

# INTERNATIONAL TRADE AGREEMENTS AND UK IMMIGRATION POLICY: A PRACTICAL BLUEPRINT FOR EVOLUTION



## About TheCityUK

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TheCityUK is the industry-led body representing UK-based financial and related professional services. In our 10th anniversary year, we continue to champion and support the success of the ecosystem, and thereby our members, promoting policies in the UK, across Europe and internationally that drive competitiveness, support job creation and ensure long-term economic growth. The industry contributes over 10% of the UK's total economic output and employs 2.3 million people, with two thirds of these jobs outside London. It is the largest tax payer, the biggest exporting industry, generates a trade surplus almost equivalent to all other net exporting industries combined. It also makes a real difference to people in their daily lives, helping them save for the future, buy a home, invest in a business and protect and manage risk.

## About EY

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When the financial services industry works well, it creates growth, prosperity and peace of mind for hundreds of millions of people. No other industry touches so many lives or shapes so many futures.

At EY Financial Services, we share a single focus — to build a better financial services industry, not just for now, but for the future.

We train and nurture our inclusive teams to develop minds that can transform, shape and innovate financial services. Our professionals come together from different backgrounds and walks of life to apply their skills and insights to ask better questions. It's these better questions that lead to better answers, benefiting our clients, their clients and the wider community. Our minds are made to build a better financial services industry. It's how we play our part in building a better working world.

**TheCityUK would like to thank the following:** Seema Farazi, Partner; Tim Whittaker, Senior Manager; Sally Jones, Partner, Trade Strategy and Brexit; George Riddell, Director of Trade Strategy; Dirk Nuyts, Partner; Alex Israel, Partner; Kellie Sullivan, Senior Manager; and the research team on this report: Pauline Kajibwami-Gollop, Liene Laucina, Charlotte Nicholas and Anum Wraich, Ernst & Young LLP.

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# FOREWORD

The UK's capacity to attract global talent is one of the major drivers of its position as a world-leading hub for financial and professional services. Over the years the UK has built a dynamic ecosystem renowned for its openness, cultural diversity, and its attractiveness to innovators. People come to the UK to join some of the most experienced industry practitioners and our industry has benefited from its ability to attract the best talent from across the globe and to deploy recognised expertise across jurisdictions.

Over 2.3 million people work across the country in financial and related professional services, accounting for 7.4% of total UK employment. Two-thirds of them are located outside London. Our industry contributed £10 of every £100 of economic output in 2018 with productivity twice as high as the whole-economy in terms of output per job. The financial and related professional services industry generates employment, contributes to economic output and is the biggest exporting industry with a trade surplus almost equivalent to all other net exporting industries combined. It supports businesses and individuals through its various sectors. None of this could be done without its people.

The UK is now transitioning to its new place in the global economy after leaving the EU. Covid-19 has brought further transformations, not least in spurring technology adoption and facilitating remote working - trends which could have an impact on immigration in the long run. UK policymakers must retain a strong focus on building the UK's attractiveness in their response to the Covid-19 crisis and approach to new trade partnerships.

It was encouraging that the UK government adopted six out of nine recommendations from our previous report 'The UK's immigration system and access to talent'. However, there remain gaps in the UK's domestic immigration system, affecting its coherence and effectiveness. Mobility agreements with trading partners, well-publicised to those who stand to benefit, and backed by determined implementation, will help to tackle these challenges. In order to benefit the widest possible range of citizens throughout the country, the UK should now aim to be as innovative and forward thinking as possible.

The recommendations in this report will allow the UK to seize the opportunity to use its new, independent trade and investment policy to build a more attractive, innovative, and truly international UK economy. The government's success in finding solutions to support international workers stranded by Covid-19 has shown how effective and agile the UK's immigration system can be. Our recommendations seek to build on that agility and to improve the interaction between trade agreements and the practical implementation of migration policy. Putting effective measures in place now will have a long-lasting impact on the UK's standing in the world.

I would like to thank everyone involved in this project for their support. Special thanks are due to Seema Farazi, Tim Whittaker and the team at Ernst & Young for their work and contribution to this important debate. TheCityUK looks forward to further discussion on our findings with the government, business, and other interested stakeholders.

## Miles Celic

Chief Executive Officer, TheCityUK





# INTRODUCTION

The purpose of this report is to highlight how the UK can push traditional boundaries on international trade and migration policy as it approaches new global trading partnerships and relationships, to deliver enhanced frameworks for the UK's financial and related professional services industry.

When we started this work, the UK was facing its most momentous immigration reforms in almost 50 years. That was six months ago. We publish this report in a transformed world. Transformed by ecological challenge, transformed by an extraordinary human response — at once creating a perfect storm, and a perfect opportunity to reframe thinking. International trade and immigration systems have been tested in very different but equally unprecedented ways at an unprecedented scale, and the industry continues to play a critical role in economic recovery. If ever there is a time to evolve the discussion, to look at the long-standing challenges around trade agreements and migration policy in a changed way, it is now.

We do so here through a constructive lens, focusing on what we view as immediately achievable measures that will deliver tangible benefit to the industry. We focus on those measures which evolve trade agreement related migration policy, but which do so without presenting any inherent conflict with the principles underlying the government's firmly stated intentions for its post-Brexit future immigration system.

There is a broader discussion to be had around the more aspirational reforms that could be delivered at the World Trade Organization (WTO) level. That is beyond the scope of this paper, but we hope that the recommendations herein talk to the most significant challenge around the interaction of international trade agreements and migration policy — their effective, transparent and mutual implementation at domestic levels, serving the underlying objective of enhanced access to trade in services for the industry. Without this fundamental usability, the overall purpose of driving greater trade between the UK and the specific trade partner can be defeated. This would be a missed opportunity, negatively impacting any increase in GDP expected from the trade agreement.

It has been a pleasure to work with TheCityUK and its members on this project — work which has highlighted the interest and enthusiasm felt by the industry with regards to the opportunities that can be created for the industry through future trading relationships.

**Seema Farazi**

Partner, Global Immigration, Ernst & Young LLP



# EXECUTIVE SUMMARY

Free trade agreements are only as useful as they are usable by those seeking to trade between the UK and its treaty partners. This report sets out a blueprint to evolve thinking on how such trade agreements can support the financial and related professional services industry in terms of both its use of skills and talent from outside the UK, and liberalised access for its personnel to service markets with trading partners, focusing on the key issue of business usability of negotiated provisions. The report builds on findings in TheCityUK's previous joint 2018 immigration report, 'The UK's Future Immigration System and Access to Talent'<sup>1</sup>, and our 2017 Submission on 'Future UK Trade and Investment Policy'.<sup>2</sup>

The report's findings and recommendations are based on engagement with TheCityUK's members via committee engagement, bilateral qualitative interviews and roundtables focusing on the positive and challenging aspects of the UK and other countries' immigration systems. The organisations that contributed to this work represent the breadth of financial and related professional services, including banks, insurers, asset managers, market infrastructure providers, legal services firms and consultancies.

Immigration brings productive skilled individuals to the UK who contribute billions in taxes which fund vital services across Britain. It continues to impact geopolitics as much as it is impacted by it. Immigration changes that will flow from the UK's departure from the EU are complex for the industry, with new rules, timelines and costs to navigate on immigration permissions and processes and permitted activities for business travellers. In addition, Covid-19 has meant that for the first half of 2020, 90% of the world's population has been living in countries with travel restrictions in place. The ability to move talent across borders is no longer just a question of immigration permission. Other questions include: are transport routes safe? Will borders open at the point of departure still be open at the point of arrival? Will the epidemiological situation allow exit or will employees become dislocated? What health certification may be required? What level of data must be given? What personal restrictions will be mandated on arrival or return? Are we at a point of significant inflection around how and where we work, and freedom of movement has taken on an acutely personal meaning for all.

## Key Findings

- **Domestic immigration policy can move at speed to deliver innovation.** In pandemic responses, we have seen unthinkable innovation delivered overnight. Rapidly introduced government flexibilities around immigration policy and enforcement, designed to protect those impacted by the crisis, have shown that it is possible to reimagine old ways without compromising the integrity of the system. The UK granted automatic extensions for essential workers; ripped up the rules on switching, and allowed virtual right to work checking, among other measures designed to support impacted individuals and business alike. Beyond the UK, over 50 countries abandoned the red tape and granted automatic extensions for migrant workers and business travellers, to protect them from becoming overstayers, and around 20 countries moved to online processing at least in the interim. As temporary ways of working assume some degree of longevity, several jurisdictions have swiftly introduced nomad visas to encourage those working remotely to do so in their economies.
- **Global trade frameworks are often comparatively less agile.** International trade too has been tested to limits, with distressed global supply chains and demand shocks leading to diversification among suppliers to hedge risk; near-shoring to protect against future supply chain shock; limited or targeted on-shoring (for example, around medical supplies, PPE) to the extent that government budgets allow, and conflicting impacts on even the leanest just-in-time (JIT) supply chains.<sup>3</sup> In international trade, however, policy does not typically move at such speed, even at a time of crisis response – an unavoidable reality of a global system. *"This is the time to consider the future of the multilateral trading system... [t]he outbreak of the Covid-19 pandemic has heightened the urgent need to examine the underlying principles and values of the WTO [World Trade Organization]"*, said its Deputy Director General Wolff in May, reviewing its pandemic response.<sup>4</sup> Wolff predicts that regional trade agreements will be a useful way of exploring paths forward for rulemaking where progress would be more complicated to achieve on a global basis, recognising that regional integration can be productive and should be fostered, and recognising too that continued relevance will require change.

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1 TheCityUK, 'The UK's future immigration system and access to talent', (May 2018), available at: <https://www.thecityuk.com/assets/2018/Reports-PDF/f7f8cf85d0/The-UKs-future-immigration-system-and-access-to-talent.pdf>

2 TheCityUK, 'Future UK trade and investment policy', (January 2017) available at: <https://www.thecityuk.com/assets/2018/Reports-PDF/1b9e4235f2/Future-UK-Trade-and-Investment-Policy-TheCityUK-submission.pdf>

3 World Economic Forum, 'This is what global supply chains will look like after Covid-19', (May 2020), available at: <https://www.weforum.org/agenda/2020/05/this-is-what-global-supply-chains-will-look-like-after-covid-19/>

4 World Trade Organization, 'This is the time to consider the future of the multilateral trading system', (May 2020), available at: [https://www.wto.org/english/news\\_e/news20\\_e/ddgaw\\_27may20\\_e.htm](https://www.wto.org/english/news_e/news20_e/ddgaw_27may20_e.htm)

*“As Covid-19 wreaks havoc across industries worldwide, G20 countries... should begin preparing the groundwork for a revitalised global trade framework to help rebuild the world economy.”<sup>5</sup>*

- Gaps remain in the UK's domestic immigration policy for an industry reliant on specialised skills.**<sup>6</sup> The UK's immigration system is on the cusp of a new, unified system for all non-UK nationals. The UK's 2021 Skilled Worker system for sponsored employees will represent a significant gain on its Tier 2 predecessor. EY and TheCityUK partnered in May 2018 in a joint report on a post Brexit immigration system entitled 'The UK's future immigration system and access to talent'.<sup>7</sup> That report contained nine recommendations for the UK's future system, and it is encouraging that six of our nine joint recommendations are, at least in part, realised in the new system. For a financial services sector reliant on specialised non-UK talent for 28% of the workforce, rising to 42% in FinTech, (16% and 28% of whom are EU nationals respectively), challenges remain, however. This is particularly true around cost, accessibility and administrative burden. Research on the impact on EU nationals falling under the unified system has suggested that 38% of EU nationals currently working in the sector would not qualify under that new system.<sup>8</sup> Of concern also is that the analysis found that women tend to have lower eligibility rates than men: 36% of men would be eligible for a skilled work visa, compared with 26% of women and that *“the new rules will therefore have a particular impact on restricting the immigration of women from EU countries”*.<sup>9</sup> It is therefore reassuring that delivery of that unified system on 1 January 2021 is but one stage in a concerted move to continue to revisit and improve the UK's immigration system in its totality. In July 2020, an Office for Talent was announced, to be based in No.10 with delivery teams across government departments and tasked with immediately reviewing the effectiveness of the current immigration rules and ensuring excellent customer service across the immigration system. Its purpose is to ensure the UK's talent offer is stronger than ever for students, those building their careers, and those who are already world leaders in their fields and to make it easier for them to come to the UK from around the world.<sup>10</sup> Subsequent stages will focus on building an unsponsored route, improvement of the administration of the Skilled Worker system, enhanced user experience, and development of the UK's 2025 Border Strategy *“to deliver a world class border”*.<sup>11</sup>
- Mobility agreements with trading partners have the potential to alleviate pressures for the industry.** TheCityUK has previously highlighted the importance to UK-based financial and related professional services providers of being able to establish in markets of their choice, freely recruit employees in the UK and elsewhere, and move their business personnel as business requires.<sup>12</sup> Effective temporary presence provisions in free trade agreements (FTAs) enable UK individuals to be employed in the rest of the world. For senior UK executives and professionals, careers may be enhanced by working for a period in another country. The UK derives a broad range of economic benefits from effective mobility provisions. Some of the main economic benefits for UK-based financial and related professional services are:

  - **International recruitment.** UK-based businesses can recruit from a wider pool, enabling them to meet skills needs, provide flexibility during periods of growth, and gain employees with the language skills necessary for an international financial centre.
  - **Overseas deployment of staff.** Staff can be deployed in other markets more easily, helping UK businesses to operate in or expand into other markets by enabling them to draw on existing UK staff.

