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Chapter 14

UNITED KINGDOM

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I INTRODUCTION TO THE IMMIGRATION FRAMEWORK

i History

Legislation forms the bedrock of the United Kingdom's immigration system; common law (which is a feature of so much UK jurisprudence) has little or no relevance.

However, immigration legislation is of relatively recent origin, as the first relevant statute was the Aliens Act 1905, which permitted aliens (i.e., non-British or non-Commonwealth citizens) to be admitted to the country only through certain specified ports of entry and which also gave immigration officers the power to refuse to admit 'undesirable aliens'. The definition of undesirability was usually based on the likely ability of the alien to support and maintain himself or herself in this country, which remains a requirement to the present day.

Upon the outbreak of the First World War in 1914, the Aliens Restriction Act appeared on the statute book, which imposed severe restrictions on aliens and required them, for the first time, to register with the police. This requirement survives to the present day in relation to nationals of certain countries, and whether they are required to register is largely dependent on the political relationship between the United Kingdom and those countries of which they are citizens.

In 1953, for the first time, aliens who came to the United Kingdom for purposes of employment were required to be issued with a work permit from the Department for Employment, which took into account the local labour market and, on a broader basis, the country's economic situation from time to time.

Until 1962, citizens of the British Commonwealth were not subject to immigration control. This changed when the Commonwealth Immigrants Act 1962 came into force, which made a distinction for immigration control purposes between citizens of the United Kingdom and the Commonwealth on the one hand and citizens of independent Commonwealth countries on the other. The latter group was subject to immigration control, whereas the former was not. The same theme continued with the enactment of the Commonwealth Immigrants Act 1968, which further restricted the rights of Commonwealth citizens. Holders of UK passports were divided into two categories: those who had at least one parent or grandparent born, adopted or naturalised in the United Kingdom (not subject to immigration control) and those who had no ancestral connection with the United Kingdom (who became subject to immigration control).

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By 1971, the UK system of immigration control was a hotchpotch of legislation that had been enacted primarily to deal with the potential threat of 'enemy aliens', as well as the increasing numbers of people coming to the United Kingdom from Commonwealth countries to either live or work.

The first major parliamentary effort to establish a coherent immigration policy that was to apply to all non-United Kingdom citizens who sought entry to the United Kingdom was the Immigration Act 1971.

Although the 1971 Immigration Act still provides the framework of the UK immigration system, it was primarily enabling legislation. The UK immigration process is governed by Immigration Rules that are laid before Parliament from time to time by way of statutory instrument. Very rarely are these Immigration Rules debated, even though they set out the detail of the conditions attached to those coming to the United Kingdom for purposes of work or study and for any other reason. The current Rules appear in the document HC 395, which has been amended numerous times since it was implemented in 1994.

Recently, the Immigration Act 2016 strengthened the enforcement of illegal working in the United Kingdom. The 2016 Act prevents illegal migrants from accessing essential services and introduces new measures to enforce existing immigration laws and remove illegal migrants.

Increasingly, however, decisions by the senior judiciary play an important role concerning the manner in which legislation is both interpreted and applied. The English High Court has shown itself willing to take on the government in its enforcement of immigration policy where it is felt that the government has acted unconstitutionally. In this regard, probably the most important recent decision has been *R (Alvi) v. Secretary of State at the Home Department*,[2] in which the Supreme Court ruled that the enforcing of 'policy' or 'policy guidance' issued by the immigration authorities did not have the force of law and would not until or unless such policy guidance was incorporated within the formal statutory framework.

The United Kingdom's immigration landscape continues to change. The decision by the British electorate to leave the European Union following the referendum on Thursday, 23 June 2016 created widespread speculation about how Brexit might affect EU migration to the United Kingdom and vice versa. On 29 March 2017, the then Prime Minister, Theresa May, notified Brussels of the United Kingdom's intention to leave the European Union by invoking Article 50 of the Treaty on European Union. This commenced a two-year process of exit negotiations, which was extended various times until 31 January 2020 as the UK Parliament was not able to ratify the Withdrawal Agreement. Parliament finally ratified a Withdrawal Agreement with the European Union via the European Union (Withdrawal Agreement) Act 2020 in January 2020. The European Parliament, in turn, voted to approve the agreement two days prior to the deadline such that after three and a half years of extraordinary political tension and debate, the United Kingdom formally left the European Union on 31 January 2020. The United Kingdom and the European Union agreed a transition phase to last until 31 December 2020, during which the parties negotiated the terms of the future relationship between the United Kingdom and the European Union. These negotiations, which began in March 2020, covered an enormous range of issues, including trade, customs and regulatory alignment (or non-alignment). Despite the covid-19 lockdowns, disagreements that seemed unresolvable and numerous deadlines set by the Prime Minister Boris Johnson missed, on 24 December 2020, only days before the end of the

2 *R (on the application of Alvi) v. Secretary of State for the Home Department* [2012] UKSC 33.

transition period, a deal was struck between the United Kingdom and the European Union. Less than 48 hours before the end of the transition period, the House of Commons ratified the deal, which is officially called the EU–UK Trade and Cooperation Agreement.

With the end of the transition period, EU law no longer supersedes UK domestic law, and free movement rights can no longer be exercised in the United Kingdom. The EU settlement scheme remained available to EEA citizens who arrived in the United Kingdom before the end of the transition period on 31 December 2020, with the deadline for applicants to bring their immigration status within UK law and continue living in the United Kingdom lawfully being 30 June 2021.

On 1 January 2021, the United Kingdom introduced a new immigration framework. The purpose of the new system is to attract highly skilled workers needed by key sectors of the economy and regions of the country, while at the same time reducing overall levels of migration. In particular, free movement has been replaced by a points-based system (PBS), under which EU and non-EU citizens are treated equally. Any significant transformative effect of the new system is hard to gauge at this time, given that migration flow to the United Kingdom has been overshadowed by bespoke resettlement efforts for those fleeing various war-torn areas, particularly Afghanistan in the summer of 2021 and, more recently in early 2022, Ukraine.

ii Responsibility for immigration control

The Home Office is the government department with ultimate responsibility for administering the immigration system through a division known as UK Visas and Immigration. All immigration and nationality decisions are made by UK Visas and Immigration, both domestically and overseas. Individuals who either wish to enter the United Kingdom for employment purposes or are deemed eligible to do so must first obtain a visas or entry certificate from a UK consulate abroad before coming to this country, unless they fall into an immigration category that permits them to vary their status in-country.

UK Visas and Immigration does not have agency status within the Home Office but sits as an integral part of the Home Office itself, reporting directly to ministers. It largely covers immigration and consular processing, as well as immigration law enforcement. A strategic oversight board has been created for all constituent organisations within the immigration system, which includes immigration policy, the Passport Service and Border Force. This board is chaired by the Home Office Permanent Secretary.

Although British consulates are primarily administered by the Foreign and Commonwealth Office, all immigration decisions within those consulates are taken by either Home Office or Foreign and Commonwealth Office officials known as entry clearance officers.

The Home Office has wide-ranging functions, including the administration of government immigration policies, representing the government in the United Kingdom's immigration appeal system and close liaison with the Migration Advisory Committee (MAC), an independent body established by the most recent Labour government to provide, from time to time, recommendations concerning the impact on the UK labour market of various work-based immigration routes.

Since May 2010, the emphasis of government policy has been largely directed towards restricting the numbers of overseas migrants seeking entry to the United Kingdom to work or study. Government statistics apparently showed that, over the decade to 2010, net migration (i.e., the difference between those exiting the United Kingdom and those entering the country) reached 196,000 per year. It was claimed by the then Prime Minister that, of that

number, only 27 per cent represented EU migration to the country, although the government became increasingly alarmed that, with post-2008 financial crash austerity measures taking their toll on Southern and Eastern European countries in particular, EU migration to the United Kingdom was rising year on year. The government made a rod for its own back by announcing in November 2010 a flagship policy that it intended to reduce net migration to a level of tens of thousands. Of course, such a level had not previously been within the government's control in view of the free movement provisions within the European Union. In the months leading up to the 2016 referendum, Brexit campaigners seized the initiative to draw attention to the fact that EU free movement rules made it harder to limit immigration.

The transition period ended on 31 December 2020 and free movement has now finished between the United Kingdom and the European Union. New Immigration Rules came into force on 1 January 2021. EEA nationals now follow the same Immigration Rules as third-country nationals and require a visa to work in the United Kingdom. As things stand, EEA nationals who arrived in the United Kingdom before 1 January 2021 and failed to apply under the EU settlement scheme by 30 June 2021 will be treated as overstayers; however, the Home Office has confirmed that should they have reasonable grounds for missing the original deadline, they will be given a further opportunity to apply. Whether this will reduce net migration into the United Kingdom remains to be seen, although migration from the European Union in the year to June 2019 fell to 48,000 (down from 74,000 in the year to June 2018). Non-EU migration in the same year decreased from 248,000 to 229,000. EU migration in the year ending March 2020 is estimated to have increased again to 58,000, while an estimated 316,000 more non-EU citizens moved to the United Kingdom. The government remains committed to its policy but has changed its language to reducing net migration to 'sustainable levels'.

A further Home Office responsibility is policing the United Kingdom's borders, with immigration officers at ports of entry alone having the authority over whom to admit to the United Kingdom and on what terms. Those refused entry have no immediate right of appeal (and in certain instances have no right of appeal at all) at the time of a refusal to grant entry and must leave the country, usually on the next available flight. One advantage of the increased requirement for those coming to the United Kingdom to work and study to be in possession of an entry certificate or visa before being permitted to travel to the United Kingdom is that fewer arbitrary decisions are now being made at the entry ports.

Finally, the Home Office is responsible for policing the wide-ranging legal right to work requirements introduced by the Asylum, Immigration and Nationality Act 2006. While, initially, employers have the day-to-day obligation of ensuring that each of their employees has legal permission to take up employment, the Home Office will monitor the manner in which individual employers are complying with these duties. Substantial sanctions, including both severe financial penalties and imprisonment, can be imposed not only on the employer organisation itself but also on any director or manager of the employer who has circumvented or failed to properly apply the right to work obligations set out within the 2006 legislation. The Home Office has, additionally, passed the burden of immigration control onto landlords and banking institutions with obligations to carry out 'right to rent' and 'right to bank' checks in order to curb the availability of public services to illegal migrants, again with penalties for failure to carry out the appropriate checks. In 2022, the Home Office is rolling out their new identity document validation technology (IDVT), making an employer's obligation to comply with right to work checks accessible online. Currently, the service is available to certain employees, with the aim that all employees will eventually be signed up to the system.

The Home Office's online system provides employers with a statutory excuse against a civil penalty in the event of illegal working involving the subject of the check and is therefore more foolproof than manual checks.

II INTERNATIONAL TREATY OBLIGATIONS

i Recent history

Until the United Kingdom left the European Union on 31 January 2020, of greatest relevance in any examination of UK business or employment options was the Treaty of Rome, which launched the European Union (as it is now known following the Maastricht Treaty), and the subsequent successor treaties that reaffirmed the free movement labour rights and rights of establishment of all citizens of member countries.

The right of EU citizens and their families to move and reside freely within the territory of another Member State has been binding on all Member States following Directive 2004/38/EC, which was implemented on 30 April 2006. This was a consolidating directive that replaced all the earlier directives and regulations relating to entry and residence within the European Union.

The implementation of this Directive in UK law was set out in the Immigration (European Economic Area) Regulations 2006, although these Regulations were not fully in accord with the somewhat broader 2004 Directive.

The free movement of workers provision is expressly contained within Article 45 of the Treaty on the Functioning of the European Union, which permits citizens of Member States to undertake employment within any other Member State and to move freely within Member States for this purpose. The only limitation on this very broad freedom is where exclusion of a citizen of a Member State is justified on the grounds of public policy, public security or public health. Only rarely are these limitations exercised (e.g., usually where entry of an EU citizen to another Member State could potentially result in major public disorder).

Although Article 45 does not make any reference to people seeking work (as opposed to those who have already secured employment), by inference, freedom of movement is extended to all persons who wish to enter another Member State to find work.

The same rights of free movement to EU employees are also granted to the self-employed, the self-sufficient and students, and in the United Kingdom these persons were entitled to be regarded as permanent residents (i.e., settled in the United Kingdom) after five years' residence until 31 December 2020.

Directive 2004/38 granted parallel rights to the EU national's third-country family members, although, usually, their entitlement to continue living in the United Kingdom after either the breakdown of their relationship to the EU national (if a spouse) or following the departure of the EU national to another state could be exercised only in rare circumstances.

