parliament by the Secretary of State for the Home Office ISBN 978-1-5286-3641-4 (July 2022)

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