5 World Economic Forum, 'This is why keeping global supply chains moving is key to overcoming COVID-19', (April 2020), available at: <https://www.weforum.org/agenda/2020/04/g20-trade-international-health-supplies-coronavirus-covid19-pandemic/>

6 Excluding Irish nationals who will continue to be able to move to the UK and live and work here by virtue of the Common Travel Area arrangements.

7 TheCityUK, 'The UK's future immigration system and access to talent', (May 2018), available at: <https://www.thecityuk.com/research/the-uks-future-immigration-system-and-access-to-talent/>

8 IPPR, 'Immigration plans analysis', (February 2020), available at:

<https://www.ippr.org/news-and-media/press-releases/immigration-plans-analysis-two-thirds-of-current-eu-migrants-in-health-and-care-sector-would-have-been-found-ineligible>

9 Ibid. Note also that women are likely to be harder hit than men by trade disruptions caused by the COVID-19 pandemic. The effects of the pandemic are aggravating existing vulnerabilities. Many channels through which COVID-19 is having a greater impact on women are those at the heart of gender inequalities, such as lower wages for women, fewer educational opportunities, limited access to finance, greater reliance on informal employment and social constraints. Limited access to digital technologies and lower rates of information technology (IT) skills further reduce women's opportunities for teleworking and e-commerce, and thus for adapting to the current crisis: [https://www.wto.org/english/news\\_e/news20\\_e/covid\\_05aug20\\_e.htm](https://www.wto.org/english/news_e/news20_e/covid_05aug20_e.htm)

10 UK Government, 'Government fires up R&D across the country to cement the UK as science superpower', (July 2020), available at: <https://www.gov.uk/government/news/government-fires-up-rd-across-the-country-to-cement-the-uk-as-science-superpower>

11 UK Government, '2025 UK Border Strategy Public Consultation', (July 2020), available at: <https://www.gov.uk/government/consultations/2025-uk-border-strategy-public-consultation/2025-uk-border-strategy-public-consultation>

12 TheCityUK, 'Future UK trade and investment policy', (January 2017) available at: <https://www.thecityuk.com/assets/2018/Reports-PDF/1b9e4235f2/Future-UK-Trade-and-Investment-Policy-TheCityUK-submission.pdf>

- **Education and training.** UK professional training institutions represent a considerable UK business sector. Effective provisions mean they can recruit staff globally to help deal with critical skill shortages in specialist subjects and work easily in partnership with other institutions and businesses internationally.

- **But effective FTAs will require UK policymakers to be unhesitatingly innovative, crafting trade agreements that will be positive for business and attractive for business to use.** Of course, all FTAs aim at this, through removing barriers that distort trade and reduce the free play of competition. But, to achieve this, their provisions must be easy for business to use. This is true for trade in goods, where some FTAs have included such complex rules of origin as conditions for qualifying for duty reductions that businesses have found them too onerous to operate. It is even truer for services. While market access for goods mainly involves measures at the border, such as customs duties or quantitative restrictions, market access for services relates more to the application of domestic regulation behind the border. These types of restrictions can include establishment requirements linked to quotas, joint-venture requirements, residency requirements, restrictions relating to the corporate form of a service-supplier, equity caps and nationality obligations. Across all of these, simplicity of operation is the key, especially for UK services SMEs<sup>13</sup>, whose resources for cross-border trading are limited.

It follows that key themes to guide the government on immigration reform must be simplification, efficiency and better user experience. This is important in the current context as there are three fundamental challenges with migration policy in FTAs to date, whether agreed by the US, EU or other countries, that are diametrically at odds with these key themes. Firstly, they are technically complex to even the seasoned trade lawyer. Secondly, they have not acted as an engine for change, and efforts at reform have so far produced underwhelming outcomes. Thirdly, their implementation can challenge the positive user experience that is critical to their underlying goal. FTAs are only as useful as they are usable by those seeking to trade between the UK and its treaty partners. If the eventual rules are contradictory or difficult to apply in practice then there is a risk that businesses will not use the FTAs, lessening potential economic gains.<sup>14</sup> TheCityUK has previously supported vigorous attempts to secure commitments from trading partners in the WTO context. This remains an important objective, which should continue to be pursued. That said, it will take time to get any changes at the WTO level.

- **The UK's system can be complemented by bilateral agreements with other jurisdictions, implementing mutually beneficial immigration routes.** One of the biggest risks the UK faces is not being ambitious enough with regards to services trade and missing an opportunity to do more in this area. There is space for the UK to be innovative in its services trade policy when concluding bilateral deals, and not be bound simply by WTO precedent and previous bilateral deals struck by the EU or other countries. The EU itself is presently engaged in an analysis of the interaction between EU trade commitments and immigration rules in its own Member States, including an inventorisation of applicable rules, with a view to identifying possible inconsistencies, regulatory gaps and implementation problems.<sup>15</sup> The UK has an opportunity to think creatively about how to plug skills shortages and unlock concessions from other countries in terms of the opening of services markets and proactively solving for inherent gaps and implementation problems – creating a blueprint for evolution. We recommend it does so in the following ways.

<sup>13</sup> SMEs also face significant challenges in accessing global talent. Note the FSB's February 2020 Report, 'A World of Talent'. FSB evidence shows that nearly half (48%) of small businesses cannot meet the current Tier 2 visa costs for a small business (1-50 employees). Note that this cost concern has not been alleviated by subsequent UK policy announcements. Report available at: <https://www.fsb.org.uk/resource-report/a-world-of-talent.html>

<sup>14</sup> See, for example, research by St Gallen University and their analysis of the Sino-Swiss FTA which shows most relevant Swiss businesses don't take advantage of FTA provisions because they don't understand them, rendering the economic benefits of the FTA less in practice than in theory. Sino-Swiss Free Trade Agreement – 2018 Academic Evaluation Report (pp27-28), available at: <https://www.unisg.ch/-/media/dateien/unisg/hsgservices/hsgmediacorner/aktuell/2018/20180926-sino-swiss-evaluation-report.pdf>

<sup>15</sup> Belgium-Brussels: Study on the Interaction between EU Trade Commitments (GATS and Bilateral) and Immigration Rules in EU Member States in View of Identifying Potential Inconsistencies and Regulatory Gaps 2019/S 167-407674



## Our recommendations

### Recommendation 1 – Increased certainty for UK business around short-term travel

Short-term business visits to other countries are often frustrated by a lack of clear information and guidance on permissible and prohibited activities. This issue will be exacerbated when EU freedom of movement for British Citizens within the EU ends in December 2020. In free trade agreements, the UK should focus on the form of commitments in this area and include a granular list of prohibited and permissible activities. This will deliver increased certainty for UK businesses sending British staff to the EU and other countries on business visits.

### Recommendation 2 – A hybrid, streamlined short-term category to allow productive work

Where a visitor into the UK needs to perform productive work, with very few exceptions, they cannot enter under the visitor rules and must apply for a work visa, even where the work activities are incidental or for a very short period. There is a significant increase in administration, cost and timeframes associated with applying for a work visa, and there is no middle ground between visitor status and a work visa. The UK should implement, potentially on a mutually agreed basis, a new immigration route that combines the controls associated with sponsorship with the flexibility of visitor routes. Applicants would be issued with a Certificate of Sponsorship by the UK sponsor, enabling them to perform productive work for up to six months. Non-visa nationals (and the list of non-visa nationals should be updated to include trade partner nationals offering a mutually agreed route) would be able to travel to the UK for this purpose without first applying for a visa. We first made this recommendation in 2018 in a previous report – ‘The UK’s future immigration system and access to talent’. This will deliver increased flexibility and speed to land and lower cost/administrative burdens.

### Recommendation 3 – Simplified immigration rules supporting service delivery commitments

The UK’s implementation of its commitments to facilitate contractual service suppliers to enter the UK via the Tier 5 (International) Agreement is overly complex, infrequently used, and places an excessively high administrative burden on the UK company receiving the services. Future trade agreements should provide more detail on the required implementation of commitments, to avoid the way in which they are implemented frustrating the purpose of the commitment which can result in trade distortion. Simplified and more consistent immigration routes for service suppliers will reduce friction associated with delivering and receiving cross-border services.

### Recommendation 4 – Prioritised agreement of reciprocal Youth Mobility Schemes with trade partners

The UK’s Youth Mobility scheme works well and provides a convenient self-sponsored immigration route that gives employers some relief from reliance on the sponsored worker system. But to date the UK has not agreed reciprocal youth mobility arrangements with the EU and without such arrangements in place, the end of Freedom of Movement risks bringing about a potentially overwhelming reliance on the UK’s sponsored worker system with its associated administrative burden and costs. The UK should prioritise the agreement of reciprocal youth mobility arrangements with all trade partners, but particularly the EU. Youth Mobility visa holders can proactively move to the UK and widening the scope of the route would help support a significant pool of UK-based international talent, leading to a lowering of the overall burden on UK employers.

### Recommendation 5 – Where mutually agreed, introduce an Intra-Company Transfer (Trade Partner Nationals) route

Short-term assignments to the UK of between six months and two years under the Intra-Company Transfer scheme attract significant additional costs – the Immigration Skills Charge (ISC) - £1,000 per year. This additional cost increases friction associated with short-term assignments and reduces flexibility for UK employers with branches overseas. The UK should offer a bespoke Intra-Company Transferee (ICT) route for nationals of trade partners, where reciprocated. The key differentiator would be a two-year exemption from the ISC (or a lower trade partner level charge) where a UK-based employer is making use of the new ICT (Trade Partner Nationals) route. Where the assignee extends their assignment beyond two years or localises, the ISC should be payable from that point onwards. Where equivalent payments form part of the immigration system of the UK’s trade partners, these exemptions should apply retrospectively. The introduction of an enhanced route directly enabling ICTs for trade partner national broadens the UK’s ability to negotiate mutually agreed outbound arrangements.

### Recommendation 6 – Clearly articulated and accessible principles

Employers tell us that the processes and procedures associated with visa applications, both into<sup>16</sup> but particularly out of the UK, are often overly complex, with poor published guidance and high levels of uncertainty over when, if at all, visas will be granted. These challenges increase friction and the cost of administering applications and decrease certainty. The UK should seek to agree with its trading partners, via free trade agreements, the adoption of a standard set of principles governing how visa applications are submitted and processed and actively promote awareness of opportunities. This would include substantive commitments on speed of processing, decision making processes, requirements for supporting documentation and cost. Consistent application processes in different countries will greatly reduce friction associated with international mobility.

### Report methodology

This report and its recommendations are informed by the following:

- Reference to the substantial body of prior work on immigration policy, mobility frameworks and international trade agreements. This includes reports from the WTO, OECD, Home Office and other areas of government, the Office for National Statistics (ONS), the Migration Advisory Committee (MAC) and various think tanks and other non-governmental organisations.
- Examination of relevant aspects of immigration systems in operation worldwide, with attention paid to global financial centres.
- Detailed interviews with EY's global immigration practitioners in the UK's trade priority countries.
- Detailed interviews with TheCityUK's members. Interviewees provided technical and personal perspectives on the place of international talent and culture within their organisations.

Engagement with several of TheCityUK's committees including:

- Immigration workstream
- EU Technical Advisory
- EU Strategy Group
- Liberalisation of Trade in Services (LOTIS) Committee

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<sup>16</sup> Measures being taken by the Home Office to review, simplify and consolidate the UK's Immigration Rules are welcomed by business. See further details at: <https://www.gov.uk/government/publications/simplifying-the-immigration-rules-a-response>

# CURRENT STATE OF PLAY AND IMPENDING REFORM

## A world leading hub for financial and professional services

The UK's continued international success as the world's leading hub for financial and professional services is critically dependent on both its ability to attract the best talent from across the globe, and the flexible and cost-efficient movement of people both into the UK and across borders. Accelerated by the impact of the pandemic on the movement of talent, global employers are reviewing recruitment plans to ensure they can continue to access key skills and are taking a strategic holistic view of their global workforce. This holistic view provides much needed resilience against the talent supply shock seen at the height of pandemic-induced border closures, and after covid businesses are reviewing recruitment plans to make sure they continue to get access to good quality workers. The sector continues to rely on the ability to utilise this highly agile, flexible workforce, often based in overseas branches, to fill short-term needs in the UK, including internal facing project work, short-term cover and serving clients, often at extremely short notice.