Until 1 May 2004, all new countries joining the European Union were granted unrestricted access to the UK labour market. However, with effect from 1 May 2004, eight of the 10 countries that joined the European Union on that date were subject to restrictions relating to the ability of their citizens to secure and undertake employment. The 10 countries that joined the European Union on 1 May 2004 are Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia. Of these 10 countries, only the citizens of Cyprus and Malta were entitled to full exercise of free employment rights

in the United Kingdom, whereas citizens of the remaining eight countries (the A8 countries) were subject to a registration process. The requirement to register before being able to take employment was removed for the A8 countries by the UK government in April 2011.

In January 2007, Bulgaria and Romania became EU Member States. Citizens of these countries were accorded even less access to the UK labour market than was the case with the eight countries three years earlier. They had no free access to the UK labour market and, to the extent that they could work (with the benefit of work permits and subject to a registration process), the jobs they could undertake were limited to listed categories. It can therefore be seen that, since 2004, the previous willingness of the UK government to freely open its labour markets to citizens of Member States has become more restricted. This degree of derogation from standard EU principles of free movement is permitted by the Treaty of Accession, and Bulgarians and Romanians only became entitled to the full free movement provisions of the European Union on 1 January 2014.

However, further restrictions to free movement rights were created by the British government in advance of Croatia officially becoming a member of the European Union on 1 July 2013. Under the European Union (Croatia Accession and Irish Protocol) Act 2013, a number of arrangements were announced that gave Croatian nationals access to the UK labour market but continued to subject them to employment restrictions under the current Immigration Rules in exactly the same manner as that applicable to third-country workers. Croatian nationals were entitled only to obtain permission to work in skilled occupations and, as they were subject to the provisions of the Immigration Act 1971, their ability to enter or remain in the United Kingdom for work purposes was subject to meeting the requirements of the PBS (see below). From 1 July 2013, Croatian citizens were free to enter and remain in the United Kingdom for up to three months but were not free to work. Companies that wished to employ Croatian workers were obliged to do so subject to the operation of the PBS and, even where they qualified for such employment, they were not eligible to commence work until an accession worker registration card was issued by the Home Office. Home Office permission, however, was still required to assign a certificate of sponsorship (COS) before a Croatian citizen could apply for permission to stay in the United Kingdom in a working capacity. These restrictions were lifted for Croatian nationals and, as of 1 July 2018, they have been able to enter, reside in and work in the United Kingdom in line with the EEA Regulations without acquiring any formal authorisation.

On 1 February 2020, as the United Kingdom ceased to be a Member State of the European Union, the rights of free movement emanating from the EU treaties ceased to apply. The ratified Withdrawal Agreement enabled EEA citizens to continue to travel, work and reside in the United Kingdom in precisely the same way as before until the end of the transition period on 31 December 2020. From 1 January 2021, free movement ended and EEA and non-EEA citizens are now treated equally under the UK Immigration Rules. EEA citizens living in the United Kingdom prior to 11pm on 31 December 2021 had until 30 June 2021 to apply for a status under the EU settlement scheme.

ii EU association agreements

Since the early days of the European Union, association agreements have been entered into with a number of non-EU countries. Since these treaties were signed, many of the countries to which they have applied have become full members of the European Union, including the Czech Republic, Hungary and Poland.

Of those agreements still in place, the most important is the Agreement Establishing an Association between the Republic of Turkey and the European Economic Community (the Ankara Agreement), which has been in place since 1963. Under the Ankara Agreement, Turkish citizens used to be able to enter the United Kingdom for the purposes of establishing themselves in business either as a sole trader, in partnership or in a UK-registered company.

Turkish citizens who wished to be established in the United Kingdom must have shown that they could fund their proposed UK business enterprise, that the money they were investing was their own and that their share of profits of the business would be sufficient to maintain and accommodate them and any dependants without recourse to employment (other than their work for the business itself).

Additionally, they must have established that they had a controlling interest in the company, that they would be actively involved in its promotion and management, and that the assets of the business would be owned either by the company or by the commercial vehicle that was the subject of the investment.

Unlike the United Kingdom's domestic 'business entrepreneur' provisions, there was no minimum amount of funds required to be invested by Turkish nationals under the Ankara Agreement. It merely needed to be sufficient to capitalise the business and to enable it to generate profits in due course.

Although the operation of the Ankara Agreement was of substantial benefit to entrepreneurs or business people who wished to establish a commercial operation in the United Kingdom, it was limited to that category alone and did not apply to or give any automatic employment rights. Turkish citizens' family members were eligible to be granted dependants' visas for the same length of stay as that permitted to the primary applicant.

On 16 March 2018, following a High Court case, applications made by Turkish business people and their family members for indefinite leave to remain (ILR) in the United Kingdom ceased to be accepted. The subsequent appeals to the High Court ruling were upheld and it was maintained that an extension of stay satisfied the Ankara Agreement.

On 6 July 2018, the government introduced new Immigration Rules allowing ILR applications after five years' residency by including additional eligibility criteria such as English language and knowledge of life in the United Kingdom, in line with other settlement routes.

The Ankara Agreement continued during the Brexit transition period, but, from January 2021, the United Kingdom ceased to be tied to the Agreement. As anticipated, Turkish business people who arrived in the United Kingdom before the end of the transition period are allowed to extend their leave until they become eligible for ILR.

iii The General Agreement on Trade in Services and other free trade agreements

For many years, the United Kingdom has permitted contractual service suppliers and independent professionals to enter the United Kingdom for work purposes under the General Agreement on Trade in Services or other similar trade agreements. These include the EU–CARIFORUM Economic Partnership Agreement, the EU–Andean Multiparty Trade Agreement and the EU–Chile Free Trade Agreement. However, this immigration category has been restricted and a successful applicant is permitted to stay in the United Kingdom for only a maximum of six months in any rolling 12-month period.

Effectively, this means that, following the initial length of approval of six months, an applicant under these agreements must remain outside the United Kingdom for six months

before being permitted to re-enter for a new six-month period. Inevitably, this category has become less attractive in view of the short and intermittent periods of work and residence that are permitted.

With the end of the transition period, the UK–CARIFORUM Economic Partnership Agreement, the UK–Andean Trade Agreement and the UK–Chile Agreement came into effect.

iv Diplomats and private servants in diplomatic households

Presently, overseas government employees and private servants in diplomatic households are granted leave to enter the United Kingdom for up to two years. Overseas government employees themselves can thereafter extend their permission to stay in the United Kingdom for up to 12 months at a time, until they have spent a maximum of six years in the country, at which time they will be required to leave. No change is envisaged to their situation in the foreseeable future, but major changes took place for private servants in diplomatic households after 6 April 2012. They will now be granted leave to reside and work in the United Kingdom, initially for 24 months, and this will be extendable up to a maximum period of five years. While they have previously been permitted to apply for settlement, after five years' continuous stay in the country, this entitlement has now been removed.

III RESIDENCE RIGHTS FOR EEA NATIONALS

Following the Brexit referendum in June 2016, there has been an increase in EU nationals who have exercised treaty rights by working, studying or being self-sufficient in the United Kingdom for at least five years applying for permanent residence in the United Kingdom, with more than 95,000 applications received in 2018. Despite Home Office attempts to curb the number of applicants, EU nationals continued to apply for and be granted permanent residence while the route was open (it was closed at the end of the transition period), particularly those who are also eligible for British citizenship. The individual desire for certainty is powerful.

On 30 March 2019, the EU settlement scheme was made available to the public following three test phases in which over 150,000 applications were made. All EEA nationals and their family members resident in the United Kingdom before the end of the transition period can apply under the scheme. Those who have previously lived in the United Kingdom can also apply from outside of the country. The scheme operates pursuant to the new Appendix EU in the Immigration Rules, with its purpose of bringing the status of EEA nationals within UK law. As at January 2021, more than five million applications to the scheme were made and 97 per cent of applicants have been granted status. The deadline for those applying under the scheme to bring their immigration status within UK law and continue living in the United Kingdom lawfully was 30 June 2021; however, there are a number of circumstances in which this deadline may not apply, including where an EEA national is residing in the United Kingdom on an alternative limited leave to enter or remain with an expiration date after 30 June 2021, or where EEA nationals and British citizens are family members who have lived together from 29 December or before in the European Economic Area and are now wishing to return to the United Kingdom. The end of the transition period saw further restrictions on those still wishing to apply as a family member joining someone in the United Kingdom, and they now have only 90 days to apply from the date they arrive in the United Kingdom, in line with post-Brexit visa free travel rules between the United Kingdom and the European Union.

The scheme grants two statuses: pre-settled status (i.e., limited leave to remain) and settled status (i.e., ILR). Settled status is available to those individuals who have resided in the United Kingdom for at least five years, the end period of which must be within the previous five years. For those individuals who have not resided in the United Kingdom for five years, or who cannot evidence such residence, pre-settled status is granted for a period of five years. The scheme is concerned with an individual's residence and not with their activity as under the EEA Regulations. This means that comprehensive sickness insurance is not required for those who are students or self-sufficient.

The online application form conducts an automated check of National Insurance data through HM Revenue & Customs (HMRC) and the Department for Work and Pensions. This enables a quicker assessment of eligibility and reduced documentary evidence, if any is required at all. Individuals who hold permanent residence under the EEA Regulations will need to convert this into settled status.

If granted settled status, this is valid indefinitely and is lost, inter alia, through an absence of five years from the United Kingdom (or four years for Swiss citizens). Pre-settled status is granted for five years and the applicant can apply at any time for settled status once they have reached five years' residence and before the expiry of their pre-settled status. Pre-settled status is lost through, inter alia, two years' absence from the United Kingdom.

As the United Kingdom left the European Union with an agreed Withdrawal Agreement, EEA nationals and their family members had until 30 June 2021 to apply under the scheme.

From 1 January 2021, free movement ended and EEA and non-EEA citizens are now treated equally. The United Kingdom is no longer a Member State of the European Union and therefore the rights of free movement emanating from EU treaties no longer apply. The ratified Withdrawal Agreement initially enabled EEA citizens to continue to travel, work and reside in the United Kingdom in precisely the same way as before until the end of the transition period on 31 December 2020. EEA citizens are now treated as non-visa nationals and are required to obtain a visa for work purposes, although the visa application process is more straightforward for nationals of these countries. They are able to make their visa application online and submit biometrics using smartphone self-enrolment with no requirement to provide fingerprints, while non-EEA citizens continue to submit biometrics at a visa application centre. The UK government has been working to provide electronic visa services to nationals across the globe and 2022 was the roll-out of digital visas and right to work checks. EEA citizens have, since the scheme began, been issued with an e-visa linked to their passport number, whereas, until 2022, non-EEA citizens continued to receive physical evidence of their immigration status.[3]

The scheme is available only to EEA citizens and their qualifying family members who arrived in the United Kingdom prior to 11pm on 31 December 2020. Qualifying members may later join their EU family member in the United Kingdom if the EU family member resided in the United Kingdom before 31 December 2020, the relationship existed prior to this date and they have 'reasonable grounds' for not having applied by 30 June 2021.

Now that the scheme is coming to an end and only limited numbers of individuals can consider applying, EU citizens are turning to other routes to enter or remain in the United Kingdom. One of the biggest anticipated routes used will be the skilled worker route. Thus

3 See below for the digitalisation of the UK immigration system, in particular visa issuing services and right to work checks.

far, however, it is difficult to ascertain whether declining figures in skilled worker applications from 2019 to 2021 are solely a result of the covid-19 pandemic or whether the figures tell an additional story about the introduction of the new immigration system.

IV EMPLOYER SPONSORSHIP

i Recent history

Over the past half century, a variety of routes became available to those who wished to enter the United Kingdom for working purposes or to establish or join a commercial enterprise. In February 2005, the then Prime Minister, Tony Blair, announced that the government wished to dramatically alter the immigration landscape by sweeping away many of the various employment-based immigration routes, reducing them to five categories or 'tiers'. Persons who fell into any of the five tiers would have their applications determined by an objective PBS linked to specified attributes, such as salary, academic qualifications and skill levels. This structure was intended to remove any element of discretion concerning who was, and who was not, permitted to enter the United Kingdom for work purposes.

This dramatic change was coupled with an intention to make employers themselves responsible for assigning work approvals (to be known as COS), based on the objective application of the number of points achieved by a particular overseas migrant. For compliance checks to be carried out by the Home Office more easily, any employer wishing to employ overseas migrants pursuant to a COS is required to hold a sponsor's licence permitting it to do so. A complex series of passwords and user IDs are provided to each employer sponsor, and all relevant information about an overseas migrant is held in a central government computer bank called the sponsor management system.