As well as the more general need for a pool of UK based international talent, key needs sit around the following four areas:

- business travel
- service delivery
- long-term hires
- assignments/Intra-Company Transfers

## HOW FINANCIAL & RELATED PROFESSIONAL SERVICES FIRMS USE NON-UK LABOUR\*



\*INCLUDING EU AND THE REST OF THE WORLD

## UK-BASED FINANCIAL AND RELATED PROFESSIONAL SERVICES FIRMS HEAD OFFICE LOCATION

UK = 54%

EEA = 25%

REST OF WORLD = 21%



## OVER 1 IN 4 EMPLOYEES IN BANKING & FINANCE IN LONDON ARE NON-UK CITIZENS\*



• 16.9% - EU

• 11.4% - REST OF THE WORLD

\*BASED ON ONS DATA, APRIL 2016-MARCH 2017

## The current state of play in UK immigration

### Business Travel

*"There is a reliance on STBVs, our functions are heavily matrixed with management sitting in different locations to their reports so this cross-border travel is seen as essential to manage teams effectively and deliver operational effectiveness."*

Member response

Global employers in the industry currently rely heavily on friction free short-term business travel between the EU and the UK. European citizens face no current restrictions on their activities in the UK and as such this route is used regularly by businesses to facilitate short-term, informal, cross-border work in the UK, and for British citizens in the EU. This has provided critical agility for the industry in its pandemic response as it has dealt with dislocated employees, those stranded by border restrictions, or those seeking longer-term flexibility to work across the EU as offices remain at risk of cyclical closure. Rights of free movement have meant that, in immigration terms, employees have been able to work remotely without any restrictions on the type of work activity they can undertake, supporting the industry's operational resilience.

Non-EU nationals entering the UK under the current business visitor rules' are permitted to perform a range of business activities including business meetings, internal project work and requirements briefings. Training is also permitted providing it is predominately classroom based. While the UK's business visitor guidance is clear and transparent, there is a general lack of understanding on provisions across the globe. Guidance is often scant and open to interpretation – not all jurisdictions provide a list of permissible and prohibited activities in the way the UK does. In pandemic responses this has been challenging for the industry. This lack of clarity can create unnecessary obstacles, and dislocated employees have in many cases been unable to work in their remote location. Respondents to our research support having a clear, standardised and mutually agreed list of permissible activities under the business visitor route.

There is support for a broader view to be taken in FTAs that could facilitate the assignment of employees for a short period. Temporary travel is often critical for an employee to provide short-term cover. This type of activity typically falls foul of permitted business visitor activities, but the cost and timeline around required immigration processes can run contrary to the required speed of deployment.

*"We would be very interested in a new immigration route for business travellers, interns, short-term assignees that would allow some concessions that take into account the temporary nature of these employees' presence in a host country. We would be open to a route that is time limited for the holder and accepting also if these captured only certain nationalities. We would expect to see shorter processing times, and reduced application costs for this type of measure."*

Member response

### Service Delivery

Where trade agreement immigration routes allow service delivery to a client, they are rarely easy to use, and businesses tend to use the host country's domestic immigration route to facilitate such moves. This often requires the client to sponsor an employee of their provider which is far from ideal and not legally viable in many jurisdictions. In the UK's system, the relevant route is the Tier 5 International Agreements category – which we discuss later in this report.

*"We wouldn't expect our clients to become involved in sponsoring our staff from a visa perspective, and we would not want to place this burden or expectation on them."*

Member response



## Long-term Hires

The UK's Tier 2 category is currently the only viable long-term option under the pre-2021 system for most non-EEA nationals wishing to work in the UK. In order to apply, it is necessary to be sponsored by a UK employer holding a Tier 2 Sponsor Licence. Tier 2 is currently limited to roles skilled to the Regulated Qualifications Framework (RQF) level 6 or above (e.g. managers and professionals). It is split into two categories:

- Tier 2 General
- Tier 2 Intra-Company Transferee

As the ICT route is not suitable for permanent transfers, employers rely on the Tier 2 General category. Unless an exemption applies (for example the role is on the Shortage Occupation List or the salary is at least £159,600 per annum), employers must run a Resident Labour Market Test before proceeding to sponsor an individual in this category to demonstrate that there are no suitable candidates from within the settled workforce (British citizens, those with ILR or EEA/Swiss nationals).

For those seeking to employ a non-EEA national from outside of the UK under the Tier 2 General route, a sponsor must make a request for a Restricted Certificate of Sponsorship. The Home Office allocates up to 20,700 Restricted Certificates of Sponsorship per year, the current annual limit. Individuals entering the UK in the Tier 2 General category may remain in this visa category for a maximum of six years and can generally qualify for indefinite leave to remain (ILR) upon the completion of five years' continuous residence in the UK, subject to meeting the eligibility requirements. Those who have not acquired ILR by that six year maximum are expected to switch to another visa category for which they are eligible or leave the UK.

Unless an exemption applies, all Tier 2 visa holders are subject to a cooling off period upon completion of their assignment. This precludes individuals from applying for another Tier 2 visa for a 12-month period from the end of their previous visa or, where this can be evidenced appropriately, their date of departure from the UK. This limitation prevents individuals undertaking 'back-to-back' assignments.

## Assignees and intra-company transferees

The Tier 2 Intra-Company Transferee (ICT) category allows multinational employers to move employees from their overseas offices into the UK for a fixed term period. The maximum duration an individual may spend in this category is tied to the salary to be paid (for those on salaries up to £120,000 per annum the maximum is five years, for those paid £120,000 and higher the maximum is nine years). Importantly, those entering the UK in this route after 5 April 2011 cannot normally qualify for ILR.

Until April 2017 the ICT route was comprised of four sub-categories:

- Short-term, for moves of up to 12 months.
- Long-term, for moves of up to five years.
- Skills Transfer, for moves of up to six months with the sole purpose of imparting or sharing skills and/or knowledge.
- Graduate Trainee, to accommodate those on international graduate rotation programmes.

As the minimum salary threshold for the Long-term route is £41,500 per annum (or the minimum for the role, whichever is the higher), the closure of the short-term route and skills transfer routes in April 2017 and November 2016 respectively has reduced the options open to international businesses when considering assignments to address skills gaps/shortages.

## General need for a pool of UK based international talent

In our previous report, the starting position for most feedback gathered during qualitative interviews was a clear business need to ensure access to a global talent pool where diverse skills could be brought to the UK with minimal restriction. Almost all respondents emphasised that recruiting the best global talent was a priority and that nationality was not a consideration when doing so. During our recent data gathering exercise, this continued to be a theme amongst all the businesses we engaged with.

*"We are a hugely international company – non-UK talent is a huge component of what makes up our human capital across our UK offices. This is true not just for London where many of our key revenue generating business are headquartered – but also in other cities where many of our support operations are based, and where we might be one of that city's largest corporate employers."*

Member response

The UK's success in financial services is underpinned by its unequalled pool of talent and expertise. People from all corners of the world come here to work in a dynamic global market and learn alongside some of the most renowned industry practitioners. Over 12% of the banking and finance workforce in the UK as a whole are from the EU and the rest of the world. In London, this figure is even more stark, with over 28% of the workforce from the EU and the rest of the world (rising to 42% in FinTech). Many of these employees are engaged in highly skilled roles. The financial and related professional services industry is already defined by a higher than average presence of highly skilled roles, with 60% of the workforce in roles that require a high level of skill, compared to 45% across the wider UK economy.<sup>17</sup>

*"We employ personnel in the UK and around the world, so the employment of non-UK talent is fundamental to the success of the business."*

Member response

## The journey to the 2021 system

Some of these routes are of course changing significantly in 2021, and in most cases for the better.

In July 2017, following the EU referendum, the government asked its Migration Advisory Committee (MAC) to advise on the immigration impact of the UK's exit from the EU, and on aligning the immigration system with the UK's 'modern industrial strategy' on science, research and innovation, published in 2017.<sup>18</sup> The current industrial strategy is to boost productivity by backing businesses to create good jobs and increase the earning power of people throughout the UK with investment in skills, industries and infrastructure.<sup>19</sup> In September 2018, the MAC reported back — recommending a unified system, a less restrictive regime for the highly skilled and reduced bureaucratic burden on employers. December 2018 saw the government release its White Paper setting out the vision for that unified 2021 system.

In June and September 2019, the MAC was asked to look at the minimum salary thresholds for skilled workers and the Australian style Points Based System respectively. The MAC delivered their report in January 2020 recommending a reduction in salary thresholds for skilled workers, among other things. The Home Secretary delivered her substantive policy statements on the future immigration system in February and July of this year and the new system will be in force as of 1 January 2021, with routes expected to open in the Autumn to enable applications from those planning to enter the UK from 2021. There are two further waves of immigration policy underway focusing on an unsponsored route and the streamlining of the sponsorship system for employers, and the digitisation of borders, immigration and application processes by 2025.<sup>20</sup>

<sup>17</sup> TheCityUK, 'Financial Services Skills Taskforce - Final report', (January 2020), available at: <https://www.thecityuk.com/assets/2020/Reports/43e976fdcd/Financial-Services-Skills-Taskforce-final-report.pdf>

<sup>18</sup> UK Government, 'PM unveils plans for a modern Industrial Strategy fit for Global Britain', (January 2017), available at: <https://www.gov.uk/government/news/pm-unveils-plans-for-a-modern-industrial-strategy-fit-for-global-britain>

<sup>19</sup> UK Government, 'The UK's Industrial Strategy', (October 2019), available at: <https://www.gov.uk/government/topical-events/the-uks-industrial-strategy>

<sup>20</sup> Information available at: <https://www.gov.uk/government/consultations/2025-uk-border-strategy-public-consultation/2025-uk-border-strategy-public-consultation#context-for-this-consultation-and-the-2025-border-strategy> and <https://www.gov.uk/search/news-and-communications?parent=%2Fentering-staying-uk&topic=ba3a9702-da22-487f-86c1-8334a730e559>

## Our 2018 joint report

TheCityUK and EU joint report (2018) 'The UK's future immigration system and access to talent'<sup>21</sup> made nine recommendations to the government:

1. Introduce a flexible short-term immigration category to enable ICTs to come to the UK for up to six months without needing to apply for a visa before travel where they are a non-visa national.
2. Establish an independent Skills Advisory Board accountable directly to Parliament, tasked with analysing how to utilise skilled employer migration to fill skills shortages in the UK.
3. Adopt a new perspective on skills, broadening accessibility to medium skilled jobs and also allow a top up for STEM subjects.
4. Establish a more appropriate and dynamic Shortage Occupation List (SOL).
5. Introduce a STEM post study worker route.
6. Introduce a specialist branch of Tier 2 for experts with a waiver of Resident Labour Market Test (RLMT) requirements.
7. Take steps to avoid regional bias.
8. Extend the returning resident period for Indefinite Leave to Remain (ILR) from two to five years.
9. Streamline the immigration system, by controlling and reducing the associated administrative burden.

Status update on the progress of TheCityUK and EY's key recommendations from our 2018 report 'The UK's future immigration system and access to talent'

	Recommendation	Core objective	Progress towards this objective, as outlined in July 2020 policy announcements
1	A new flexible short-term immigration category	Allowing non-visa nationals to conduct some work in the UK for up to six months without needing to apply for a visa before travel	No movement
2	An independent Skills Advisory Board	Creating a new independent body with oversight of the UK's immigration system to encourage consistent, long-term immigration planning	Creation of cross-departmental Office for Talent. The Office will review the effectiveness of the current rules and ensure excellent customer service across the immigration system, so that it is simple, easy, and quick. They will also help those coming to the UK better understand the opportunities on offer and break down any barriers they might face
3	A new perspective on skills	Lowering the Tier 2 skills threshold to enable EU and non-EU citizens to fill medium skilled roles (e.g. RQF 3 and 4) where they have additional skills	The Skilled Worker skills threshold will be lowered to RQF 3 without additional skills requirements
4	An appropriate and dynamic SOL	Making the SOL more representative of current skills shortages via a mechanism that enables employers to efficiently add roles to the SOL	The SOL becomes less important, as the skills threshold is lowered, cap removed and requirement to test the resident labour market abolished. The SOL will now be useful in offering tradeable points and allowing a lower salary (£20,480 instead of £25,600). The MAC is currently reviewing the SOL at all skill levels
5	Welcoming and retaining overseas students	Reintroduce a post-study work visa, but in a manner that addresses the concerns that led to the scheme being closed	A new graduate work visa will allow overseas students graduating from UK universities from 2021 to remain in the UK for two years after graduation. No restrictions on type of work

<sup>21</sup> TheCityUK, 'The UK's future immigration system and access to talent', (May 2018), available at: <https://www.thecityuk.com/research/the-uks-future-immigration-system-and-access-to-talent/>

6	A specialist branch of Tier 2 for specialist overseas experts	Quicker and easier (i.e. without the Resident Labour Market Test (RLMT) sponsorship of roles that require overseas expertise	RLMT and cap to be abolished
7	Avoiding regional bias	Ending the prioritisation of London/South East roles in the annual cap because of their higher salaries	Cap to be abolished. Lower minimum salary thresholds, but no regional variation
8	Extending the validity of ILR	Bringing validity of ILR in line with settled status, so that it can only be lost after five consecutive years outside the UK	No movement
9	A streamlined immigration system: controlling and reducing the administrative burden on employers and applicants	Improving the user experience of navigating the immigration system for applicants and employers	Sponsorship processes to remain largely the same, albeit the removal of the cap and RLMT will help streamline applications. Gradual but continuous improvements to application processes over the next few years. In-country switching (e.g. from Tier 5 (YMS)) to be allowed. Creation of cross-departmental Office for Talent as described above

It is encouraging that much of this looks set to be delivered in the 2021 system through:

- The removal of resident labour market testing.
- The removal of the cap on the number of people who can come to the UK under the Tier 2 General / Skilled Worker visa category (this is currently limited to 20,700 per year).
- The promise of streamlined sponsorship for employers and lighter touch processing, with better connectivity across government departments and less bureaucracy where data is already held e.g. by HMRC.
- The reintroduction of a two year visa for all graduates in the UK (not just STEM) - allowing them to apply to stay in the UK for two years after their studies to look to look for (and engage in) graduate work that could act as a bridge to long-term work in the UK. The UK's 2021 Immigration system.