In view of the radical nature of these changes, they took over three years to be implemented. By November 2008, the PBS with its five tiers had been rolled out and since then the most radical changes to the employment categories of the UK immigration process have been operational.

In February 2020, the government announced its plans for a new UK immigration PBS to be introduced at the end of the Brexit transition period. The new PBS was open to applications from 1 December 2020 and came into force on 1 January 2021. The purpose of the new framework is to ensure that the country remains open for business and is attracting the skills and attributes needed by key sectors of the economy and regions of the country while at the same time reducing overall migration numbers and boosting the skills and opportunities of local workers. New categories largely based on the previous tiered system are now in operation, with further reforms coming into effect.

Perhaps the most politically charged part of the new system is that there is no route for 'low-skilled' workers, even on a temporary or transitional basis. Instead, the government argues that there will be sufficient labour in the United Kingdom from among the 3.2 million people who have already applied to remain under the EU settlement scheme, as well as non-EU citizens who come as dependants of skilled migrants.

ii PBS – the regime

In January 2021, the five-tiered PBS was replaced by a PBS with stand-alone categories that largely resemble their predecessors. Although some employment routes do not fall within the PBS, the vast majority do.

The PBS includes routes for investors, entrepreneurs, those with 'exceptional talent' and graduate entrepreneurs (the entrepreneur and graduate entrepreneur routes are now closed to new applicants, and the exceptional talent route closed on 20 February 2020).

The skilled worker category is applicable to highly skilled employees performing at or above school-leaver level, whereas the intra-company transfer (ICT) category is applicable to highly skilled employees performing graduate-level roles or above, divided into subcategories of ICTs and intra-company graduate trainees.

The PBS, additionally, includes routes for students and temporary work, which further incorporate myriad different categories, including people permitted to come to the United Kingdom under youth mobility schemes (primarily replacing the old working holidaymaker route available to young Commonwealth citizens), government-approved exchanges, those wishing to undertake internships and those of high ability in the arts, sports or entertainment sectors.

In any of the above categories, only those who secure the requisite number of points are eligible to seek entry to the United Kingdom for the purposes of employment or study. Of the employment-based routes, the following are the most prevalent and the most widely used by UK companies that need to employ migrant labour.

iii Employment categories

These applications are sponsored by employers that either wish to transfer their overseas employees to the United Kingdom or to hire a new recruit. Table 1 of the Immigration Rules Appendix Skilled Occupations lists the occupations for which visa applications under this category can be accepted.

In 2020, this category was divided into two primary types: skilled worker for new hires and intra-company for overseas employees of a UK business (either at graduate or established worker levels). In April 2022, the latter category started to be replaced with a new global business mobility category, which is itself subdivided as follows.

Senior or specialist worker

The senior or specialist worker route is nearly identical to the ICT route that it replaced. The category supports inwards investment and trade by allowing multinational employers who are of senior manager level or who are specialist employers in a particular working area to transfer key company personnel from overseas to their UK branch.

Within the senior or specialist worker category, the role must be of a suitable level and salary. The applicant must, additionally, be a current employee of the sponsor group and, unless they are applying as a high earner (earning over £73,900 per year), must have worked outside the United Kingdom for the sponsor group for a cumulative period of at least 12 months. Additionally, the salary for the role must meet or exceed the going rate for the role and the general salary requirements for the visa. The previous ICT route required an overseas migrant to earn an annual salary of at least £41,500. This has now increased to £42,000, except where the migrant is applying for permission to stay through transitional arrangements.

Transitional arrangements are available for those falling into certain occupation codes at the appropriate skill level for a senior or specialist worker and will allow them to apply for permission to stay, being sponsored to continue working in the same job for the same employer in that occupation code. It is available for migrants who were previously granted permission as an ICT migrant under the rules in force before 6 April 2011 or who were a work permit holder and who have since then continuously had permission in the current category.

The desire to continue using this category as a way to overcome particular labour shortages is evidenced in the current list of occupations that are eligible to use the transitional arrangements. The occupational codes listed are those in the arts sector, including actors, dancers, designers and authors.

However, migrants who entered the United Kingdom in this category, or any of the category's predecessors under the Immigration Rules in force after 6 April 2010, are not permitted to obtain ILR. This requirement is intended to discourage overseas migrants from coming to the United Kingdom purportedly to fill temporary labour shortages but whose real intention is to settle permanently in the county.

This restriction was further tightened in April 2011 when rules were introduced that required this category of overseas migrants to leave the United Kingdom after they had lived and worked in this category for five years (or, since January 2021, nine years for those earning in excess of £73,900 a year). The basic premise remains the same, however, as even these highly paid executives will be required to leave the United Kingdom at the end of this extended period, unless they switch to skilled worker status in the meantime. This category maintains a cooling-off period, whereby a migrant is permitted to hold leave in this category for a period of up to five years in any six-year rolling period, or up to nine years in any 10-year period for high earners. The period of leave is calculated as a cumulative total of leave held on the new global business mobility routes and the old intra-company routes.

Global business mobility migrants are exempt from the requirement of having to establish their English language ability but are required to pay the immigration health surcharge for themselves and their dependants. Their employees must pay the immigration skills charge (introduced from April 2017) of £1,000 per year of visa validity (£364 for small or charitable sponsors).

Graduate trainee

The global business mobility graduate trainee route replaces a near identical (but simplified) predecessor, the intra-company graduate trainee route. This category is for graduate trainees within, usually, a multinational company who have been employed abroad for at least three months and who are being transferred to the UK parent, branch or subsidiary of the same organisation as part of a structured graduate training programme. The programme must define the progression towards a managerial or specialist role and will require the UK employer to provide a detailed training programme that meets the requirements of this subcategory.

The role must also be graduate level, and the migrant should be paid the general salary requirements for a job listed in one of the occupational codes, which is £23,100 per year, or the going rate for the job listed, which for a graduate is 70 per cent of the prorated going rate listed in the Appendix. The grant of permission will count towards the migrant's total of five years' stay in the United Kingdom under the global business mobility route.

UK expansion worker

The global business mobility UK expansion worker route is for overseas migrants assigned by their sponsors to undertake business expansion work in the United Kingdom. The route is aimed at replacing the sole representative provisions in the representative of an overseas business route. Senior executives or specialist workers of an overseas company can come to the United Kingdom to establish a wholly owned subsidiary or register a UK branch for that

overseas parent company. There must be no existing branch, subsidiary or other representative in the United Kingdom, although if the UK entity merely has a legal existence but does not employ staff or transact any commercial activities, the route may still be available.

The new route is also designed to accommodate those overseas migrants who do not necessarily fall into the senior or specialist worker route because their sponsor company has not yet begun trading in the United Kingdom. Therefore, the requirements are much the same as those needed for the senior or specialist worker route. Generally, the UK expansion worker visa will be granted for a period of 12 months or less, and this particular route can be held for a maximum of two years of the total of five available to those overseas migrants with permission to stay in the United Kingdom under the global business mobility routes.

Service supplier

Overseas migrants are eligible for the global business mobility service supplier route where they are undertaking a temporary work assignment in the United Kingdom where such work falls into one of two categories. Either they are a contractual service supplier employed by an overseas service provider to undertake the specific work in the United Kingdom or they are a self-employed independent professional based overseas. The route will replace the contractual service supplier and independent professional provisions in the temporary work – international agreement route in a bid to simplify the PBS immigration routes.

The overseas migrant must have obtained a contract for their work in the United Kingdom, which should be registered with the Home Office and be for a service that is covered by one of the United Kingdom's international trade agreements. The overseas work requirement will be met where a migrant has worked for the overseas service provider for a cumulative period of 12 months outside the United Kingdom and is currently working for that provider. The migrant should be a service supplier who, in most cases, has a university degree or equivalent-level technical qualification and must have at least three years' professional experience (holding any relevant professional qualifications required for their role) or at least six years if they are self-employed or supplying chef de cuisine services under the UK–CARIFORUM Economic Partnership Agreement. Additionally, the nationality of the overseas migrant should be the same as the country in which the overseas service provider is based, though there are some exceptions, depending on the service being provided. There is no points-based salary requirement for this route.

Secondment worker

Where a migrant is being seconded to the United Kingdom as part of a high-value contract or investment by their overseas employer, they may be eligible for the global business mobility secondment worker route. This route is the only route in the global business mobility scheme that is not replacing in whole or in part any other PBS immigration options and is a wholly new provision.

The route is similar to the global business mobility service supplier route in that there are no specific points-based salary requirements for this route; instead, it is necessary to demonstrate the overseas work requirement. Asides from this, the general requirements of the route still mirror all other global mobility routes.

Skilled worker

The skilled worker category is the main route for sponsorship for migrants to be employed in the United Kingdom. It replaces the previous Tier 2 (General) category with several significant amendments. There has been a suspension on the cap of the number of migrants who can come to the United Kingdom, and the resident labour market test has been abolished. Further, the skills threshold was reduced from RQF6+ (graduate level to above) to RQF3–5 (A level or equivalent). The general salary threshold has been lowered from £30,000 to £25,600, and the new entrants' salary rate will be 30 per cent lower than the rate for experienced workers.

Despite changes to the requirements, in 2021, over 90 per cent of skilled worker applications were for roles at RFQ6+ level, and this may be because the cost of hiring a worker from abroad for a lower-level position is not feasible. The move away from free movement and the end of the EU settlement scheme in the summer of 2021 have meant that EU nationals now have to apply for skilled worker visas. Applications from EEA and non-EEA nationals for this visa are almost 50:50.

COS

The route to applying for a skilled worker visa from within the United Kingdom has been widened, and migrants who are in the United Kingdom on a non-temporary visa (i.e., not a visitor visa) are eligible to apply for the scheme from in-country. This is a significant departure from the previous system, where there were very limited routes to an in-country application. An employer that wishes to hire a migrant who is already in the United Kingdom on a residence visa will be able to assign a COS to that individual without Home Office approval.

Defined COS

This 'defined' category applies to all migrants wishing to take up skilled worker employment in the United Kingdom and are applying from outside of the United Kingdom. Unlike every other COS, the sponsoring employer is unable to assign a COS to that individual without prior approval from the Home Office. The panel process from the previous system has been removed; approval can now be obtained by submitting a defined COS request at any time via the Home Office's computer system. These requests are processed by the Home Office and the outcome is intended to be communicated within 24 hours.

Eligibility requirements

There are certain common themes and requirements applicable to all skilled worker and ICT migrants. In addition to securing sufficient points for salary levels and academic skills levels, with the exception of ICT migrants, every overseas migrant must establish English language proficiency. The salary to be paid to any skilled worker migrant must also be no less than the prevailing salary applicable to that role, as specified within the Home Office's Standard Occupational Classification (SOC) codes. These were revised and simplified in April 2014 and are likely to be reviewed annually.

The April 2014 revisions to the SOC codes were wide-ranging. The number of SOC codes was substantially reduced and for most (although not all) the prevailing salary rates were increased. They were further increased in 2017, and in April 2019 the new salary rates were both increased and decreased to reflect the latest available occupational salary data for each job type. The list of shortage occupations was reduced, primarily by removing a number of healthcare professionals from the previous list, with the exception of nurses, who were

reinstated to the list in early 2016. All jobs must now meet the academic qualification RQF3, which applies to A level roles. The latest revisions to the codes took place in October 2019, when a significant number of jobs were added to the shortage occupation list, in particular in the healthcare sector, following a review by the MAC.

Overseas migrants must satisfy the Home Office that, for a minimum period of 28 days prior to applying for their visas, they have access to minimum cash amounts (known as maintenance) held by them in a regulated banking institution. In the case of COS holders, the minimum sum is £1,270. If the applicant has a dependent partner, this figure increases by £285 and then by £315 for the first dependent child (under 18 years old) and by £200 for any other dependent child. In the case of A-rated sponsors (i.e., employers), the relevant maintenance levels for both the employee and dependants can be 'guaranteed' by that employer, the effect of which is that the overseas migrant does not personally have to provide evidence of minimum cash savings. B-rated sponsors, however, are not permitted to give such a guarantee, and any overseas migrant wishing to be employed by a B-rated sponsor must evidence the minimum cash savings amounts. Employers of skilled worker migrants are no longer required to write a separate letter to confirm that they will guarantee maintenance for those dependants in circumstances where the dependant is applying for his or her visa at the same time as the primary applicant. Further, where an applicant (either a main applicant or their PBS dependant applying at a different time) has been living in the United Kingdom for 12 months, they are not required to show maintenance.