### The UK's 2021 Immigration system

On 13 July 2020, the Home Office published detailed further guidance on how the UK's new Points-Based Immigration System will operate post-Brexit. The statement covered work, business, study and visit routes, and confirmed that the Points-Based System will be streamlined and simplified, making the best use of technology. Importantly, following the careful consideration given to the 'Windrush Lessons Learned Review' produced by Wendy Williams, the Home Office reiterated its commitment to implement a fair system whereby people from every part of the world are treated equally. It will also implement fundamental cultural and operational changes across the board to improve the fairness, humanity and openness of the system, as well as addressing diversity and inclusion.

At a glance:

- The UK will have **one single immigration system** for all nationalities.
- The existing Tier 2 General visa will become the **Skilled Worker** route.
- There will be greater flexibility around **switching** visa categories.
- A **Graduate route** will open from Summer 2021 to allow international students to apply for a two year visa to work or look for work in the UK (three years if they have studied for a PhD in the UK) after their degree.
- The UK will introduce an **unsponsored route** at a later date which will run in parallel with the points-based system for applicants without a job offer or sponsorship.
- The Home Office will continue to expand coverage to more sectors and businesses under the **Start-up and Innovator** routes.



- The government has set up a cross-departmental unit – the **Office for Talent** – to make it easier for **global talent** to come and live in the UK.

### The Skilled Worker route

The Skilled Worker route represents a significant enhancement on Tier 2 for employers. Key changes include:

- **Reduced skills requirement:** The minimum skill level reduces from degree level roles (RQF level 6) to A-Level skilled roles (RQF Level 3).
- **Removal of the cap:** The current cap of 20,700 sponsored visas per annum will be abolished. Business will no longer need to apply for a Restricted Certificate of Sponsorship in the monthly panel. This will increase certainty in outcome and will decrease lead-times to onboard skilled workers.
- **Removal of the Resident Labour Market Test:** The requirement to advertise roles for 28 days will be removed. This will decrease lead-times to onboard skilled workers.
- **Reduced salary thresholds for visa sponsorship:** The new lower salary threshold will be £25,600 (from £30,000) per annum or the going rate for their particular job (whichever is the higher) for private sector roles, or £20,480 per annum for certain public sector roles or new entrants to their profession.
- **Simplified cooling off period:** This will be based on total time spent in the UK giving business greater flexibility and decreasing costs.

### The Intra Company Transfer route

The Tier 2 (Intra Company Transfer) route will be replaced by two new categories:

- Intra Company Transfer
- Intra Company Graduate Trainees

ICT visa holders will be able to localise by switching, where they are eligible, to a Skilled Worker visa in the UK and will benefit from the simplified cooling off period. For the ICT route, the required skills level remains at RQF level 6. Minimum salary thresholds will be different from the Skilled Worker route and are likely to remain at the current level of £41,500 (£23,000 for graduate trainees) or the minimum for the role (whichever is higher).

### Enhanced flexibility but prevailing challenge

Under the new system, it will be easier for businesses to sponsor non-UK workers than under the current sponsored system. The Skilled Worker route will be more streamlined than the current Tier 2 system as illustrated above and employers will have access to a post-graduate talent pool via the Graduate Route, which will help to keep costs down in the first instance. Continued improvements to the application system are promised as part of a complete overhaul to the visas and application service. The Home Office continues to consult with businesses on the proposed unsponsored route.

Despite these positive developments, until an unsponsored route is introduced, the only long-term option is the Skilled Worker route. This presents three fundamental challenges for the industry:

1. Businesses will need to have a sponsor licence in place.
2. Costs will rise significantly for two reasons: (1) the actual cost is increasing due to increases in the Immigration Health Surcharge and incremental increase in application fees; and (2) employers will need to bear this cost for more employees (including EU national employees arriving in the UK from 1 January 2021). Under the new system, the cost for a five year Skilled Worker visa is over £9,500, taking into account application fees and the Immigration Skills and Health charges.
3. There are now barriers to entry for EU nationals that no-one is used to navigating, and even with the reduced skills level in that system, the impact of that will take some time to be understood.

Leaving aside costs and administration, the Skilled Worker route of itself leaves gaps for a fast-paced industry reliant on experimentation and innovation:

- Equity is not recognised towards salary thresholds, whereas equity is often a preferred means of core compensation in FinTech.
- There is no effective scale-up option (incentives for inward investors under the current Tier 2 rules are viewed as insufficient to meet the need).

This is all seen by the industry as generating significant friction to an individual fulfilling their potential in the UK and delivering on their ultimate economic value, stifling the very experimentation and innovation that the industry needs. All of this is particularly problematic for FinTech. According to Innovate Finance (pre-pandemic) research, the UK's FinTech sector looks set to top 100,000 employees by the year 2030 with 30,000 new jobs created and 82% of companies say they already face difficulties in recruiting non-EU talent.<sup>22</sup> From January 2021, EU talent will also have to go through the Skilled Worker route – unlike now – so it will be harder to get people through the door and research says this could lead to a shortfall of 3,200 highly-skilled workers by 2030, at a cost to the UK FinTech sector of £361m. With current and future expected domestic skill-shortages, particularly for specialist technical roles, it is critical for the sector to face minimal friction in accessing foreign talent.

*"...Without a flexible approach, the UK FinTech sector stands to lose its global pre-eminence with FinTech companies already facing challenges in recruiting appropriate skills and talent. However, the potential size of the loss has not yet come to pass and if managed correctly, may not materialise. It is up to policy makers, industry and academia to propose sensible recommendations to mitigate the impact of these findings and to ensure sectors such as FinTech continue to be an engine for UK innovation and growth."*<sup>23</sup>

## State of play of domestic immigration policy in the EU

The free movement of EU citizens within the EU, if they fulfil certain conditions, flows from the four freedoms and, under the Treaty on the Functioning of the European Union, the Union shall develop a common immigration policy aimed at ensuring at all stages, the efficient management of immigration flows, fair treatment of third-country nationals residing legally in the EU, and the prevention of, and enhanced measures to combat, illegal immigration and human trafficking.

In order to achieve these goals, the European Commission set out the European Agenda on Migration in 2015, and one of the chapters of this Agenda focuses on corporate immigration.<sup>24</sup>

*"United in diversity is the official motto of the EU. The EU tries as much as possible to take a stance on a unified immigration approach but often struggles with political and cultural differences between the member states."*

Dirk Nuyts, Partner, EY EMEA Immigration

Although immigration is not a direct competence of the EU, over the years the EU has put an important footprint on the European immigration map and with its aim for a common immigration policy has been impactful through a series of recommendations, largely followed by the core group of EU member states. In its Agenda on Migration, the European Commission stressed that it would assess possible ways to provide legal certainty to highly-skilled foreign professionals who need to travel to the EU for short periods in order to provide services, not least to "strengthen the EU's position to demand reciprocities when negotiating FTAs".<sup>25</sup>

<sup>22</sup> Innovate Finance, 'Financial technology industry calls for clarity on immigration policy as new research reveals potential for 30,000 new jobs', (April 2018), available at: <https://www.innovatefinance.com/news/financial-technology-industry-calls-for-clarity-on-immigration-policy-as-new-research-reveals-potential-for-30000-new-jobs/>

<sup>23</sup> Charlotte Crosswell, CEO of Innovate Finance, 'Financial technology industry calls for clarity on immigration policy as new research reveals potential for 30,000 new jobs', (April 2018), available at: <https://www.innovatefinance.com/news/financial-technology-industry-calls-for-clarity-on-immigration-policy-as-new-research-reveals-potential-for-30000-new-jobs/>

<sup>24</sup> European Commission, 'European Agenda on Migration', (September 2018), available at: [https://ec.europa.eu/home-affairs/what-we-do/policies/european-agenda-migration\\_en](https://ec.europa.eu/home-affairs/what-we-do/policies/european-agenda-migration_en)

<sup>25</sup> Ibid

*Europe is competing with other economies to attract workers with the skills it needs... This is why, even if the case for legal migration will always be difficult at a time of high unemployment and social change, it is important to have in place a clear and rigorous common system, which reflects the EU interest, including by maintaining Europe as an attractive destination for migrants.*

European Commission<sup>26</sup>

Although there is no common EU legislation for third country nationals coming to work in the EU, the EU has launched several initiatives to attract workers with the skills it needs. These mainly focus on highly skilled workforce, scientific researchers and seasonal workers and has approved several regulations and directives to simplify the immigration procedures for these categories of workers (e.g. EU Blue Card Directive, Posted Workers Directive, Single Permit Directive).

The Schengen Agreement (1985), which abolished border checks within the Schengen Area and implemented a unified Schengen visa system for third party nationals, was originally not an EU initiative. However, since 1999, the Schengen Agreement has been incorporated into EU law and all new Member States that join the EU are legally obliged to become part of the Schengen Area when technical requirements have been met. The Schengen Area will soon implement the European Travel information and Authorisation System (ETIAS). Similar to the US ESTA, travellers into the Schengen Area will have to fill out an online application form that covers a range of biometric, travel and security related questions.

Overall, while member states share some policies, domestic immigration policy across the EU is largely disparate. Among the key challenges this creates for the UK industry in the present trade context, is the one flagged by our respondents in respect of business travel. While trans-national policy will cover the ability to enter the EU, the activities that can be performed in country are vastly divergent across Member States and set at the domestic level.

*"We would be very receptive also if the scope of what qualified as incidental duties under Business Traveller routes was expanded. This would be exceptionally useful for us not only for travel to the US but also for UK citizens travelling into the EU post 31 December 2020, and vice-versa (reciprocal arrangements)."*

Member response

## Stepping into an unknown

There are a number of conflating future trends that have the potential to impact all of these issues significantly, accelerated, in some cases by the impact of the pandemic.<sup>27</sup>

### Increased regionalisation

The shift in the pattern of globalisation towards increased regionalisation of the global economic and political systems was accelerating even before the pandemic. International trade has been tested to its limits, with distressed global supply chains and demand shock leading to diversification among suppliers to hedge risk and near-shoring.<sup>28</sup> And as multilateral governance institutions have thus far failed to coordinate the pandemic response at a global level, the pandemic is accentuating regionalism. The shock of border closures at scale at the height of the pandemic could bring moves to shorten supply chains in services as well as goods, with resultant impact on migration practices and policies. New ways of work too are seeing work move for people, where people have been unable to move for work. Regionalisation of itself does not signal a retreat from globalisation. International trade remains vital and supply chains remain complex and highly internationalised. Therefore, tools to support the UK in an age of globalisation, such as trade and regulatory policy, remain just as essential as before.

<sup>26</sup> Ibid.

<sup>27</sup> EY, 'What the COVID-19 crisis means for the geostrategic outlook', (May 2020), available at: [https://www.ey.com/en\\_gl/geostrategy/what-the-covid-19-crisis-means-for-the-geostrategic-outlook](https://www.ey.com/en_gl/geostrategy/what-the-covid-19-crisis-means-for-the-geostrategic-outlook)

<sup>28</sup> World Economic Forum, 'Here's how global supply chains will change after COVID-19', (May 2020), available at: <https://www.weforum.org/agenda/2020/05/this-is-what-global-supply-chains-will-look-like-after-covid-19/>

## Technology

The fourth industrial revolution promises long-term gains in productivity yet is accelerating geopolitical competition and exacerbating social and economic grievances. At the same time, technology enablement proved critical to the operational resilience we saw in the industry, when forced to switch at scale to remote working overnight. Social distancing and economic lockdowns have dramatically accelerated many long-term trends such as digitalisation, the shift to e-commerce, disintermediation, remote working and distance learning. Late adopters are being forced to catch up overnight.

## Demographics

“The global population is aging, with the worldwide median age set to surpass 30 years for the first time in 2020. But this aging is not equally distributed, and risks to domestic political stability are rising in countries with either extremely old or young populations. Europe, where 19% of its residents are 65 years of age or older, is the region with by far the oldest population. In contrast, the youngest region in the world is Sub-Saharan Africa, where the median age is just 18.7 years. The geopolitical balance of power will increasingly shift in favour of economies with sustainable working-age populations — if they are able to successfully integrate large youth populations into the workforce.”<sup>29</sup>

Without supportive policies, risks to political stability are rising in countries with very old or young populations, even as the geopolitical balance of power shifts in favour of economies with sustainable working-age populations. Aging populations challenge workforce growth and economic dynamism consequently will suffer in the long term. These economic challenges could be exacerbated if the pandemic causes a long-term reduction in international migration and outsourcing parts of a company's workforce to other countries. The pandemic is accentuating the societal, economic and policy implications of aging. A country's demographic profile will shape the operational and cost burdens the outbreak imposes: older societies face a higher human and economic toll from the disease and, perhaps, a slower economic recovery. Nations with large youth populations that encounter high unemployment and economic dislocations as a result of the pandemic may be at greater risk for social upheaval.<sup>30</sup>

## Environment

Climate change is becoming a race against time for government, business and society to develop solutions that prevent the worst consequences of this pre-eminent global risk from materialising. Conventional wisdom holds that economic uncertainty and hardship diminish the stature of environmental concerns. However, we are seeing contrary responses and, with a central focus on sustainability, the impact of the pandemic on reduced carbon footprint and controlled costs around international travel is serving to accelerate discussion in the sector to re-evaluate strategies.