The resident labour market test was removed in the PBS, although the employer must still be able to demonstrate that the job position is a genuine vacancy. The job must exist, must genuinely be at the appropriate skill and salary level and must not have been created for immigration purposes. Recruiting in a particular way has been indicated as only one of the many factors that may be taken into account by the Home Office. Other considerations can include the job description, whether the sponsor credibly could have a need for that job and the sponsor's history of compliance with the immigration system.

To qualify for a skilled worker COS, migrants will be required to score 70 points overall across different categories, including a job offer with an approved sponsor at an appropriate skill level, English language proficiency and salary level. Fifty of those points must be earned by meeting mandatory criteria for the application. They can obtain these mandatory points by having an offer of a job by an approved sponsor, a job offer at an appropriate skill level and English language skills at intermediate level. A migrant must then obtain a further 20 'tradeable' points through a combination of points for their salary, a job in a shortage occupation or a relevant PhD – totalling 70 points for the application. Points awarded for salary are tradeable on a sliding scale so that individuals with a salary of £23,040 will still be able to earn points for salary. The job must also meet the 'going rate' requirement for the occupation.

Individuals earning £20,480 or more may still be eligible under the scheme through the acquisition of points in other areas, such as working in a sector where there is a skills shortage or having a PhD in a subject relevant to the job. The MAC has been commissioned to produce a shortage occupation list covering all jobs encompassed by the skilled worker route and to keep the list under regular review. The jobs that meet this requirement are all set out within the SOC codes set out in Appendix Skilled Occupations of the Immigration Rules. Jobs in the shortage occupation category may be paid 80 per cent of the going rate for the occupation code, provided that the salary is minimum £20,480 per year.

'New entrants' to the UK labour system will continue to benefit from a reduced salary threshold for three years in the new system. A new entrant skilled worker includes those switching from the student or graduate route to the skilled worker route and those under the age of 26, as well as those working towards recognised professional qualifications or moving directly into postdoctoral positions.

Set out below is the current points table applicable to overseas migrants hoping to qualify for a skilled worker job. In this regard, it should be noted that the only salary levels permitted to be taken into account are those that are guaranteed to be paid, and not those that vary, such as discretionary or performance-based bonuses.

Characteristics	Tradeable	Points
Offer of job by approved sponsor	No	20
Job at appropriate skill level	No	20
Speaks English at required level	No	10
Salary of £20,480 (minimum)–£23,039	Yes	0
Salary of £23,040–£25,999	Yes	10
Salary of £25,600 or above	Yes	20
Job in a shortage occupation (as designated by the MAC)	Yes	20
Education qualification: PhD in subject relevant to the job	Yes	10
Education qualification: PhD in a STEM subject relevant to the job	Yes	20
MAC, Migration Advisory Committee; STEM, science, technology, engineering or mathematics.		

The points requirements for ICT migrants are more simplified, and no points are tradeable. Set out below is the current points table applicable to overseas migrants hoping to qualify for an intra-company job. As there is no English language requirement in the intra-company category, a migrant is only required to score a total of 60 points.

Points requirements	Points
Offer of job by approved sponsor	20
Job at appropriate skill level	20
Salary at required level	20

Applicants in these categories are required to pay the immigration health surcharge. Additionally, those prospective migrants who are coming from certain countries where tuberculosis continues to be a major health risk (such as China, Hong Kong, India, the Philippines, Russia and Sri Lanka) are required to obtain from an approved medical practitioner a certificate to confirm that they are not suffering from tuberculosis.

Unlike ICT migrants, overseas migrants employed in the United Kingdom with the benefit of a skilled worker COS (whether defined or undefined) are permitted to apply for ILR once they have lived in the United Kingdom and worked in a skilled worker category for five years (time spent in the Tier 2 (General) category can be combined with time under the skilled worker category to meet the five-year eligibility period). They will, however, be required to establish at that time that they still meet all the criteria applicable for continuing approval of their skilled worker employment, including confirmation from their employer that they are still required for the job. This requirement was introduced on 6 April 2011.

In addition, from April 2016, all Tier 2 (General) – now skilled worker – ILR applicants must meet a minimum pay threshold as well as the prevailing wage for their particular job.

This amount was lowered under the new PBS, and for applications submitted from January 2021, the minimum threshold to be met is £25,600 per annum. This threshold is a decrease of nearly £10,000 from the previous system.

The maximum permitted period of stay under the previous system for Tier 2 (General) has been removed, and a skilled worker migrant can extend their permission to remain in the United Kingdom indefinitely if they do not apply for ILR. Skilled worker migrants can obtain a maximum initial period of leave of five years.

The cooling-off period under the old system has also been largely abolished. There is no cooling-off period for skilled worker migrants, although the restrictions remain for ICT migrants in a different configuration.

A final point on procedural matters is that if skilled worker migrants are in the United Kingdom and fail to apply to renew their stay before their visa expiry, there is a 14-day 'grace period' given to them so that there will be no adverse effect on their immigration history, provided that they apply to renew their status (in country) within that 14-day period with persuasive reasons for the delay.

When applying for ILR, overseas migrants are permitted to spend as many as 180 days in each year out of the United Kingdom during the prescribed five-year period without continuity of stay being broken. The effect of this is that, provided that the overseas migrant does not spend more than 900 days out of the United Kingdom during the five years leading to eligibility for ILR, and provided that these absences do not exceed 180 days in a year and are all work-related, approved annual leave or for compassionate purposes, ILR can be approved. This requirement was first introduced in December 2012 to correct inconsistencies in approach by Home Office caseworkers when considering ILR applications and whether discretion on length of absences should be exercised or not. For periods of leave granted after January 2018 that will contribute to the qualifying period for ILR, the 180-day absence limit is calculated on a rolling basis, and the absences will be taken from within any 12-month period rather than a given year. Leave issued before this date will still be calculated in consecutive 12-month periods. The same also applies to PBS dependants if applying after January 2018.

These changes are part of the government's continuing wish to separate the historical link between temporary employment and permanent residence. Whether or not any additional changes in this regard will occur is subject to ongoing consultation.

From April 2017, the requirement to provide a criminal record certificate was extended to include Tier 2 (General) entry clearance – now skilled worker – applicants coming to work in the education, health or social care sectors; partners of the main applicants as above; and partners applying overseas to join an existing skilled worker migrant working in one of those sectors. Certificates must be provided for any country in which the applicant has resided for 12 months or more (whether continuous or in aggregate) in the past 10 years prior to their application while aged 18 or over. Certificates from the applicant's most recent country of residence will normally only be considered valid if they have been issued no earlier than six months before the application date. Certificates from countries prior to the applicant's most recent country of residence must normally cover the entire period of residency (up to 10 years prior to the application date) but will otherwise be considered valid indefinitely.

At a later stage, the government also intends to create a 'broader unsponsored route' within the PBS to run alongside the employer-led system. Qualifying individuals will be able to come to the United Kingdom without a job offer. The government plans suggest that a cautious approach is being taken in the development of this route, presumably to maintain the integrity of its policy to take back control of immigration numbers. The plans suggest that

the route will be capped and monitored carefully during an implementation phase. Example characteristics for which points could be awarded include academic qualifications, age and relevant work experience.

Health and care worker

A new category specifically for skilled migrants working in the healthcare sector was introduced in August 2020, assuredly in response to the contributions of health and care workers in the United Kingdom during the covid-19 pandemic. The health and care visa currently exists within the purview of the skilled worker visa. It allows medical professionals to come to or stay in the United Kingdom to do an eligible job with the NHS or an NHS supplier or in adult social care. A migrant intending to apply under this category must meet the requirements of the skilled worker visa and must, additionally, be a qualified doctor, nurse, health professional or adult social care professional working in an eligible health or social care job.

Migrants and their dependants in the health and care worker category pay lower application fees and are exempt from paying the immigration health surcharge. The application process for this category is also intended to be streamlined, with a dedicated team handling applications, providing decisions more quickly than other working categories.

The end of free movement has had a significant effect on the health and care sectors, and investigations were published by the MAC in 2022, which highlighted the exact impact of the changes. In the meantime, care worker jobs have been made eligible for the heath and care visa and placed on the shortage occupation list. The rate of applications for senior care workers has risen through 2021 to between 400 and 500 a month.

Scale-up

From April 2022, a new scale-up route has been made available in order to allow overseas migrants with a job offer at the required skill level from a recognised UK scale-up organisation to qualify for a fast-track visa.

The premise behind this route is that overseas migrants apply to obtain entry clearance as a scale-up worker before arriving in the United Kingdom. To be granted this leave, the requirements are similar to those for a skilled worker, including sponsorship.

Permission will initially be granted for a period of two years, after which an individual may make an unsponsored application from inside the United Kingdom. Instead of providing evidence of sponsorship for their extension, applicants will have to show that their Pay As You Earn earnings were at least £33,000 per annum or the going rate for their position (whichever is higher) for at least 50 per cent for their time in the route. Such an extension will be granted for three years, and settlement can be reached on the same grounds after this five-year period.

Overseas migrants on this route will be able to enter the country by being employed by a sponsor company.

High potential individual

After being announced in March 2021, from April 2022, a new points-based route has been introduced for recent graduates of top global universities, called the high potential individual route with the aim of continuing to attract the best and brightest to the United Kingdom so that the country maintains its status as a leading international hub for emerging technologies. Work, including self-employed work, is permitted on this route without the need for sponsorship.

Applicants for this route must have a qualification equivalent to either a UK bachelor's or postgraduate degree qualification from one of the top global universities outside the United Kingdom, as decided by the Home Office in a list published online annually. The Home Office will use three ranking systems to extract their list of universities, with the criteria being that the university must be listed in the top 50 universities in at least two of the following three ranking tables: the Times Higher Education World University Rankings; the QS World University Rankings; and the Academy Ranking of World Universities. The degree should have been awarded within five years of an application being submitted.

English language and financial requirements (for those applying for permission to enter or who have been in the country for less than 12 months) will also have to be evidenced when submitting an application.

Migrants on this route will be granted permission for a period of two years if they are relying on qualifications equivalent to a UK bachelor's- or master's-level degree and for three years if they are relying on qualifications equivalent to a UK PhD.

T5 temporary workers

The old Tier 5 route has remained intact and is now called T5 temporary workers. This route is divided into several categories, and its purpose is to enable individuals to enter the United Kingdom for short periods to take up temporary work before returning to their home country. No immigration cap has been imposed on these routes; in most instances, it would be futile to do so, in view of the temporary nature of the roles that overseas migrants will fill. The categories are as follows.

Youth mobility scheme

This largely mirrors the (now defunct) working holidaymaker scheme, which permitted young Commonwealth citizens to enter the United Kingdom for up to two years for the purposes of temporary employment and taking an extended holiday. The requirements under the new scheme remain much the same, as it enables applicants between the ages of 18 to 30 from certain countries to enter and work in the United Kingdom for two years. However, the requirement that such applicants also 'take a holiday' no longer applies. The countries that benefit from this scheme are currently limited to Australia, Canada, Hong Kong, Japan, Monaco, New Zealand, South Korea, San Marino and Taiwan, along with British overseas citizens, British overseas territories citizens and British nationals (overseas). The scheme was extended to include San Marino from January 2021 following the end of free movement.

The number of applicants from each country is limited as follows: Australia 30,000; New Zealand 13,000; Canada 5,000; and the remaining countries are allocated 1,000 places each. The selection process in Taiwan is a lottery-based scheme split into two ballots in January and July each year. There is no allocation restriction for British citizens or nationals mentioned above.

Temporary worker

This category was created to enable overseas migrants to take up temporary employment or an internship or to enter the United Kingdom as part of a graduate training programme. Applicants need to be issued with a COS by an 'overarching body' that has previously been approved by the Home Office. There are currently approximately 50 registered overarching

bodies permitted to assign COS to suitably qualified applicants, all of which must be independent from the employers with whom the overseas migrants will work or undertake their internship programme.

Government authorised exchanges (GAEs) come under this broad category. The maximum period of stay permitted to applicants coming for a work experience programme under Tier 5 (GAE) is 12 months. Work experience programmes that fall within this category will be work experience and internships run by the Bar Council, BUNAC, the Commonwealth Exchange Programme, Fulbright UK/US Teacher Exchange Programme and Tier 5 intern schemes generally.

However, when applicants are seeking entry for GAE research and training programmes, they will continue to be permitted to stay in the country for up to 24 months. Programmes that benefit from the longer period of stay include Chatham House overseas visiting fellowships, Commonwealth scholarship and fellowship plans, sponsored researchers, UK–India education and research initiatives and the US–UK Education Commission (also known as the US–UK Fulbright Commission).

Under the PBS, from January 2021, new categories for religious workers and charity workers to enter the United Kingdom for a short-term period were set up.

The Tier 5 temporary worker visa also has a seasonal worker category. The route was originally available for edible horticulture, poultry production work and specific pork butchery work, though there have been some changes to the eligible occupations in 2021 and 2022. Such occupations initially came under the seasonal workers pilot scheme launched in 2019, but seasonal workers can now apply under the broad temporary worker category. Towards the end of 2021, the government agreed to some temporary visas for various occupations such as heavy goods vehicle drivers and poultry workers, which formed part of a balancing act between maintaining the general principles of the skilled worker route and applying flexibility in the face of employment shortages and other challenges that could have substantial consequences for the economy, particularly in the wake of Brexit.

As of 28 February 2022, haulage drivers transporting food goods no longer have access to this route. Limitations have also specifically been put on pork butchery roles. Applicants could be granted permission for a maximum period of six months if their application was submitted before 6 April 2022, when this route closed for pork butchers. It should be noted that butchers can also use the skilled worker route to remain in the United Kingdom on a more permanent basis. In April 2022, the category was also extended to include roles in ornamental horticulture and a new minimum hourly pay requirement of £10.10 per hour (equal to the minimum hourly rate for skilled workers).

Creative route and sporting route

The routes for creative or sporting individuals have been separated in the new PBS, although the requirements remain similar for each category. This enables artists, entertainers and sportspeople to enter the United Kingdom to perform at a particular event, which may not necessarily be a one-off situation, as it also includes actors taking part in theatrical productions that may last for a considerable period. The visa can be issued for a period of up to 12 months. In the case of sportspeople, they must be internationally established at the highest level, and their presence in the United Kingdom must be regarded as making a significant contribution to a sports event or series of events. In each instance, the employer, or even a management company, agency or promoter, can assign the COS. Where the artist or sportsperson intends to stay in the United Kingdom for less than three months, that

individual may be exempted from obtaining a visa or entry certificate before coming here, unless that individual is a visa national (i.e., the citizen of a country for which a visa must be secured before entry to the United Kingdom is permitted for any purpose). Sportspeople seeking to come to the United Kingdom on a temporary basis – 12 months or less – are not subject to an English language requirement.

iv Sponsor obligations

Since the introduction of the Immigration, Asylum and Nationality Act 2006, employers have been subject to an increasing range of obligations, including the requirement to ensure that an overseas migrant has correct work authorisation (through the legal right to work checks), in addition to compliance with numerous sponsorship duties. Along with the 2006 Act, civil penalties were introduced for employers, with fines of up to £20,000 for each unlawfully employed worker, and unlimited fines and up to two years' imprisonment for knowingly employing illegal workers.

Employers are required to check eligibility to work in the United Kingdom for each new overseas migrant before employment commences, and for those with limited entitlement to remain in this country (i.e., everyone except for UK citizens, EEA citizens and those who are settled here), annual checks were required on their continuing ability to work here. EEA citizens joined this group of migrants on 30 June 2021. Employers now need to check the eligibility of those migrants to work in the United Kingdom as any other overseas migrants. However, the right to work checks have been relaxed, in that once the migrant has complied with the requirements to establish a right to work in the United Kingdom, there is no longer any requirement to check their immigration status annually, and this can be deferred to either their visa expiry date or a date that their employment comes to an end, if earlier. That will reduce the regulatory burden on employers, particularly large employers, that find it difficult to deal with annual checks for a substantial and mobile workforce.

Once a UK employer has been issued with a sponsor's licence, the Home Office has the power to suspend, downgrade or even revoke the licence. This could have catastrophic consequences for any overseas migrant working for that employer with a sponsored work visa by the employer; for example, if the sponsor's licence is revoked with immediate effect, that employer is unable to continue lawfully employing that individual. The employee will then have their leave curtailed to 60 days, during which period they must seek alternative employment with a different sponsor, failing which he or she will be required to leave the country together with any family members (and may be subject to the cooling-off period).

The Home Office has not identified all the circumstances in which it will suspend, withdraw or downgrade a sponsor's licence, but when considering appropriate action, it will consider the seriousness of the sponsor's failures, whether the sponsor's acts or omissions are part of a consistent or sustained record of non-compliance, and whether the sponsor has taken any remedial action to minimise those failures. Suspension of a sponsor's licence will prevent that employer from assigning any new COS, and if the employer attempts to assign a new COS, it is likely that its sponsor's licence will be revoked.

The Home Office will revoke a sponsor's licence for a variety of reasons, including where it stops trading for any reason (including insolvency), where it has been issued with a civil penalty for employing one or more illegal workers and the fine imposed for at least one of those workers is the maximum amount, or where a civil penalty has been imposed and has not been paid within 28 days.

A sponsor's licence will normally be revoked in circumstances where the employer is convicted for any offence introduced by a variety of immigration statutes, including the Immigration Act 1971, the Immigration Act 1988, the Nationality Immigration and Asylum Act 2002, and the Immigration, Asylum and Nationality Act 2006. Licences will also be revoked for any offence relating to trafficking for sexual exploitation or any other offence that shows that a sponsor poses a risk to immigration control.

v Non-PBS employment categories

Very few of the previous employment-based immigration routes have survived the introduction of the PBS, and even fewer will survive the changes that came into force in 2022. However, the most important that have done so are as follows.

Domestic worker in a private household

Although this route for entry to the United Kingdom has been in existence for many years, it was only in September 2002 that it formally became part of the UK Immigration Rules. Provided that the appropriate criteria were met, overseas domestic workers in a private household could accompany their employer to the United Kingdom for an initial period of one year, which would then be extended annually (if the criteria were still met) until they became eligible for ILR after five years' continuous employment in this category. With effect from 6 April 2012, the maximum permitted stay for such workers is six months for new applicants and only then in circumstances where the overseas employer is coming to the United Kingdom as a visitor. No extensions beyond six months are now permitted, and this route to settlement has been extinguished. Prior to April 2012, a domestic worker in a private household could bring his or her dependants to the United Kingdom, who themselves were permitted to take up employment. Under the new regime, domestic workers are no longer permitted to be joined by their dependants.

Commonwealth citizens with UK ancestry

This is the final remaining immigration benefit reserved only for Commonwealth citizens, and it remains in place because of much diplomatic lobbying by, primarily, the governments of Australia, Canada and New Zealand.

The requirements that the applicant must meet are that he or she is a Commonwealth citizen, has at least one UK-born grandparent and intends to either take employment or seek employment upon arrival in the United Kingdom.

This route is not available to those who have no wish to work but merely have a UK-born grandparent. The applicant must either have a job or intend to find one before the entry certificate will be issued.

The application is submitted to a British consulate in the applicant's home country or country of residence and, if approved, the visa will be valid for five years. Upon the expiry of that five-year period, the applicant and immediate family members (spouse and children under 18 years of age) are eligible for ILR, provided that either they are working at the time of application or they can evidence attempts to find work in the previous five years. In November 2019, the Home Office issued updated policy guidance for caseworkers confirming that applicants working as unpaid volunteers (or intending to be) will satisfy the working criteria of the application.

Representatives of overseas businesses

Previously, this category included provisions for sole representatives of an overseas company to come to the United Kingdom to establish a wholly owned subsidiary or register a UK branch for that overseas parent company. In 2022, this route was merged into the new global business mobility route as part of the points-based immigration options. Representatives of overseas businesses apply in this category only if they are a media representative. As a result, overseas migrants who would have previously been able to use their time as a sole representative of an overseas business towards settlement will no longer be eligible for settlement under the new global business mobility expansion worker route. A media representative is an employee of an overseas media organisation who is posted to the United Kingdom on a long-term assignment. The route is open to employees of an overseas newspaper, news agency or broadcasting organisation being posted on a long-term assignment as a representative of their overseas employer where there is no requirement to take operational decisions. Those qualifying under the subcategory for employees of overseas news or media organisations will be granted three years' leave, during which they may work only for the employer in question. Provided that these criteria are met, this status can be extended, following which the media representative (and their immediate family) will be eligible to apply for ILR. There is also an English language requirement for media employees.

Business visitors

The visitor rules have been simplified and the new rules took effect from 1 December 2020. There are now four types of visitor visa: standard visitor; marriage and civil partnership visitor; permitted paid engagement visitor; and transit visitor.

Business visitors can come to the United Kingdom under the standard visitor category. They can visit the United Kingdom for different business reasons, such as attending meetings, conferences or trade fairs or negotiating contracts. Business visitors must remember that there is a distinction between working in the United Kingdom and entering the United Kingdom for business purposes. The former requires express permission to work in the United Kingdom, whereas the latter does not.

'Permitted paid engagements' visitor category

The UK Immigration Rules have only rarely permitted 'short-term working' activities, and never where the individual receives remuneration or a fee for their services.

However, this visitor category was established to deal with prearranged specific activities where the overseas visitor is permitted to enter the country as a visitor and to receive a fee. This route is restricted to those coming for one month or less and no formal sponsorship from any UK employer or institution is required. Examples of permitted activities for a visitor in this category of stay are:

a giving a lecture, examining students and participating in or chairing selection panels;
b overseas designated air pilot examiners assessing UK pilots to ensure that they meet national air regulatory requirements of those countries;
c providing advocacy in a particular area of law (as a qualified lawyer) in a court or in a tribunal hearing, arbitration or other form of alternative dispute resolution in the United Kingdom;
d professional artists, entertainers or sportspersons carrying out an activity relating to their main profession (e.g., artists exhibiting and selling their work);
e authors engaged in book signings;

f entertainers giving a one-off or short series of performances; and
g sportspersons providing, for example, guest media commentaries in their chosen field.

A visa will be required for visa nationals, although not for any other individual who would not normally require a visa to secure entry to the United Kingdom. However, non-visa nationals must still be able to satisfy an immigration officer at a UK port of entry that their activities clearly fall within the parameters of the new visitor category.

National Health Service surcharge

A major increase in the cost of recruiting overseas (now including EEA nationals) labour was introduced in October 2020. The immigration health surcharge (or National Health Service (NHS) surcharge as it has become known) was initially set at £200 a year for temporary migrants (with a primary applicant or their dependants or both) and £150 a year for students. This was increased on 8 January 2019 to £400 and £300 per year, respectively, and just over a year later it was increased to £624 and £470 per year, respectively. Dependent children are no longer charged the same amount as a primary applicant but are charged £470 per year. The fees must be paid for the entire period of leave being requested at the time that these applications are being applied for. Duplicate payments for the same period – for example, when an applicant changes their immigration route part-way through their current visa – are refunded.

The NHS surcharge is paid by all overseas nationals who apply to come to the United Kingdom to either work, study or join family for a limited period of more than six months and will also be paid by the same individuals who are already in the United Kingdom and apply to extend their stay. This includes Australians and New Zealanders, who were previously exempt.

The exemptions to the requirement to pay the surcharge are:

a tourists who enter the United Kingdom on a tourist visa will not pay the surcharge, although they will remain directly chargeable for hospital treatment should they need to utilise the services of the NHS while in the United Kingdom. However, the NHS will charge each such tourist 150 per cent of the cost of the treatment and therefore private travel and health insurance should be taken out;
b asylum applicants;
c victims of slavery or human trafficking and their dependants;
d dependants of a member of the armed forces;
e those applying for the EU settlement scheme;
f those eligible for a frontier worker permit and have an S1 certificate;
g those applying for ILR;
h those applying for a visa to the Isle of Man or Channel Islands; and
i health and care workers who are eligible for a health and care worker visa and their dependants.

Although there is certain logic to imposing this surcharge, it is an additional burden imposed on large employers (in particular) that operate in the global marketplace and that recruit hundreds, if not thousands, of overseas migrants. The burden caused by this surcharge is further increased due to the removal of EEA nationals from the UK labour market following the end of free movement. This surcharge can be paid by the employee or the employer. There is no requirement for the employer to pay this on behalf of a sponsored employee.

Additionally, applicants for visas who will stay in the United Kingdom for more than six months must secure tuberculosis certificates if applying from certain countries where tuberculosis is an ongoing health risk.

Immigration skills charge and COS

An additional charge is now payable by employers that employ migrant workers in skilled roles under the skilled worker or ICT sponsorship scheme on or after April 2017. The skills charge is set at £1,000 per employee per year and at a reduced rate of £364 for small or charitable organisations.

Companies that have fewer than 50 employees, companies with a turnover of less than £6.5 million and where their balance sheet is no more than £3.26 million, and companies that are charitable organisations will pay a lower skills charge of £364.