These uncertainties and shifting sands point to the need for agile and practically impactful responses, over the immovable and entrenched, building on some of the paradigm shifts we have seen in the global pandemic responses.

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<sup>29</sup> EY, ‘2020 Geopolitical Outlook’, (February 2020), available at: [https://www.ey.com/en\\_gl/geostrategy/why-companies-must-plan-for-geopolitical-volatility-and-global-rebalancing](https://www.ey.com/en_gl/geostrategy/why-companies-must-plan-for-geopolitical-volatility-and-global-rebalancing).

<sup>30</sup> EY, ‘What the COVID-19 crisis means for the geostrategic outlook’, (May 2020), available at: [https://www.ey.com/en\\_gl/geostrategy/what-the-covid-19-crisis-means-for-the-geostrategic-outlook](https://www.ey.com/en_gl/geostrategy/what-the-covid-19-crisis-means-for-the-geostrategic-outlook)



# IMMIGRATION IN INTERNATIONAL AGREEMENTS

## What is a mobility framework?<sup>31</sup>

A mobility framework refers to the scope of policies and provisions relating to the movement of people across borders. In the context of the World Trade Organisation ('WTO'), mobility frameworks apply to the movement of people between WTO members. The basis of these frameworks is typically to facilitate or enhance trade and economic activity between members, for which the movement of people to supply services plays a key part.

## How does this relate to the WTO?

The WTO is concerned with trade in goods and services internationally and rules that facilitate trade between countries. The movement of people to supply services is therefore an important part of this objective. Trade in services is 'the most dynamic segment of international trade in terms of growth'.<sup>32</sup>

## Uruguay Round and Post-Uruguay Round Mode 4 negotiations

As part of the outcome of the Uruguay Round, WTO members came together to agree the General Agreement on Trade in Services. As part of agreement, each WTO Member put forward a list of the commitments they were making, or "Schedule of Specific Commitments" as they are formally known. The WTO General Agreement on Trade in Services ('GATS') refers to four 'modes' under which services might be traded between WTO members:

- **Mode 1.** Cross-border trade
- **Mode 2.** Consumption abroad
- **Mode 3.** Commercial presence
- **Mode 4.** Presence of natural persons

It is this fourth mode which affects policies relating to individual mobility, primarily in relation to the movement of personnel across borders for the purposes of providing services. The commitments under Mode 4 in those initial schedules were largely limited to two categories: intra-company transferees regarded as "essential personnel", such as managers and technical staff linked with a commercial presence in the host country; and business visitors, i.e. short-term visitors not in general gainfully employed in the host country.

After the WTO had been established and the GATS had come into force, a number of countries agreed that improvements to the Mode 4 commitments were needed. This resulted in six WTO Members (counting the European Communities, as it was then and including the UK, as one) improving their commitments. The improvements mostly concern access opportunities for additional categories of service suppliers, namely independent foreign professionals in a number of business sectors, and/or the extension of their permitted duration of stay. The upgraded commitments are attached to the Third Protocol to the GATS, which entered into force on 30 January 1996. Further commitments on Mode 4 have been made, notably by countries acceding to the WTO in subsequent years.

## Who is typically covered by GATS?

All 164 members of the WTO are at the same time members of the GATS and have assumed commitments to varying degrees.

<sup>31</sup> See WTO for more information and a very detailed paper on Mode 4: 'Building Bridges for Global Labour Mobility', available at [https://read.oecd-ilibrary.org/trade/trade-and-migration\\_9789264016408-en#page1](https://read.oecd-ilibrary.org/trade/trade-and-migration_9789264016408-en#page1).

<sup>32</sup> Migration Data Portal, 'Migration and trade', (July 2019), available at: <https://migrationdataportal.org/themes/migration-and-trade#further-reading>

Summary of Mode 4 Coverage:<sup>33</sup>

Included	Excluded	Differences of view exist
Temporary movement (temporary is undefined)	Permanent migration (residence, citizenship or employment on a permanent basis)	
Related to the supply of services	Persons working in non-service sectors - e.g., agriculture, manufacturing	Scope of activities included in “services incidental to agriculture” (e.g., temporary agricultural workers or suppliers of fruit-picking services?) or services incidental to manufacturing
All skill levels included (but in practice commitments to date are limited to the highly skilled)		
Foreign employees of foreign companies established in the host country	Domestic (nationals of host country) employees of foreign companies established in the host country	Foreign employees of domestic companies
Business visitors Intra-corporate transferees Contractual service suppliers (self-employed or as employee of a foreign service supplier)	Persons seeking to enter the employment market	

### Why is GATS relevant to immigration policy?

Under GATS, Mode 4 refers to the presence of persons of one WTO member in the territory of another for the purpose of providing a service. The important distinction from an immigration perspective is that this presence is temporary, in the sense that Mode 4 does not concern persons seeking access to the employment market in the host member state. GATS therefore does not affect broader immigration policies within a country, such as citizenship, rights of residence or permanent employment. Mode 4 now typically covers independent service suppliers, intra-company transferees and business visitors.

### What does ‘temporary’ mean in this context?

‘Temporary’ is not defined and members of the GATS have taken differing approaches to this, however (as above) permanent migration is explicitly excluded.

### What is national treatment?

The WTO defines national treatment as: ‘the principle of giving others the same treatment as one’s own nationals’. The principle is used to determine whether WTO members have created or maintained conditions which discriminate against foreign suppliers in favour of nationals.

### Is national treatment always granted in trade agreements to movement of persons?

During the negotiations leading to GATS, participating countries undertook specific commitments on market access and national treatment, which are contained in individual services schedules. There is therefore some variation in commitments granting national treatment in any specific trade agreement. Each country schedule will list specific commitments showing which types of service-supply within specified services sectors will be subject to market-opening, and under what conditions (including conditions applying to national treatment), within that country’s jurisdiction.

<sup>33</sup> OECD, World Bank, IOM Seminar Paper, ‘A Quick Guide to the GATS and Mode 4’, (November 2004), p9, available at: [https://www.iom.int/jahia/webdav/site/myjahiasite/shared/shared/mainsite/microsites/IDM/workshops/Trade\\_2004\\_04051004/related%20docs/quick\\_guide.pdf](https://www.iom.int/jahia/webdav/site/myjahiasite/shared/shared/mainsite/microsites/IDM/workshops/Trade_2004_04051004/related%20docs/quick_guide.pdf)

### Do Mode 4 commitments confer rights on natural persons as regards immigration?

Mode 4 commitments have no self-executing effect and thus confer no rights directly on individual natural persons or juridical persons. However, WTO members can bring disputes to the WTO when a member government believes another member government is violating an agreement or a commitment that it has made in the WTO.<sup>34</sup>

### Are there other ways in which countries can agree mobility frameworks?

Yes. Mobility frameworks come in many forms from free movement zones<sup>35</sup> (highest degree of liberalisation with freedom of movement for establishment), to bilateral frameworks (such as Youth Mobility Schemes<sup>36</sup>) to Memoranda of Understanding (non-legally binding expressions of intent). According to some, the WTO's General Agreement on Trade in Services (GATS) has 'yielded little real progress so far'<sup>37</sup> in terms of the liberalisation of international trade in services and in the movement of people, at the multilateral level. Negotiations within plurilateral and bilateral frameworks are therefore seen as more flexible and therefore likely to be more successful. What can also be seen are changes to domestic law following trade talks, an example being the Australia-United States Free Trade Agreement (AUSFTA), which led the United States to create a new visa category - the E-3 - which to date is available only to Australians seeking to work in the United States (capped at 10,500 per fiscal year). This represents a possible way in which business mobility can be addressed within the overall context of FTA negotiations, and implemented through domestic law, but without being part of the FTA text itself.

<sup>34</sup> This has happened previously in the migration context. Full disputes list and supporting materials available at: [https://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds503\\_e.htm](https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds503_e.htm)

<sup>35</sup> See summary of Free Movement zones that follows this section

<sup>36</sup> The UK also has 'informal' agreements with Australia, Canada, Japan, Monaco, New Zealand, Hong Kong, Republic of Korea and Taiwan that facilitate the Tier 5 (Youth Mobility Scheme). Details available at: <https://www.gov.uk/tier-5-youth-mobility>

<sup>37</sup> The World Economy, 'International Trade Agreements and International Migration', (December 2010), available at: <https://doi.org/10.1111/j.1467-9701.2010.01299.x>

## Global free movement zones

### European Union/Single Market

Austria <sup>5</sup>	Belgium	Bulgaria	Croatia	Cyprus
Czech Rep.	Denmark	Estonia	Finland	France
Germany	Greece	Hungary	Iceland <sup>1</sup>	Ireland
Italy	Latvia	Liechtenstein <sup>1, 4</sup>	Lithuania	Luxembourg
Malta	Netherlands	Norway <sup>1</sup>	Poland	Portugal
Romania	Slovakia	Slovenia	Spain	Sweden
Switzerland <sup>2</sup>	United Kingdom <sup>3</sup>			

Unless otherwise stated, full citizens of the above listed countries can work freely in the other countries without requiring a work permit. Registration of residence may be required.

1. Members of the European Economic Area and the Single Market, but not the EU
2. Member of the Single Market, but not the EU or EEA. A work permit may be required for EU citizens in some circumstances.  
Restricted quota for Croatian nationals
3. No longer a member of the EU, but effectively a member of the Single Market until 31 December 2020
4. Imposes an annual quota
5. Imposes work permit requirement for Croatian nationals

### Individuals 'from' other locations also covered by virtue of passport include:

- Aland Islands (Finnish passport)
- Aruba (Dutch passport)
- Bonaire, Sint Eustatius and Saba (Dutch passport)
- Bouvet Island (Norwegian passport)
- All French overseas departments and territories (e.g. French Guinea, Martinique) (French passport)
- Macao (Portuguese passport)

### Notable exceptions:

- Faroe Islands (Danish passport but does not grant Freedom of Movement rights)
- Greenland (Danish passport but does not grant Freedom of Movement rights)
- Channel Islands & Isle of Man (if holding a Channel Islander or Manxmen passport – does not grant Freedom of Movement rights)
- All British passports other than 'British Citizen'



## UK and Ireland Common Travel Area (CTA)

Passport held > Destination V	UK	Republic of Ireland	Channel Islands	Isle of Man	Other EU/EEA state or Switzerland
	Ordinary/Full	Ordinary/Full	Channel Islander passport	Manxmen passport	Ordinary/Full
UK Mainland		Can work freely	Can work freely	Can work freely	Can work freely <sup>2</sup>
Ireland	Can work freely		Can work freely	Can work freely	Can work freely
Channel Islands	Permission required <sup>1</sup>	Permission required <sup>1</sup>		Permission required <sup>1</sup>	Permission required <sup>1</sup>
Isle of Man	Permission required <sup>3</sup>	Permission required <sup>3</sup>	Permission required <sup>3</sup>		Permission required <sup>3</sup>

1. Requirements vary on different islands. A person who has resident status on the relevant island is unlikely to require permission. Such residence can not be determined by looking at the individual's passport – not all Channel Islands residents hold a 'Channel Islander' passport
2. Only until 31 December 2020
3. A person who has resident status on the relevant island is unlikely to require permission. Such residence can not be determined by looking at the individual's passport – not all Isle of Man residents hold a 'Manxmen' passport. Exemptions apply for certain roles and employment up to 10 days a year

### Individuals 'from' other locations also covered by virtue of passport include:

- None

### Notable exceptions:

- All UK issued passports denoting a type of British nationality other than 'British Citizen'

## Trans-Tasman Travel Arrangement

Passport held > Destination V	Australia	New Zealand
	Ordinary/Full	Ordinary/Full
Australia		Visa on arrival. Can work freely
New Zealand	Visa on arrival. Can work freely	

### Individuals 'from' other locations also covered by virtue of passport include:

- Cook islands (NZ passport)
- Niue (NZ passport)
- Tokelau (NZ passport)
- Cocos (Keeling) Islands (AUS passport)
- Christmas Island (AUS passport)
- Norfolk Island (AUS passport)

### Notable exceptions:

- None

## Mainland China and surrounding area

Passport held > Destination V	Mainland China	Hong Kong	Macao	Taiwan
	Ordinary/Full	HK SAR passport	Macao SAR passport	Republic of China (Taiwan) passport
Mainland China		Mainland travel permit <sup>1</sup>	Mainland travel permit <sup>1</sup>	Mainland travel permit <sup>1</sup>
Hong Kong	Full application required <sup>2</sup>		Full application required <sup>2</sup>	Full application required <sup>2</sup>
Macao	Full application required <sup>2</sup>	Full application required <sup>2</sup>		Full application required <sup>2</sup>
Taiwan	Full application required <sup>2</sup>	Full application required <sup>2</sup>	Full application required <sup>2</sup>	

1. A mainland travel permit allows work in mainland China. Theoretically a straightforward process, but in practice, issuance is subject to discretion and sometimes delays
2. Permission to work is required

### Individuals 'from' other locations also covered by the agreement by virtue of passport include:

- None

### Notable exceptions:

- British National Overseas (BNO) passport (must use HK SAR passport instead)
- Portuguese passport (must use Macao SAR passport instead)

## Commonwealth of Independent States (CIS)

Passport held > Destination V	Russia	Armenia	Ukraine	Moldova	Belarus
	Ordinary/Full	Ordinary/Full	Ordinary/Full	Ordinary/Full	Ordinary/Full
Russia		Can work freely <sup>1</sup>	Work patent required <sup>2</sup>	Work patent required <sup>2</sup>	Can work freely <sup>1</sup>
Armenia	Can work freely <sup>1</sup>				Can work freely <sup>1</sup>

Passport held > Destination V	Azerbaijan	Uzbekistan	Tajikistan	Kyrgyzstan	Kazakhstan
	Ordinary/Full	Ordinary/Full	Ordinary/Full	Ordinary/Full	Ordinary/Full
Russia	Work patent required <sup>2</sup>	Work patent required <sup>2</sup>	Work patent required <sup>2</sup>	Can work freely <sup>1</sup>	Can work freely <sup>1</sup>
Armenia	Work patent required <sup>2</sup>	Work patent required <sup>2</sup>	Work patent required <sup>2</sup>	Can work freely <sup>1</sup>	Can work freely <sup>1</sup>

1. Members of the Eurasian Economic Union. No permit or patent required
2. No visa required to enter, but must apply for patent within 30 days of arrival. Must then find employment within 60 days of issuance and register the employment with the authorities

### Individuals 'from' other locations also covered by the agreement by virtue of passport include:

- None

### Notable exceptions:

- None

## MERCOSUR Residence Agreement

Argentina	Bolivia	Brazil	Chile
Colombia	Ecuador	Paraguay	Peru

Unless otherwise stated, the principle is that citizens of Mercosur Member States (Argentina, Brazil, Paraguay and Uruguay) and Associated States (Bolivia, Chile, Colombia, Ecuador and Peru) apply for a residence document in country, but the only real requirements are nationality and a clean criminal record. Some other in-country requirements may apply, and differ from country to country.