The skills charge was announced alongside a number of changes to the Immigration Rules following the MAC's report of January 2016 advising the government on how to 'significantly reduce the level of economic migration from outside the EU'. It is notable that this predated the June 2016 referendum.

The skills charge will not apply to a sponsor of an overseas national who was sponsored in Tier 2 before 6 April 2017. Furthermore, it will be imposed only on main applicants, so it will not affect dependent family members. In practice, the skills charge increases the cost of a five-year skilled worker or ICT sponsorship by £5,000. Essentially, it is designed to reduce demand on the scheme and result in additional opportunities for resident workers.

The skills charge is paid at the time of assigning COS to overseas migrants by the employer. The COS fee is currently £199 for all overseas migrants except for nationals of Austria, Belgium, Croatia, Republic of Cyprus, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Luxembourg, Malta, the Netherlands, North Macedonia, Norway, Poland, Portugal, Slovakia, Spain, Sweden and Turkey. These countries are exempt from the COS fee. The COS and skills charge must be paid by the employer, and the employer cannot request or allow the employee to pay for these fees in any way.

Right to rent

With effect from February 2016, private landlords are required, pursuant to the Immigration Act 2014 and the 'compliant environment' policy (formerly 'hostile environment'), to conduct immigration status checks on their tenants. Financial penalties of up to £3,000 can be imposed on landlords who fail to undertake the immigration checks or who rent property to a person whose immigration status (or lack of one) means that they do not have a right to rent in the United Kingdom.

Immigration status checks must be conducted by either the landlord or lettings agent before entering into a residential tenancy agreement with any adult who is to occupy the premises as their main or only home. In the first six months of operation, the Home Office Right to Rent Landlord Checking Service was used over 11,000 times, and the helpline took over 800 calls to support landlords, agents and tenants in implementing the scheme.

The right to rent provisions were strengthened by the Immigration Act 2016, which introduced mechanisms for landlords to evict illegal migrant tenants more easily and, in some circumstances, without a court order. In practice, landlords will request a Notice of Letting to a Disqualified Person from the Home Office, which, if issued, confirms that the tenant is

disqualified from renting in the United Kingdom as a result of their immigration status. On receipt of this, the landlord will be expected to take action to ensure that the illegal migrant leaves the property.

However, on 1 March 2019, a High Court ruling[4] stated that the right to rent policy was certain to cause discrimination on the grounds of race and nationality. The Court made a declaration of incompatibility with human rights. This is supported by various reports, one being from research undertaken by the Residential Landlords Association in 2018 that confirmed that 42 per cent of landlords were, as a result of the policy, less likely to agree to a tenancy with a person who did not hold a British passport. The government appealed this ruling in January 2020 at the Court of Appeal and, on 21 April 2020, the Court of Appeal ruled that the checks are not unlawful under the Human Rights Act, reversing the decision of the High Court.

Immigration checks on bank accounts

Wider enforcement measures with respect to banks and building societies have made it even more problematic for illegal migrants to live and work in the United Kingdom. Measures introduced by the Immigration Act 2016 provided the Home Office with an escalating range of options, including where a current account holder is confirmed to be unlawfully present in the United Kingdom. This provision was implemented in January 2018 and placed a burden on banks and building societies to check the immigration status of personal bank account holders in the United Kingdom and inform the Home Office where legal right of residence is not found. The Home Office will then conduct its own checks and may apply to the courts for an order instructing the bank or building society to freeze the individual's accounts. This further enables the Home Office to prosecute individuals for the criminal offence of working illegally and recovering wages as proceeds of crime.

The Home Office states that (at this stage) only details of illegal migrants who are liable for removal or deportation from the United Kingdom or who have absconded from immigration control will be checked (against a list provided by anti-fraud organisation Cifas). However, following the Windrush scandal, immigration checks on bank accounts were suspended in May 2018 and, at the time of writing, remain so.

Right to work checks

Since 2008, employers have been required to complete legal right to work checks on all employees reporting for work on or before their start date to prevent illegal working. This involves a manual check of an employee's identity document and evidence of entitlement to work in the United Kingdom, such as with a British or EU passport or a visa that permits work. Carrying out a compliant right to work check (with appropriate document retention) provides the employer with a statutory excuse, which can be used as either a partial or a complete defence if the employee has been working illegally. Failure to carry out the required right to work check can result in the employer being subject to significant financial penalties or imprisonment.

From 28 January 2019, employers have been able to conduct legal right to work checks online. The online check is undertaken via the employer's online profile of the

4 *R (Joint Council for the Welfare of Immigrants) v. Secretary of State for the Home Department* [2019] EWHC 452 (Admin).

official government website, and the Home Office will keep records of checks undertaken. Completion of a correct online right to work check with appropriate record-keeping provides the employer with a statutory excuse.

The online right to work check must be kept electronically or in hard copy on the employee's personnel file (as per previous requirements) and must be kept for the duration of the employment, plus an additional two years from that date.

As part of covid-19 measures, as of March 2020, some temporary changes were made to the current guidance that allowed employers to conduct checks online via video calls. Throughout 2022, the Home Office chose to maintain a level of continuity in the process of checking an individual's legal right to work in the United Kingdom by extending the covid-19 adjustments. Employers continued to have the choice of conducting online checks until October 2022 after employers gave positive feedback on being allowed to use third-party ID providers to digitally check British and Irish passports.

The extension comes as the Home Office rolled out its new IDVT in 2022, which hopes to support long-term, post-pandemic work practices; accelerate recruitment and onboarding processes; and enhance employer mobility and the security and integrity of right to work checks. The scheme has become available to certain employees already, and the aim is for all employees to eventually be able to access fully electronic right to work checks. The online system is aimed at providing employers with a statutory excuse against a civil penalty in the event of illegal working involving the subject of the check, and should therefore prove to be more efficient and effective than manual checks.

It is anticipated that employers will use the government's extension of covid-19 adjustments to develop commercial relationships with IDVT providers, update their pre-employment checking processes and onboard their chosen provider so that the implementation of IDVT will run smoothly. It remains unclear how the charges payable for using IDVT will affect some smaller employers and whether they will resort to fully compliant manual checks again at the end of the extension period.

V INVESTORS, SKILLED MIGRANTS, ENTREPRENEURS AND GRADUATES

Immigration routes for those who fall into this category were originally governed by Tier 1 (PBS) and later represented in stand-alone categories when, on 29 March 2019, Appendix W of the Immigration Rules expanded to additionally govern entrepreneurs as well as the global talent route for highly skilled migrants (see Section VI).

It is impossible for self-employed professionals who would not ordinarily be investing substantial sums into a UK business to secure any form of approval to work in the United Kingdom. The skilled worker route is not normally available to the self-employed; it is primarily intended for employees. However, there is an exception for members of a limited liability partnership (LLP) in circumstances where, although they may be regarded as self-employed for tax purposes, their status is more akin to employees. In these circumstances, those individuals can be assigned a skilled worker COS that relieves some of the pressure on many professions that favour an LLP as a corporate vehicle, such as law firms, accountants, architects and numerous entities within the financial services sector.

Before 2022, the four available routes to the self-employed were limited to persons in the categories of investors, entrepreneurs, persons of exceptional talent and graduate entrepreneurs.

For those overseas migrants on the original Tier 1 (Entrepreneur) route, which closed to new applicants in 2019, the deadline to extend their visa or apply for settlement under this route was 5 April 2023, meaning that many applicants will have been taking more urgent steps towards ensuring that they continue to meet the criteria, given the large financial thresholds in place.

On 17 February 2022, the government abruptly closed the Tier 1 (Investor) route, abandoning their standard policy of giving at least 21 days' notice of any change in law, justified by money laundering and national security concerns. Currently, there is nothing to suggest that existing overseas migrants on the investor route cannot extend their visas or apply for ILR in the future.

i Investors

The UK government is currently making a concerted effort to attract more high net worth individuals to invest in the United Kingdom. Under provisions introduced on 6 April 2011, the route has been made more attractive by enabling investors to achieve ILR more quickly (subject to their investment levels) and to spend longer periods outside the United Kingdom than was previously permitted, without losing eligibility to apply for ILR.

The financial entry threshold is the investment of £2 million into the UK economy. This must be invested into shares or loan capital of actively trading UK companies. (Property companies and property investment companies are not permitted investment vehicles and, since 29 March 2019, UK government bonds have also been removed as a means of a qualifying investment following the Home Office's indication that these do not allow for meaningful economic benefits.)

Further changes that have been effected from 29 March 2019 include the requirement for funds to have been held in the applicant's bank account for two years, rather than 90 days, unless a source of funds disclosure is made, and a Financial Conduct Authority-regulated bank must provide a letter confirming that all due diligence and know your client checks are complete. Additionally, there has been an introduction of a pooled investment vehicle. This will be permitted if the vehicle receives funding from the UK government or devolved government department.

In December 2012, new Immigration Rules were introduced that permit the Home Office to curtail the leave of an investor migrant to remain in the United Kingdom if the required investment level has not been maintained. However, with effect from April 2015, the requirement to 'top up' the investment to ensure that it maintains its initial value is no longer required, provided that the same investment remains in place. If an investor, for example, sells stocks that are reducing in value and buys new and more profitable investments, the topping-up requirement still applies. Furthermore, loans or investments by applicants that are held in offshore custody are explicitly forbidden, as the purpose of this immigration category is that all investments must remain under an applicant's control in, and must genuinely benefit, the United Kingdom.

The applicant applies for entry clearance in his or her country of usual residence and, unlike any other PBS applicant, the English language or maintenance requirements do not need to be met.

Investors may spend up to 180 days a year outside the United Kingdom during the five-year period leading to eligibility for settlement, in substitution of the previous annual limit of 90 days (and subject to the new 180-day absence limit within any 12-month period for periods of leave granted after January 2018).

To qualify for ILR, the total sum of £2 million must remain invested by the applicant for the full five-year period before becoming eligible for settlement. This period reduces exponentially depending on the total value of the investment made. In particular, those investing £5 million or more into the United Kingdom may apply for ILR after three years, and those who invest £10 million or more are eligible after two years.

Applicants for an investor visa (in addition to applicants in the entrepreneur category) will be required to submit a police clearance certificate with their application from any country where they have lived for 12 months or more in the previous 10 years. This also applies to any dependants aged 18 or over. This requirement does not apply to those who are switching into or extending in the investor or entrepreneur categories from within the United Kingdom.

Processing times for obtaining a certificate vary significantly from country to country and will be greater if the individual applicant is no longer resident in that country. For example, there is an overseas turnaround in the United States of up to 12 weeks, whereas in Hong Kong it can normally be secured within a week. There is, however, a concession for applicants where it is not reasonably practicable to obtain a certificate from a particular country, although evidence of this would need to be provided with the visa application.

Another change introduced on 29 March 2019 is a deadline for investors who applied for and were granted their initial visas before 6 November 2014 (i.e., with a requirement to invest a minimum of £1 million) to submit an extension application before 6 April 2020; otherwise, the applicant will need to meet the requirements for an investment of £2 million, and ILR applications must be made before 6 April 2022.

The United Kingdom is in a highly competitive market, as many other EU countries have introduced their own investor schemes that promise both permanent residence and citizenship to those who invest significantly less than the sums required by the United Kingdom.

A number of countries within the European Union, including Austria, Cyprus, Hungary, Portugal, Spain and, most notably, Malta, have all introduced schemes to encourage high net worth individuals to invest sums into those respective countries, which would then lead either to permanent residency or (in Malta's case) to immediate citizenship. As these figures have been set relatively low (€650,000 in Malta), this is likely to have a significant effect on 'higher-value' countries such as the United Kingdom that wish to keep investment levels at a higher figure. However, if it is possible for a non-EU individual to invest sums of considerably less in, for example, Malta, than the United Kingdom is currently demanding, it would make little sense for such an individual to invest a substantially higher amount in the United Kingdom and then have to wait for five or six years before being able to secure British citizenship. In Malta, he or she would acquire Maltese citizenship immediately, and that would confer full EU rights on that individual. This is also a relevant consideration following the United Kingdom's departure from the European Union.

ii Entrepreneur

Major changes have also been introduced to this category, which, even outside the PBS, has been part of the immigration landscape for nearly 20 years. It was closed to new applicants on 29 March 2019, and extension applications will be accepted until 5 April 2023. Applications by existing entrepreneur migrants will be accepted until 5 April 2023, and accelerated routes to ILR will remain open until this date. Additionally, applicants whose current grant of leave was within the Tier 1 (Graduate Entrepreneur) category will be permitted to switch into the entrepreneur category until 5 July 2021. Subsequent extension applications must be made

before 5 July 2025 and ILR applications before 5 July 2027. For individuals eligible to switch into the entrepreneur category, submit an extension or apply for ILR, the criteria of the existing category need to be met.