Individuals 'from' other locations also covered by the agreement by virtue of passport include:

- None

Notable exceptions:

- None

## Gulf Cooperation Council (GCC)

Passport held > Destination V	UAE	Qatar	Saudi Arabia	Bahrain	Kuwait	Oman
	Ordinary/Full	Ordinary/Full	Ordinary/Full	Ordinary/Full	Ordinary/Full	Ordinary/Full
<b>UAE</b>		Assess case <sup>2</sup>	No visa required <sup>1</sup>	No visa required <sup>1</sup>	No visa required <sup>1</sup>	No visa required <sup>1</sup>
<b>Qatar</b>	No visa required <sup>1</sup>		No visa required <sup>1</sup>	No visa required <sup>1</sup>	No visa required <sup>1</sup>	No visa required <sup>1</sup>
<b>Saudi Arabia</b>	No visa required <sup>1</sup>	Assess case <sup>2</sup>		No visa required <sup>1</sup>	No visa required <sup>1</sup>	No visa required <sup>1</sup>
<b>Bahrain</b>	No visa required <sup>1</sup>	Assess case <sup>2</sup>	No visa required <sup>1</sup>		No visa required <sup>1</sup>	No visa required <sup>1</sup>
<b>Kuwait</b>	No visa required <sup>1</sup>	Assess case <sup>2</sup>	No visa required <sup>1</sup>	No visa required <sup>1</sup>		No visa required <sup>1</sup>
<b>Oman</b>	No visa required <sup>1</sup>	Assess case <sup>2</sup>	No visa required <sup>1</sup>	No visa required <sup>1</sup>	No visa required <sup>1</sup>	

1. Free movement principle applies, but some in-country requirements may apply, including simplified work permit process, obtaining a GCC ID card etc. Bans on working in certain sectors may apply
2. Relationships between Qatar and the rest of the GCC states are complex and in a state of flux. Various bans/exemptions apply, and each case should be assessed on its own merits

Individuals 'from' other locations also covered by the agreement by virtue of passport include:

- None

Notable exceptions:

- None

# THE CASE FOR CHANGE: UNMET NEEDS AND CURRENT UK OBJECTIVES

As detailed earlier in this report, Autumn 2020 will see the implementation of a new immigration system in the UK, to take effect when freedom of movement ends on 31 December 2020. The purpose of this section of the report is to assess where there may be gaps — immigration or mobility routes into the UK that are not sufficiently catered for by the new system. The objective is not just to assess gaps in the status quo, under which nationals of an EU member state can travel to and work in the UK freely, but also to consider what new gaps will exist once freedom of movement is ended, and how the negative impact of any current gaps may increase from 2021.<sup>38</sup>

Assessing gaps which may only appear in the future is not straightforward, and the extent to which these challenges will have an impact as soon as the transition period ends also varies. By way of an example, the requirement from January 2021 that British Citizens hold a work visa to enable them to deliver services into the EU is likely to have an immediate impact on businesses' ability to deliver those services and the profitability of doing so. Conversely, while the size of the UK-based pool of international talent available to hire for any given position may well be affected by the end of freedom of movement, the impact of this is unlikely to become immediately apparent in January 2021 and will take some time to assess.

## Focus

This section primarily focuses on travel into the UK, largely because the flow of EU citizens into the UK for work related activities has historically far exceeded the flow of British Citizens into any single EU member state. To assess the individual immigration systems of each EU member state and how these systems may change to accommodate British Citizens from 2021 is beyond the scope of this report.

In assessing which gaps exist, and will exist from 2021, we have considered the following:

- The views of employers who make use of the UK's current immigration system and employ EU workers.
- Previous analysis of the UK's reliance on migration and immigration policy statements made by recent governments, including:
  - The 2018 immigration White Paper<sup>39</sup> published by Theresa May's administration, compared with;
  - The most recent immigration proposals published by Boris Johnson's administration in February<sup>40</sup> and July<sup>41</sup> 2020.

## Travel into the UK

In a section titled Mobility, the 2018 White Paper outlined how the UK's existing Mode 4 commitments, derived from the EU's GATS commitments or originating in EU trade deals with third countries such as the EU-Canada CETA, are currently implemented in the UK's immigration system. The paper also stated that *"the government expects to negotiate similar arrangements with the EU as part of a deal on a future economic relationship"*.<sup>42</sup> Unless and until such a UK-EU agreement is concluded, the UK and the EU will be bound only by their GATS Mode 4 commitments towards each other as WTO members.<sup>43</sup>

## GATS compared to bilateral agreements

It is important to note that the mobility provisions contained within bilateral trade agreements between the EU and other parties (such as the EU-Canada CETA) typically contain more ambitious mobility provisions than those contained under the two sides' GATS Mode 4 commitments applying to all WTO members. One example is that the EU-Canada CETA contains provisions on Graduate Trainees, whereas the EU's commitments under GATS do not. In December 2018, well before departure from the EU, the UK

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38 Analysis by IPPR found that around 69% of EU migrants currently working in the UK would be ineligible for a skilled worker visa from 2021 – IPPR, 'Immigration plans analysis', (19 February 2020), available at: <https://www.ippr.org/news-and-media/press-releases/immigration-plans-analysis-two-thirds-of-current-eu-migrants-in-health-and-care-sector-would-have-been-found-ineligible>

39 Home Office, 'The UK's future skills-based immigration system', (19 December 2018), available at: <https://www.gov.uk/government/publications/the-uks-future-skills-based-immigration-system>

40 Home Office, 'UK points-based immigration system: policy statement', (19 February 2020), available at: <https://www.gov.uk/government/publications/the-uks-points-based-immigration-system-policy-statement>

41 Home Office, 'UK points-based immigration system: further details statement', (13 July 2020), available at: <https://www.gov.uk/government/publications/uk-points-based-immigration-system-further-details-statement>

42 Supra n38 at para 6.73

43 Except in the case of the UK-Ireland Common Travel Area

notified the WTO of its intention to rectify the commitments under GATS made by the UK as a Member State of the EU, effectively replicating them as UK commitments. These UK GATS commitments could be built on, in a UK-EU agreement, to cater for more comprehensive GATS Mode 4 mobility arrangements between the UK and the EU. But to date, no comprehensive trade deal has been agreed with the EU. As a result, the UK and the EU risk having to fall back to relying on their basic GATS commitments towards all WTO members.

### The removal of the planned transitional route

To many observers, the most striking difference between the 2018 White Paper and the 2020 proposals was the removal of a planned transitional self-sponsored immigration route for those from specified low risk countries, to include all EU citizens.<sup>44</sup> Mrs May's administration had proposed that as a transitional measure, those qualifying under this route would be eligible for a 12-month visa allowing them to work in any role, with no minimum salary thresholds (beyond national minimum wage requirements). This was to be a time-limited measure, kept under review to 2025 and possibly subject to a cap. While critics saw this proposed route as a de-facto continuation of freedom of movement for low-skilled workers, the reality is that many employers in the financial and professional services sector would have seen this route as facilitating the following short-term activities:

1. intra-company business travel that may include short-term work duties not currently permitted under the visitor rules
2. delivery of services
3. short-term assignments and work placements.

At present, under freedom of movement, EU citizens can perform all of these activities in the UK (and vice versa) without the need to obtain a visa. The default situation, from 2021, is that EU citizens will need to apply for work visas to perform these activities. In the vast majority of cases, this means a Skilled Worker (rebranded Tier 2 General) visa under the new system. The proposed transitional measure was not limited to EU nationals but would have potentially remedied an immediate gap.

While the 2020 proposals did include two new immigration routes in the form of a new post-study work route and a highly skilled points-based route, these are significantly narrower in scope and will open only in 2021 or later. The result is that, when freedom of movement ends, employers' reliance on the Skilled Worker route will increase significantly. In turn this will increase friction associated with the activities identified above, in the form of:

- visa application fees, £9,539 for a five year Skilled Worker visa (single applicant)
- administrative burden for the employer<sup>45</sup>
- visa processing times and application processes.

While the proposal of a transitional self-sponsored route in the 2018 White Paper was widely welcomed by employers as an appropriate temporary measure, it is clear that the decision by the current government to abandon this approach is a deliberate one, and we do not consider it to be viable to call for its reinstatement. The purpose of this report is thus to identify new immigration routes and/or the expansion of existing immigration routes that could be agreed with the UK's trade partners, likely on a reciprocal basis, and that could help ameliorate an over-reliance on the Skilled Worker sponsorship system and the extra friction this creates when compared to the status quo, i.e. freedom of movement. To that effect, it is helpful that the government's July 2020 Immigration Statement refers to routes supporting inward trade and investment and giving effect to commitments that the UK has made in free trade agreements in respect of specified categories of workers.<sup>46</sup>

<sup>44</sup> The transitional scheme was first outlined in the Government's December 2018 White Paper, supra n2 at para6.41 but had been abandoned by February 2020, supra n3, paras 14-19

<sup>45</sup> Research by EY for the Russell Group of universities found the mean in-house cost associated with navigating the immigration system to be £510 per sponsored migrant worker - EY, 'Challenges and costs of the UK immigration system for Russell Group universities', (6 March 2019), available at: <https://russellgroup.ac.uk/media/5750/challenges-and-costs-of-the-uk-immigration-system-for-russell-group-universities.pdf>

<sup>46</sup> Supra n4, paras 105 and 109

## Travel out of the UK

The majority of evidence we received related to how employers would like to see the UK's immigration system change. This is understandable, given the majority of contributors are based in the UK with a UK inbound focus to their professional responsibilities. Although many contributors also oversee mobility and business travel from the UK into other countries (particularly EU member states), the volume of travel from all other countries into the UK typically far exceeds travel from the UK into any other single location. Naturally, this results in a deeper understanding of the UK's immigration system and its associated challenges than those that exist in other immigration systems.

Contributors did however comment that they would be keen to see standardisation where possible, and that this could be one desired component of reciprocal mobility arrangements agreed as part of a trade deal. Particularly in relation to the EU, employers are used to being able to send British Citizens to one or more EU member states without needing to concern themselves with the differences between each member state's domestic immigration policy. Complete harmonisation of the EU's immigration policy is clearly beyond the scope of a trade deal with the UK, but there are some areas where some administrative alignment might be possible, namely:

- a standardised list of the activities which can be performed as a business visitor<sup>47</sup> without requiring work authorisation
- immigration clearance for the delivery of services
- administrative processes.

We have found that in practice, employers are concerned more with the process they are required to complete and any associated requirements to facilitate mobility or business travel, than they are with underlying principles set out in trade agreements. This is because there can often be a de facto disconnect between countries' commitments under trade agreements and their practical implementation and operation by each country's immigration authorities.