The primary purpose of the entrepreneur route is to enable an applicant to set up a new business, join an existing business or become a director in either a new or an existing business in the United Kingdom. The minimum requirement that existed to be granted entry clearance as a Tier 1 (Entrepreneur) was that the applicant had a sum of £200,000 held in a regulated financial institution that was freely disposable in the United Kingdom. In early 2017, a change was introduced to require the prospective entrepreneur to have held £200,000 in his or her name for a three-month period prior to the application. The maintenance and English language requirements must be met, the NHS surcharge paid and a police clearance certificate obtained.

Applications for entry clearance were submitted to the appropriate British consulate. As far as maintenance is concerned, the applicant must have held a minimum of £3,100 in a bank account for a minimum of three months prior to the application being submitted (over and above the threshold sum of £200,000), and this figure increased by £1,800 for each dependant.

However, it was considered by the Home Office that merely requiring financial criteria to be met left this route open to abuse. Accordingly, with effect from 31 January 2013, Immigration Rules were introduced that included a 'genuine entrepreneur' test (as a form of assessment of an applicant's credibility), the option to interview an applicant should there be concern about his or her credibility, and a requirement that the investment of funds must be available on an ongoing basis rather than solely at the time of application. A new power was implemented that enabled an entrepreneur visa (or leave to remain in the United Kingdom) to be curtailed if, at any time during his or her initial period of stay (normally three years), non-compliance was established. The effect of these changes was that many more supporting documents were required at the time an initial entrepreneur application was submitted. Applicants were required to produce not only a business plan but also any other material (such as prior financial statements of an existing business, letters from accountants and evidence of an applicant's business track record) to enable UK entry clearance officers to assess the genuine nature of the application and the likelihood of the business succeeding in the United Kingdom.

Within six months of entering the United Kingdom, the entrepreneur must have become a director of the UK enterprise into which the £200,000 sum is being invested, or must have registered as self-employed with HMRC. If the registration did not take place within the relevant six months, the Home Office could curtail an entrepreneur migrant's leave to remain in the United Kingdom. The visa was issued for an initial period of three years, which could then be extended for a further two years, before the entrepreneur and family become eligible for ILR.

The initial financial threshold became more flexible. As an alternative to investing £200,000, an applicant in this category could have access to £50,000 held in a regulated financial institution that had been funded by a Financial Services Authority-registered venture capital firm, a UK government department or an entrepreneurial seeding competition recognised by UK Trade and Investment.

Entrepreneurs are permitted to be absent from the United Kingdom for up to 180 days in any 12-month period.

As a further incentive to prospective entrepreneurs, they may apply for accelerated settlement after three years if either their investment has created 10 full-time or equivalent jobs for resident workers for at least 12 months or the company or firm into which the investment has been made has generated a total turnover of at least £5 million over a three-year period.

A new 'prospective entrepreneur' visitor visa was introduced outside the PBS to enable business entrepreneurs to enter the United Kingdom for the purposes of securing financial backing, the intention being that any such entrepreneur will be permitted to switch in-country to long-term residence in the United Kingdom as a Tier 1 (Entrepreneur) without having to file the entry clearance application abroad. This route has since been closed.

Minor changes were introduced in HC 1078 to the Tier 1 (Entrepreneur) category to clarify evidential requirements and to correct minor drafting errors in the Immigration Rules. There was an amendment to provide a clearer definition of invested funds, a removal of references to HMRC documentation that has been discontinued in light of self-assessment of self-employed earnings, and clarification to the evidential requirements for applicants who have invested in an LLP. Further, the specified evidence required to demonstrate that an entrepreneur's employee has settled status in the United Kingdom has been revised to satisfy the requirement for the applicant to create jobs for settled workers.

On 29 March 2019, the Tier 1 (Entrepreneur) migrant category was closed to new applicants. Individuals who wish to come to the United Kingdom to establish a business must now apply within the new start-up and innovator categories at Appendix W of the Immigration Rules. In addition, all extension applications will require a business activity brief and job descriptions for employed workers. Entrepreneurs who benefited from the transitional arrangements in place regarding evidence of job creation and directors' loans (i.e., the rules that applied to applicants before April 2014 and November 2015, respectively) will now also need to meet the requirements that are currently in operation for extension or ILR applications.

iii Tier 1 (Exceptional Talent)

This category was closed to new applicants on 20 February 2020. Applications for ILR by existing Tier 1 (Exceptional Talent) migrants are still accepted. Additionally, applicants whose current leave is in the Tier 1 (Exceptional Talent) category are permitted to extend their leave into the global talent category.

This route was initially introduced by the government on 6 April 2011 for 'exceptionally talented migrants in the fields of science, arts and humanities' who wish to both work and eventually reside permanently in the United Kingdom. This was subject to an annual cap of 1,000 in its first year of operation, to be reviewed after 12 months (it has never been changed).

The exceptional talent route is open to those who are internationally recognised as world leaders in their field and to those migrants who show 'exceptional promise' and who are likely to become internationally recognised.

Migrants under the Tier 1 (Exceptional Talent) category will not need sponsorship from a UK employer or organisation but will require endorsement by a designated 'competent body' that is acknowledged to be expert within its own particular field.

This category has been broadened in an effort to further develop the digital industry in the United Kingdom. There are two stages to obtaining entry clearance for digital technology applicants, the first step being to apply to Tech Nation for an endorsement and the second to use that endorsement to support a visa application for entry clearance. Companies that

wish to employ an individual holding a visa under this category will not need a sponsorship licence and nor will they need to sponsor the individual. The application may be made by any individual keen to develop their work from inside the United Kingdom.

Before Tech Nation issues an endorsement, it will review the credentials of the candidate against its own set criteria. Candidates must either have a proven track record of advancement in the digital technology sector or have contributed to the development of the sector from additional work undertaken outside their primary role.

There is no single definition of exceptional talent, and the role of the competent body will be to set the criteria that will apply to those who may qualify for endorsement. A list of competent bodies is available on the Home Office website.

For its initial year of operation, this immigration route was available only to those applying from outside the United Kingdom, and to qualify for ILR, exceptionally talented migrants must reside in the United Kingdom for a five-year period and be economically active in their field of expertise.

On 20 February 2020, this category was closed to new applicants. Individuals who wish to come to the United Kingdom as recognised or emerging leaders in the fields of science, engineering, medicine, humanities, digital technology, arts and culture must now apply within the global talent category of Appendix W of the Immigration Rules.

iv Tier 1 (Graduate Entrepreneur)

This category was introduced in April 2012 for graduates from a UK university or higher education institution who either had or wanted to develop an existing viable business proposition. The individuals must have been identified by their college as having entrepreneurial skills, although its effect was muted because time spent in this category would not lead to settlement in the United Kingdom and the total period of leave granted could not be more than 24 months.

There was a limit of 2,000 visas available in this category per year, which were split as follows: 1,000 Master of Business Administration graduates, 100 'elite global graduate entrepreneurs' and 900 in any category from UK institutions of higher education. The 100 visas available to elite global graduate entrepreneurs did not require graduation from a UK university. Provided that suitable applicants had been identified by UK Trade and Investment, they could have graduated from anywhere in the world. Previously, this immigration route prevented successful applicants from working more than 20 hours each week, although this restriction was subsequently removed.

The initial period of stay is 12 months, which can then be extended for an additional year. However, this extension will not be possible if the relevant UK educational institute loses its status as an endorsing institution or its highly trusted status under Tier 4 (PBS), ceases to be an A-rated sponsor under Tier 2 or Tier 5, or withdraws its endorsement.

On 6 July 2019, the Tier 1 (Graduate Entrepreneur) category closed to new applicants to be replaced by the start-up route. Extension applications at the end of the first year are no longer accepted, and applicants must switch into the start-up category instead. Applications to switch into the entrepreneur category were accepted up to 5 July 2021 (after the maximum two years have been granted as a graduate entrepreneur) with an additional extension permitted until July 2025. Following this, if the applicant wishes to apply for ILR, they must do so by 5 July 2027.

VI WORKERS

On 29 March 2019, a new appendix to the Immigration Rules, Appendix W, was introduced for workers to include, initially, new innovator and start-up categories. Appendix W has since been replaced in the January 2021 PBS with Appendix Start-Up, Appendix Innovator and Appendix Global Talent. The government's aim behind these new routes is to draw on a 'wider pool of overseas talent and to remain a world-leading destination for innovation'. As referred to in Section V, these categories are designed to replace the entrepreneur and graduate entrepreneur routes and are aimed at those individuals seeking to set up and establish a business in the United Kingdom. Applicants must, however, create a new business and cannot join an already established company, as was the case with the entrepreneur category. The innovator and start-up categories involve two stages: endorsement and an immigration application.

At the time of writing, there are 48 endorsing bodies for innovator and start-up visas and over 100 higher education institution-endorsing bodies for start-up visas. Some endorsing bodies have stated that they will only endorse individuals who have completed an accelerator-type programme with them, and some bodies may also insist on an ownership stake in the business. Twenty-five places are allocated to each endorsing body, although this can be increased if necessary. It is also possible for additional endorsing bodies to apply and become eligible to endorse future applicants.

The Home Office can make its own credibility assessment following the endorsement stage – namely, that it is satisfied that the applicant intends to and is capable of undertaking any work or business in the United Kingdom that is stated on their application, that the money is genuinely available to the applicant and they will use it for the specific purpose stated in the application, and that the applicant will not work in the United Kingdom in breach of their conditions (i.e., that innovators will work only for the business stated in the application). The evidence submitted and its credibility can be scrutinised along with any educational, work and immigration history that the applicant may have.

Both the start-up and innovator categories require the applicant to be over 18 years of age and evidence their English language ability before their visa can be granted. Additionally, a maintenance requirement must be met for some applicants – the applicant must have held £1,270 for a consecutive 28 days unless the endorsing body confirms that they have been awarded funding of at least this amount. Each category permits family members to join the main applicant, with additional maintenance funds required per person. Maintenance funds do not need to be evidenced if the applicant has been in the United Kingdom for 12 months or more.

If an applicant's visa is granted, endorsing bodies must review the applicant at six-, 12- and 24-month checkpoints. The endorsing bodies have a duty to inform the Home Office if the applicant, at these checkpoints, has not made reasonable progress with their original business venture and are not pursuing a viable new business venture.

On 20 February 2020, the global talent category was introduced. This category replaces the Tier 1 (Exceptional Talent) route and enables recognised or emerging leaders in their field to come to the United Kingdom and build their careers. As for the start-up and innovator routes, the global talent route involves two stages: endorsement and an immigration application.

i Start-up

The start-up route replaced the Tier 1 (Graduate Entrepreneur) application scheme. The intention was to widen the applicant pool for business founders, given that applicants do not have to be graduates, unlike the entrepreneur route. The start-up category is, more simply, a category for those who wish to establish a business in the United Kingdom for the first time. Applicants can apply to switch to this visa from within the United Kingdom (although not from a visit visa, short-term student visa, parent of a child student visa, seasonal worker visa, domestic worker visa or leave outside of the Immigration Rules).

Applicants must have their business idea endorsed and be provided with an endorsement letter that confirms that the business venture demonstrates innovation, viability and scalability. The endorsing body must be satisfied that the applicant will spend most of their time working on developing the business venture. The endorsement does not need to be provided by the same endorsing body as their previous application if the applicant is applying to remain in the United Kingdom and has previously held a Tier 1 (Graduate Entrepreneur) or start-up category visa.

Following approval from the Home Office, the visa is granted for two years unless the applicant is applying from within the United Kingdom and has already spent time in the Tier 1 (Graduate Entrepreneur) or start-up categories, in which case the new visa will take the total time spent in the United Kingdom under this category to two years. There is no option to make an extension application within the start-up category; therefore, to remain in the United Kingdom, the applicant must switch into the innovator category prior to the expiry date of their initial visa. The start-up route does not lead to ILR.

ii Innovator

The innovator category has been launched to attract experienced businesspeople to the United Kingdom so that they can establish their business here. The innovator will need to have been endorsed by a specified body after presentation of an 'innovative, viable and scalable business idea'. If approved, the visa will be granted for three years. Following a minimum of three years in the United Kingdom, and provided that the applicant meets all the eligibility requirements, an application for ILR can be made. Alternatively, there is no limit on the number of extension applications one can make under this category. It is possible to switch into this category from another visa category within the United Kingdom (although not from a visit visa, short-term student visa, parent of a child student visa, seasonal worker visa, domestic worker visa or leave outside of the Immigration Rules).