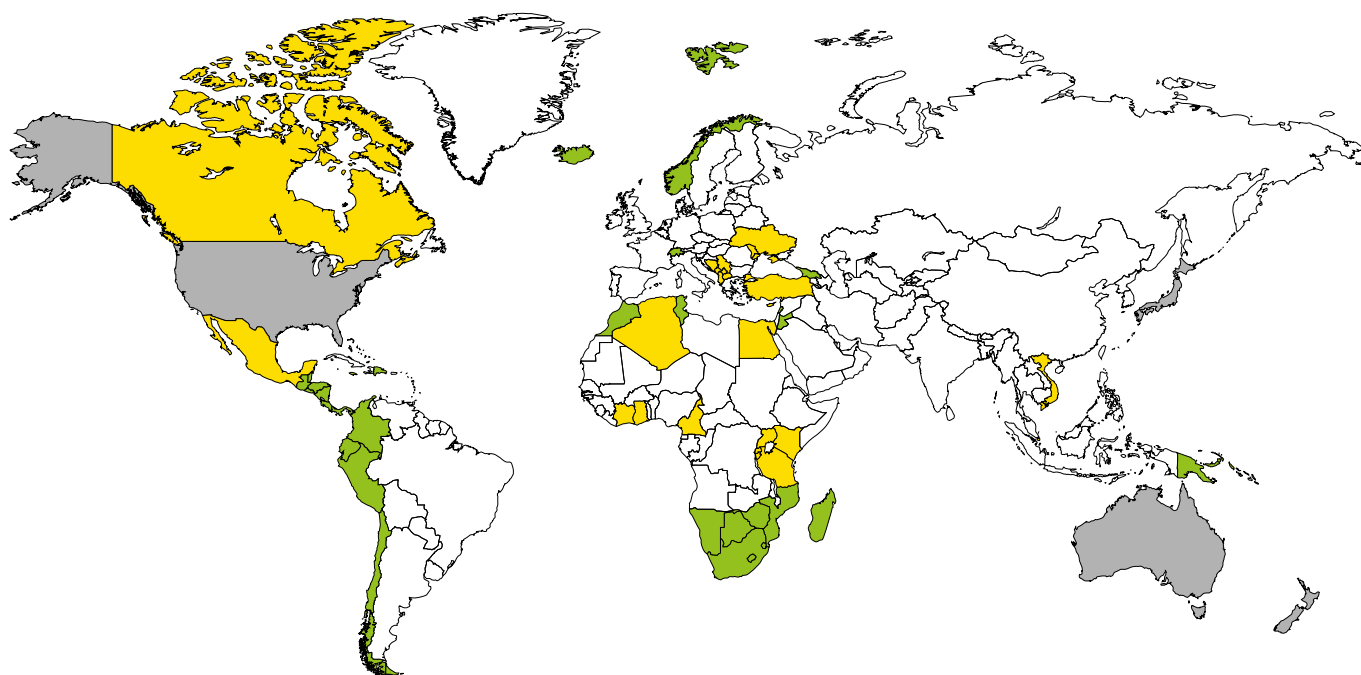
Much of this report will focus on this disconnect and how more practical implementation of commitments made in trade agreements could benefit employers and applicants.

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<sup>47</sup> i.e. under standard Schengen visitor rules – British Citizens will not be required to apply for a visa before visiting the EU for up to 90 days



## UK Negotiating Priorities



- Signed trade agreements ready for 1 January 2021\*
- Continuity trade agreements being negotiated (replacing previous EU trade agreements)
- New trade agreements being negotiated\*\*

\*Including an Industrial Product Conformity Agreement signed With Israel

\*\*A new FTA with Japan will seek to go beyond the existing EU economic partnership agreement.

*There are many ways in which the UK can strengthen its trade and investment relationships with partners across the world. One important way is to agree a Free Trade Agreement (FTA)... But a range of options is available to us, from discrete bilateral agreements to broader regional types of partnerships.*

UK Government, Trade White Paper: our future UK trade policy, 9 October 2017

In 2017, the UK government (as part of its preparation of an independent trade policy) published its Trade White Paper: Our Future Trade Policy.<sup>48</sup> The White Paper outlines many of the objectives across trade in goods, trade in services, and intellectual property, among others. It has not been updated under the current government. Instead, the Department of International Trade (DIT) has published individual negotiating objectives for each of the trade agreements that it is currently pursuing (excluding those agreements which are replacements for existing EU Free Trade Agreements), namely UK-US, UK-Japan, UK-Australia and UK-New Zealand.<sup>49</sup>

### Objectives in trade negotiations with the EU<sup>50</sup>

At the WTO, as part of the process of the UK leaving the European Union, the UK has initiated a process to replicate the concessions and commitments it had made as a member state of the EU under the collective EU GATS schedule and its supplementary commitments into one consolidated, UK-specific schedule, as noted above. The commitments include Supplement 2, on the additional Mode 4 commitments referred to earlier.<sup>51</sup> At the time of writing, this process of replication is still underway with one WTO Member maintaining its objections to the process undertaken by the UK. In addition, the UK has one Most-Favoured Nation (MFN) Exemption relating to Mode 4. The MFN Exemptions are a list of non-conforming measures that WTO Members listed when they were negotiating the GATS as measures that were meant to be temporary and gradually phased out. This has not happened and many MFN Exemptions remain in force today. The UK exemption relates to “citizens of Commonwealth countries with a grandparent born in the UK” for whom “the UK waives the requirement for a work permit in all services sectors”. Such individuals are often able to apply under the UK’s Ancestry Visa route, which allows work and leads to settlement after a five year period of residence in the UK.

### UK Mode 4 Objectives for new Free Trade Agreements

TOPIC	UK-US Negotiations	UK-Japan Negotiations	UK-Australia Negotiations	UK-New Zealand Negotiations
Trade in Services				
Market Access and National Treatment	<ul style="list-style-type: none"> <li>Secure ambitious commitments from the US on market access and fair competition for UK services exporters.</li> </ul>	<ul style="list-style-type: none"> <li>Secure ambitious commitments on market access and national treatment to ensure certainty for UK services suppliers in their access to the Japanese market.</li> </ul>	<ul style="list-style-type: none"> <li>Secure ambitious commitments from Australia on market access and fair competition for UK services exporters.</li> </ul>	<ul style="list-style-type: none"> <li>Secure ambitious commitments from New Zealand on market access and fair competition for UK services exporters.</li> </ul>
Sector-specific services chapters	<ul style="list-style-type: none"> <li>Agree best-in-class rules for all services sectors, as well as sector-specific rules, to support our world-leading services industry, including key UK export sectors such as financial services, professional and business services and transport services.</li> </ul>	<ul style="list-style-type: none"> <li>Secure best-in-class rules for all services sectors, as well as sector specific rules to ensure transparency and support our world-leading services industries, including key UK export sectors such as financial services, professional and business services, telecommunications and transports services.</li> </ul>	<ul style="list-style-type: none"> <li>Agree best-in-class rules for all services sectors, as well as sector-specific rules, to support our world-leading services industry, including key UK export sectors such as financial services, professional and business services and transport services.</li> </ul>	<ul style="list-style-type: none"> <li>Agree best-in-class rules for all services sectors (as well as sector-specific rules) to support our world-leading services industry, including key UK export sectors such as financial services, professional and business services and transport services.</li> </ul>

<sup>48</sup> UK Government, ‘Preparing for our future UK trade policy’, (October 2017), available at: <https://www.gov.uk/government/publications/preparing-for-our-future-uk-trade-policy>

<sup>49</sup> UK Government, ‘Free Trade’, (August 2020), available at: <https://www.gov.uk/business-and-industry/free-trade>

<sup>50</sup> UK Government, ‘The Future Relationship with the EU’, (February 2020), available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/868874/The\\_Future\\_Relationship\\_with\\_the\\_EU.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/868874/The_Future_Relationship_with_the_EU.pdf)

<sup>51</sup> Also: Schedule of Specific Commitments of the European Communities and its Member States (doc. GATS/SC/31 of 15 April 1994) – GATS/SC/31; Schedule of Specific Commitments of the European Communities and its Member States, Supplement 2 (doc. GATS/SC/31/Suppl.2 of 28 July 1995) – GATS/SC/31/Suppl.2; Schedule of Specific Commitments of the European Communities and its Member States, Supplement 3 (doc. GATS/SC/31/Suppl.3 of 11 April 1997) – GATS/SC/31/Suppl.3; Schedule of Specific Commitments of the European Communities and its Member States, Supplement 4, Revision (doc. GATS/SC/31/Suppl.4/Rev.1 of 18 November 1999) – GATS/SC/31/Suppl.4/Rev.1.

<b>Domestic Regulation</b>	<ul style="list-style-type: none"> <li>Ensure certainty for UK services exporters in their continuing access to the US market and transparency on US services regulation.</li> </ul>	<ul style="list-style-type: none"> <li>Ensure certainty for UK services exporters in their continuing access to the Japanese market and transparency on Japanese services regulation.</li> </ul>	<ul style="list-style-type: none"> <li>Ensure certainty for UK services exporters in their continuing access to the Australian market and transparency on Australian services regulation.</li> </ul>	<ul style="list-style-type: none"> <li>Ensure certainty for UK services exporters in their continuing access to the New Zealand market and transparency on New Zealand services regulation.</li> </ul>
<b>Business Mobility and Mutual Recognition of Professional Qualifications (MRPQ)</b>				
<b>Mode 4 provisions and Mutual Recognition of Professional Qualifications</b>	<ul style="list-style-type: none"> <li>Increase opportunities for UK service suppliers and investors to operate in the US by enhancing opportunities for business travel and supporting the recognition of professional qualifications.</li> </ul>	<ul style="list-style-type: none"> <li>Secure opportunities for UK services suppliers and investors to operate in Japan through provisions for temporary business travel and supporting the recognition of professional qualifications.</li> </ul>	<ul style="list-style-type: none"> <li>Increase opportunities for UK service suppliers and investors to operate in Australia by enhancing opportunities for business travel and supporting the MRPQs.</li> </ul>	<ul style="list-style-type: none"> <li>Increase opportunities for UK service suppliers and investors to operate in New Zealand by enhancing opportunities for business travel and supporting the MRPQs.</li> </ul>
<b>Digital Trade</b>				
<b>Advanced provisions</b>	<ul style="list-style-type: none"> <li>Secure cutting-edge provisions which maximise opportunities for digital trade across all sectors of the economy.</li> </ul>	<ul style="list-style-type: none"> <li>Secure cutting-edge provisions which maximise opportunities for digital trade across all sectors of the economy.</li> <li>Promote a world leading eco-system for digital trade that supports businesses of all sizes across the UK.</li> </ul>	<ul style="list-style-type: none"> <li>Secure cutting-edge provisions which maximise opportunities for digital trade across all sectors of the economy.</li> <li>Promote a world-leading eco-system for digital trade that supports businesses of all sizes across the UK.</li> </ul>	<ul style="list-style-type: none"> <li>Secure cutting-edge provisions which maximise opportunities for digital trade across all sectors of the economy.</li> <li>Promote a world-leading eco-system for digital trade that supports businesses of all sizes across the UK.</li> </ul>
<b>Data flows</b>	<ul style="list-style-type: none"> <li>Include provisions that facilitate the free flow of data, while ensuring that the UK's high standards of personal data protection are maintained, and include provisions to prevent unjustified data localisation requirements.</li> </ul>	<i>No specific mention in the Negotiating Objectives section but is mentioned several times in other sections of the document.</i>	<ul style="list-style-type: none"> <li>Include provisions that facilitate the free flow of data, while ensuring that the UK's high standards of personal data protection are maintained and include provisions to prevent unjustified data localisation requirements.</li> </ul>	<ul style="list-style-type: none"> <li>Include provisions that facilitate the free flow of data, while ensuring that the UK's high standards of personal data protection are maintained and include provisions to prevent unjustified data localisation requirements.</li> </ul>

## Objectives in negotiations with the US

The UK exports many businesses services to the US, including in key areas of UK strength such as accountancy, architecture and legal services. In its Policy Paper, 'The UK's approach to trade negotiations with the US', the DIT presents an FTA with the US as a way to increase opportunities for UK service suppliers and investors to operate in the US by enhancing opportunities for business travel and supporting the recognition of professional qualifications.<sup>52</sup> The report further stresses that the government has listened to concerns on business mobility raised by UK respondents and will be looking at how best to address these concerns in an FTA. More broadly, it comments that the government is already working to improve the travel environment in relation to business mobility, such as the use of e-Gates for US passport holders, "improving security and fluidity at the border for eligible business traveller".<sup>53</sup>

It is telling that immigration featured heavily in consultation responses to the DIT on the UK-US trade relationship, with 167

52 DIT, 'UK-US Free Trade Agreement', available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/869592/UK\\_US\\_FTA\\_negotiations.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/869592/UK_US_FTA_negotiations.pdf)

53 Ibid at p18

individual respondents supporting a UK-US FTA which would liberalise the temporary entry of workers, making it easier for skilled workers to temporarily move to the US to supply services. Eighty-three businesses prioritised services as part of a UK-US FTA in their comments. Several businesses encouraged strengthened ties between the New York and London financial centres and identified that there might be scope to expand the list of cross-border commitments for financial services in an ambitious UK-US FTA.

Respondents identified opportunities within the services sectors for further visa liberalisation to support the movement of labour and students. Responses highlighted the uncertainty, expense and complexity of the US visa system as reasons for this and wanted any FTA to reduce administrative barriers for workers applying for temporary US and UK visas. One public sector respondent highlighted the restrictions on visa and work permits and noted that visa barriers could be removed by a potential UK-US FTA, while another respondent commented that the full benefits of any trade agreement could not be realised until visa restrictions were lowered.<sup>54</sup>

## Objectives in other trade negotiations

In policy papers on trade objectives with the UK's prospective future trading partners, there are common aims:

- **Australia:** Increasing opportunities for UK service suppliers and investors to operate in Australia by enhancing opportunities for business travel. The UK sees an FTA with Australia as a key step towards accession to the Comprehensive and Progressive Trans-Pacific Partnership (CPTPP).<sup>55</sup>
- **Japan:** Securing opportunities for UK services suppliers and investors to operate in Japan through provisions for temporary business travel and supporting the recognition of professional qualifications.<sup>56</sup>
- **New Zealand:** Increasing opportunities for UK service suppliers and investors to operate in New Zealand by enhancing opportunities for business travel. The UK sees an FTA with New Zealand as a key step towards accession to the CPTPP.<sup>57</sup>

In consultation responses immigration again features highly across the board:

### Australia

Individual respondents identified a reciprocal streamlined visa system as being their priority, with respondents calling for movement of professionals and workers between Australia and UK to be prioritised. One respondent stated that they would like to see the UK join the Trans-Tasman Travel Arrangement (TTTA) to facilitate intra-company transfers in areas of mutual benefit to both economies.