All applicants must be endorsed at each application stage, whether for entry clearance, leave to remain or ILR, and applicants may be endorsed under the 'new business' or 'same business' criteria. The definition of new business would apply if it is the applicant's initial application, or the applicant is making an extension application and decides to pursue a different business idea. The same business route would be applicable to extensions of stay.

A fundamental requirement in the innovator category is the investment of £50,000 into a new business by the applicant. At the application stage, the applicant must evidence that the money is available to them, or that they have already invested the money into the business. The source of funds is permitted to be the endorsing body (or another source that has been verified by the endorsing body), a UK organisation, an overseas organisation or an individual third party. This category permits joint innovators, yet both applicants must have £50,000 each to invest. The innovator must also have funds to fulfil the maintenance requirement in addition to the investment funds if they have been in the United Kingdom for less than

12 months. Furthermore, the applicant must satisfy the endorsing body that their business venture meets the innovation, viability and scalability requirements and that they will work only on developing business ventures rather than undertake alternative employment.

Applicants applying for an extension of stay and wishing to rely on the same business will not need to invest a further £50,000. They must, however, obtain an endorsement letter that confirms various crucial points in relation to the business (e.g., it is still active and trading) and its prospective sustainability.

Once the endorsement has been provided, the Home Office may then undertake a credibility assessment before granting the visa. Should the application be approved, the applicant will be issued a visa that will be valid for three years.

To qualify for ILR, the applicant will need to meet the requirements as laid down for the same business route and obtain a letter from the endorsing body to confirm that a selection of two of the seven achievements set out in Appendix W have been reached (the achievements list from which an innovator can select includes, for example, evidence that the business has engaged in significant research and development activity and has applied for intellectual property protection in the United Kingdom, has created the equivalent of at least 10 full-time jobs for resident workers or five with an average annual salary of at least £25,000 gross, or has generated a minimum annual gross revenue of £1 million in the previous year). The applicant must also satisfy the general rules for ILR, including passing the Life in the UK test and not exceeding over 180 days' absences in any rolling 12-month period.

iii Global talent

The global talent category was launched on 20 February 2020. This route replaced the Tier 1 (Exceptional Talent) scheme and enables talented and promising individuals in the fields of science, engineering, medicine, humanities, digital technology, arts and culture (including film, television, fashion design and architecture) to come to the United Kingdom and build their careers. As with the exceptional talent route, applicants must be leaders in their field or have the potential to become leaders in their field, as determined by an endorsing body. Unlike its predecessor, the global talent category will not be subject to a cap on the number of applicants, ensuring that all migrants who can meet the qualifying criteria will be able to secure entry subject to successful visa checks.

Under the initial category requirements, migrants under the global talent route are required to hold an endorsement from a designated body engaged by the Home Office to develop specific criteria and consider individual applications on its behalf. The endorsing bodies are the Royal Society, the British Academy, the Royal Academy of Engineering, Tech Nation and Arts Council England, as well as UK Research and Innovation (UKRI). Many of these bodies were already working in the context of the exceptional talent route. In particular, UKRI will consider applications from individuals operating in the scientific community who will be hosted or employed at a UK research organisation deemed acceptable by UKRI. Applicants must provide critical contributions to work supported by a substantial research grant or award from a specific endorsed funder.

In March 2021, the Home Office announced a change to the category allowing applicants who have reached the pinnacle of their careers to bypass the endorsement requirement and instead qualify if they have a received a prestigious prize. The prizes considered to be prestigious are set out in Appendix Global Talent: Prestigious Prizes. Such prizes include an Academy Award, a BAFTA, a Nobel Prize or an Olivier Award. All other requirements and conditions will be the same as an application with an endorsement.

Visas will be issued for a period of up to five years; however, applicants will be able to choose how much leave they wish to be granted in a single application, in whole years, up to a maximum of five years. This means that global talent applicants who wish to come to the United Kingdom for only two years in this category will not need to pay the maximum five-year NHS surcharge payment. Applicants endorsed by endorsing bodies responsible for science, engineering, humanities or medicine will be able to apply for settlement after three years regardless of whether they were approved under the 'promise' criteria, 'talent' criteria or the new 'endorsed funder' option. To extend or settle in the category, applicants will need to show that they have earned money in the United Kingdom during their previous grant of leave linked to their expert field and they must remain endorsed. The global talent category will continue to have no minimum English language or maintenance requirements.

There will be more freedom for global talent migrants when it comes to absences abroad and eligibility for ILR. Unlike applicants in other categories who must not spend more than 180 days outside the United Kingdom in any 12-month period, global talent migrants endorsed by one of the bodies for science, engineering, humanities or medicine will be permitted to be outside the country for as long as they require, on condition that their absences are linked to their professional activities.

VII OUTLOOK AND CONCLUSIONS

i Overview of current UK domestic immigration routes

Following the sea change in the UK immigration process introduced by the PBS in 2008, it was hoped that subsequent changes would be introduced over time, primarily to help improve the operation of the new system and to enable it to function more smoothly. Unfortunately, this has not proved to be the case and during the past 10 years the UK immigration process has been rather uneven. The changes of government in May 2010, 2016 and 2019, bringing with them a raft of new policy initiatives, have made matters substantially more challenging for the business community. Of course, the Brexit vote created a new reason for substantial changes to the UK immigration system.

A major policy of the current government and its predecessors has been to substantially reduce net migration numbers to the United Kingdom. The routes that have borne the brunt of this policy have been the economic immigration routes, primarily those that apply to employees, or the self-employed, and to students. According to figures published by the government, the number of people from outside the European Economic Area and Switzerland given entry to the United Kingdom as sponsored students and family members increased by nearly 80 per cent from 272,000 in 1999 to 489,000 in 2009. It appears that, in 2009, the student route (including dependants) accounted for approximately 76 per cent of the total net migration into the United Kingdom. However, the combined number of student and non-EEA family visas issued substantially decreased to fewer than 358,000 in 2017 and then increased slightly in 2018 with 241,054 student (and dependant) visas issued and 151,953 non-EEA family-related visas issued. Visas granted for family reasons increased again in 2019 and 190,973 visas were issued. Student visa numbers were also increased to 285,508. In the year ending March 2020, a total of 299,023 student visas and 194,746 family visas were issued. These statistics are likely to increase further with EEA nationals now being third-country nationals in the United Kingdom following the end of the transition period, although much depends on the continued attractiveness of the United Kingdom as a place to study (noting the increased tuition fees) and live.

Following Brexit, the UK resident labour market size reduced significantly and the government accepted the fact that the United Kingdom has not been producing a sufficient number of qualified persons, particularly in the areas of science, mathematics and engineering, to meet the increasing needs of UK industry. To that end, the government abolished the annual cap on skilled worker migrants and removed the resident labour market test in the new PBS, a change that has been welcomed, and most have commented on its smooth implementation and current operation.[5]

The introduction of the NHS surcharge increased the cost of recruiting labour from outside the European Economic Area, and the immigration skills charge (introduced in April 2017) further increased the costs burden on employers. The government will continue to levy both charges under the new immigration system. At £1,000 per year for large sponsors, this can increase the cost by £5,000 for a five-year visa. These additional costs are intended to deter employers from sponsoring overseas nationals unnecessarily, in an attempt to encourage more recruitment from the resident labour force. However, there are few businesses that would seek to incur the high costs of overseas recruitment, government fees and relocation costs if such labour is readily available from within the United Kingdom. A family of four coming to the United Kingdom in the skilled worker category for a five-year period can add £15,000 to the cost of most overseas hires. If a business cannot afford these costs and cannot find the skills it needs from within the United Kingdom, this undoubtedly causes difficulties for the growth of the business.

Even more generally, the UK immigration system is relatively expensive and time-consuming. Alongside the introduction of immigration skills charges and health surcharges, the direct cost of immigration applications has roughly quadrupled between 2014 and 2018, and there have been further extensive changes in the past four years. Moving forward, as of February 2022, the United Kingdom will no longer offer a reduction in cost according to nationality. It is currently unclear how the fees influence migrants' decisions to choose the United Kingdom as a destination or how employers choose whether to employ an individual under the skilled worker category or the temporary worker category.

The government further eased restrictions in the new PBS by allowing ICT migrants to switch to the skilled worker category. This will address the problem many ICT migrants face of not being able to settle in the United Kingdom, despite spending many years here. An additional documentary burden is the English language competency requirement, which must be evidenced by migrants who are not nationals of a majority English-speaking country. The ICT migrants are exempt from meeting the English language requirement along with dependants of skilled workers.

A criminality test has been introduced for all overseas migrants, who will have to prove that they are free of unspent convictions (under the Rehabilitation of Offenders Act 1974) when applying for ILR. Those who cannot establish this will have to leave the United Kingdom if they have no other legitimate basis to stay here. As an example, any person convicted of an offence, no matter how minor, who receives a non-custodial sentence will have to wait for a minimum of 12 months after the conviction before being eligible to apply for ILR. For more serious offences, this increases in tranches up to a bar of 15 years for those who have been sentenced to a term of imprisonment of four years or more.

5 Migration Advisory Committee annual report, 2021 (published 15 December 2021).

As of 6 April 2017, Tier 2 (General)/Skilled Worker entry clearance applicants within the health, education and social care sectors are also required to obtain a criminal record certificate.

ii Brexit

The relationship between the United Kingdom and the European Union

The future of the United Kingdom's relationship with the rest of the European Union is still a topic of discussion even after the trade deal.

EU citizens have been able to live and work legally in the United Kingdom without having to meet any of the criteria detailed above that non-EU nationals currently have to comply with, such as having a skilled job or qualifying family relationships. Examples of other benefits EU citizens have enjoyed include visa-free travel to the United Kingdom and cooperation on asylum. Following the United Kingdom's departure from the European Union on 31 January 2020 with the Withdrawal Agreement and the end of the transition period on 31 December 2020, rights enjoyed by EU citizens for many decades ceased to exist. The government announced its new immigration framework, which came into force on 1 January 2021, under which free movement ended and EU and non-EU nationals started to be treated equally. However, the EU settlement scheme remains open to EU nationals who started living in the United Kingdom prior to 11pm on 31 December 2020.

End of the single market and the 'four freedoms' for the United Kingdom

The government did not retain membership of the single market and will not continue to accept the four freedoms of goods, capital, services and people.

The agreement reached between the European Union and the United Kingdom does not involve access to the single market, which enables the free movement of people between the European Union and the United Kingdom as one of the four freedoms. This means that EU nationals will become third-country nationals under UK immigration law. The United Kingdom will be required to impose selection criteria on EU citizens in the same manner as it currently does for non-EU nationals. The selection criteria to be applied will require migrants to demonstrate that they have a skilled job, a spouse or partner in the United Kingdom, or a place to study with a registered university or college. Further, the government has confirmed that the new immigration framework will not include a route for lower-skilled workers, even on a temporary or transitional basis. This is not welcome news for the business community, as many employers are concerned with retaining their workforce, particularly in the care, construction and hospitality sectors, which rely heavily on the free flow of labour from the European Union.

EU Member States have adopted reciprocal measures confirming that British nationals residing in the relevant countries prior to the end of the transition period will be allowed to regularise their stay. A number of EU countries have, however, confirmed that they will change their policies towards British citizens residing abroad from 1 January 2021, effectively treating them as third-country nationals. British citizens have to meet EU countries' default immigration criteria, the rules and policies of which will vary from country to country.

iii Overview

Despite the negative sentiments directed towards the United Kingdom as a result of Brexit, the government remains hopeful that with the help of the new immigration system the country will continue to attract 'the brightest and the best' to work or study in the United Kingdom. Whether this will be the case in practice remains to be seen, especially because, due to the covid-19 crisis, we have not had the opportunity to understand the true working of the new immigration system.

Notwithstanding, the UK Home Office showed in 2020 that it was willing to change and adapt to dynamic circumstances and introduce necessary exceptions during a time of international crisis. Although the execution was not faultless, the UK Home Office managed to address many immigration problems created and exacerbated by the covid-19 crisis.

Prior to the covid-19 crisis, Brexit was the major issue causing uncertainty in terms of the United Kingdom's economic growth. Covid-19 managed to transcend this issue. In the circumstances of the global crisis, amid which the United Kingdom left the European Union, the United Kingdom may have yet to experience the true economic impact of Brexit.

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