Twelve businesses called for flexibility to recruit overseas staff and for staff temporarily moving to work overseas. One business specifically highlighted the need for measures enabling the temporary movement of workers and professionals for business reasons, while other businesses highlighted the need for measures reducing visa fees, minimising experience thresholds for intercompany transfers and extending the Australian skilled occupations visa eligibility list.

Business respondents who called for an FTA to prioritise the movement of highly skilled professionals in order to enable their global business networks to grow emphasised the heavy reliance that businesses have on cross border activity and movement. It was noted by one business association that minimising the bureaucracy of visa applications provides an opportunity for the UK, as they felt the UK is currently losing out to the US on Australian business ventures due to UK visa restrictions on highly qualified personnel.

### Japan

Several respondents suggested that the UK seek ongoing rights for the temporary entry of workers to supply services in Japan, while some considered further visa liberalisation in a future UK-Japan agreement as a potential benefit. Other respondents raised the importance of temporary entry of workers and transparency on visa processing as particularly relevant to small and medium sized enterprises (SMEs).

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<sup>54</sup> Ibid at p133 and 126

<sup>55</sup> DIT, 'UK-Australia free trade agreement: the UK's strategic approach', (July 2020), available at: <https://www.gov.uk/government/publications/uks-approach-to-negotiating-a-free-trade-agreement-with-australia/uk-australia-free-trade-agreement-the-uks-strategic-approach>

<sup>56</sup> DIT, 'UK-Japan free trade agreement: the UK's strategic approach', (May 2020), available at: <https://www.gov.uk/government/publications/uks-approach-to-negotiating-a-free-trade-agreement-with-japan/uk-japan-free-trade-agreement-the-uks-strategic-approach>

<sup>57</sup> UK Government, 'UK approach to negotiating a free trade agreement with New Zealand', (July 2020), available at: <https://www.gov.uk/government/publications/uk-approach-to-negotiating-a-free-trade-agreement-with-new-zealand>

## New Zealand

One individual respondent stated that an FTA should encourage the movement of people for business purposes. Another respondent called for the UK to focus on softening the restrictive movement requirements for key personnel linked to investment as part of an FTA with New Zealand. One respondent suggested that the UK be a part of the Trans-Tasman Travel Agreement (TTTA) to enable easier intra-corporate transfers in areas of mutual benefit to our economies.

Some business respondents stated that an FTA should also facilitate the movement of skilled workers, noting that this would enable UK businesses to gain access to the best global talent. One business association had concerns about the potential for unrestricted freedom of movement but was of the view that there was a need for a targeted approach which focuses on areas where there is a need for specific types of labour. Several business associations were of the view that allowing greater mobility of skilled workers might attract and retain the right talent to the UK which would ensure that UK businesses and industries would remain competitive.

There was a suggestion of a professional mobility programme within the General Work Visa (Tier 2) to facilitate the entry of professionals to the UK, creating a category of UK working visa for which only professional New Zealand citizens working in certain occupational categories are eligible. Respondents also called for the government to consider the impact of any visa processing requirements resulting from an end to the freedom of movement for EEA nationals.

## Overarching aims: SMEs and women's economic empowerment

Two proposed overarching aims for UK trade policy are important to highlight in the present context - important as there are challenges to them within the current framework from an immigration perspective.

Firstly, there should be a commitment to SME-friendly provisions throughout, including on services sectors and business mobility. This could help "knock down trade barriers that will benefit the 30,000 SMEs in every part of the UK already exporting to the US"<sup>58</sup>, the 8,000 SMEs exporting to Japan<sup>59</sup> and the 13,400 SMEs exporting to Australia<sup>60</sup>, among others. We highlight these challenges in the next section of this paper.

Secondly, there should be overarching commitments to advance women's economic empowerment through trade and to seek cooperation on this aim. This includes promoting women's ability to access the benefits of trade agreements in recognition of the disproportionate barriers that women can face in economic participation. As highlighted earlier, there can be particular challenges for women in immigration policy around access – we pointed to research by the IPPR suggesting that EU women would be disproportionately impacted by the UK's 2021 immigration system (by -10%). Pressure too is felt where employment related immigration status is inflexible to changing personal circumstances. Shifted ways of working in pandemic responses can also exacerbate underlying inequalities.

Solving this critical issue is beyond the scope of this report, but to address those barriers, policy makers must be alive to the totality of the challenge - the solution will require a holistic approach across all areas impacting women's economic participation: trade, employment, entrepreneurship and the workforce.

## Finally

While the objectives that have been set out in policy papers to date are welcome and sensible, there is some gap between these expressed objectives, the unmet needs set out above and those expressed in the trade consultation responses, and there is a question as to whether these could go farther.

<sup>58</sup> DIT, 'UK-US Free Trade Agreement', available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/869592/UK\\_US\\_FTA\\_negotiations.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/869592/UK_US_FTA_negotiations.pdf)

<sup>59</sup> DIT, 'UK-Japan free trade agreement: the UK's strategic approach', (May 2020), available at: <https://www.gov.uk/government/publications/uks-approach-to-negotiating-a-free-trade-agreement-with-japan/uk-japan-free-trade-agreement-the-uks-strategic-approach#fn:5>

<sup>60</sup> DIT, 'UK-Australia free trade agreement: the UK's strategic approach', (July 2020), available at: <https://www.gov.uk/government/publications/uks-approach-to-negotiating-a-free-trade-agreement-with-australia/uk-australia-free-trade-agreement-the-uks-strategic-approach>

# A NEW APPROACH TO INTERNATIONAL TRADE AND MIGRATION

International trade and immigration systems have been tested in very different but equally unprecedented ways at unprecedented scale over the last five months, and if ever there was a time to advance the discussion, to tackle the long-standing challenges around trade agreements and migration policy in a changed way, it is now, emboldened by reimagined expectations around the possible.

## Why change?

At the outset of this report we highlighted three fundamental challenges with migration policy in FTAs. Firstly, technical complexity. Secondly, they are slow to evolve. Thirdly, and most importantly, their implementation is not always effective. These challenges, we said, are diametrically at odds with the themes currently driving UK government immigration reform: simplification, efficiency and better user experience. FTAs are only as useful as they are usable by those seeking to trade between the UK and its treaty partners. For businesses in the industry which will eventually make use of these FTAs, this usability is crucial. If the eventual rules are contradictory or difficult to apply in practice then there is a risk that businesses will not use the FTAs, lessening potential economic gains.

## Longer term reform remains important

TheCityUK has previously supported vigorous attempts to secure commitments from trading partners in the WTO context. This remains an important objective, which should continue to be pursued. There is, however, the obvious problem of making progress on such issues within the WTO framework. Traditionally, services provisions in FTAs have not enjoyed the degree of liberalisation compared with goods trade. This is reflective of the fact that barriers to services trade are often more complicated and exist behind the border as part of the domestic regulatory environment. The UK, in its new position at the WTO and operating an independent trade and investment policy, will have fresh opportunities to emphasise the need for positive steps to address the challenges for the industry, and to lead by example in the advancement of liberalisation through sectoral accords, unilateral liberalisation and regional and bilateral preferential arrangements.

## A constructive model for change

There is a broader discussion to be had around the more aspirational reforms that could be delivered at the WTO level. That is beyond the scope of this report, but the recommendations herein talk to the most significant challenge around the interaction of international trade agreements and migration policy – their effective, transparent and mutually agreed implementation at domestic levels, serving the underlying objective of enhanced access to trade in services for the industry.

We do so here through a constructive lens, focusing on what we view as immediately achievable measures that will deliver tangible benefit to the industry.

## Achievable, deliverable goals

We focus on those measures which evolve trade agreement related migration policy, but which do so *without presenting any inherent conflict with the principles underlying the government's firmly stated intentions for its post-Brexit future immigration system*.

Within that framework, reciprocal highly skilled and otherwise limited unsponsored immigration routes such as a broadened Youth Mobility Scheme are achievable aims. A short-term work route that delivers streamlined efficiencies to employers, while maintaining compliance within the established architecture of sponsorship is an achievable aim. With the UK starting from a position of strength in terms of the transparency around its own business visitor rules, reciprocal agreements providing much needed clarity to business for outbound business travel is an achievable aim.<sup>61</sup>

This will require concerted, joined up cooperations across relevant government departments, including of course the Home Office, but also building on the initiative to create an Office of Talent – to ensure synergy and alignment on strategy, both as it relates to liberalised access for services, and domestic skills gaps for the industry.

While regional differences were out of scope for this report, we are clear there will be different demands for different parts of the UK so have attempted to put forward the case for recommendations that will work well across the regions and nations.

<sup>61</sup> This is based on objectives of some of the UK's partners in FTA discussions, including Australia which seeks "to enhance certainty on conditions of stay for business visitors, service suppliers and investors. We will also work to reduce barriers to temporary labour mobility for skilled professionals, in a manner consistent with existing immigration and workplace relations framework" at <https://www.dfat.gov.au/trade/agreements/negotiations/aukfta/negotiating-aims-and-approach>; and New Zealand which seeks "improved access across the range of business categories (business visitors, intra-corporate transferees, installers and servicers, independent professionals). This should be supported by provisions covering expeditious processing of visa applications and due process, including to ensure access to the information needed to submit visa applications" at <https://www.mfat.govt.nz/assets/FTAs-in-negotiations/UK-FTA/UK-NZ-FTA-High-Level-Objectives.pdf>



# RECOMMENDATIONS

In this section of the report, across four key areas of mobility, we look in detail at how the UK's immigration system enables mobility into the UK, and how it compares with other countries' immigration systems that facilitate mobility out of the UK. We focus not just on the commitments made by various countries in trade agreements, but also on the practical implementation of visa schemes within those countries' immigration systems, and the different ways in which different countries implement similar commitments.

We make a series of recommendations for mobility arrangements that the UK should agree with trading partners on a mutually agreed basis.

These are identified as **Direct Enabling Routes (DER)**, namely, those that are provided as part of a trade relationship, rather than those that exist in domestic immigration policy to all nationals, irrespective of any trade relationship, **Indirect Enabling Routes (IER)**.

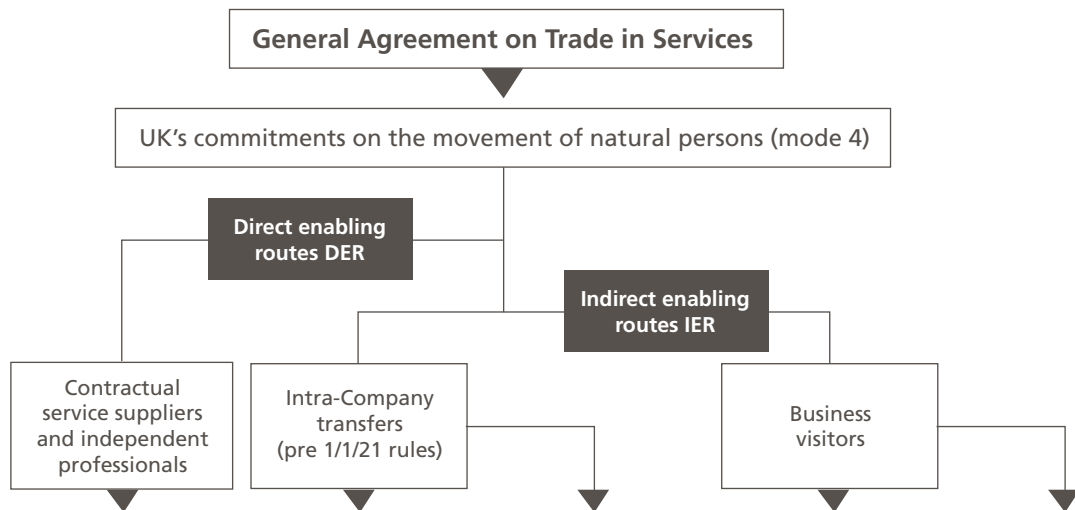
A high degree of mutual agreement should apply both to the commitments as contained within the trade agreement, but also where possible to their practical implementation as identified above. In some areas, for example service delivery, we call for an improvement to the UK's implementation to bring it up to the standard that exists in other countries.

In other areas, for example process, we call for an improvement to other countries' implementation to bring those systems up to the UK's standard. Our six recommendations are set out in the four key areas of mobility as follows:

1. BUSINESS TRAVEL
2. SERVICE PROVIDERS
3. YOUTH MOBILITY
4. PROCESS AND ACCESSIBILITY.

The UK government has stated multiple times in recent years that supporting SMEs is a major component in its trade negotiations. Throughout our recommendations we have commented on how the existing immigration systems in place in the UK impact SMEs and the extent to which they are disadvantaged compared to larger users of these systems.

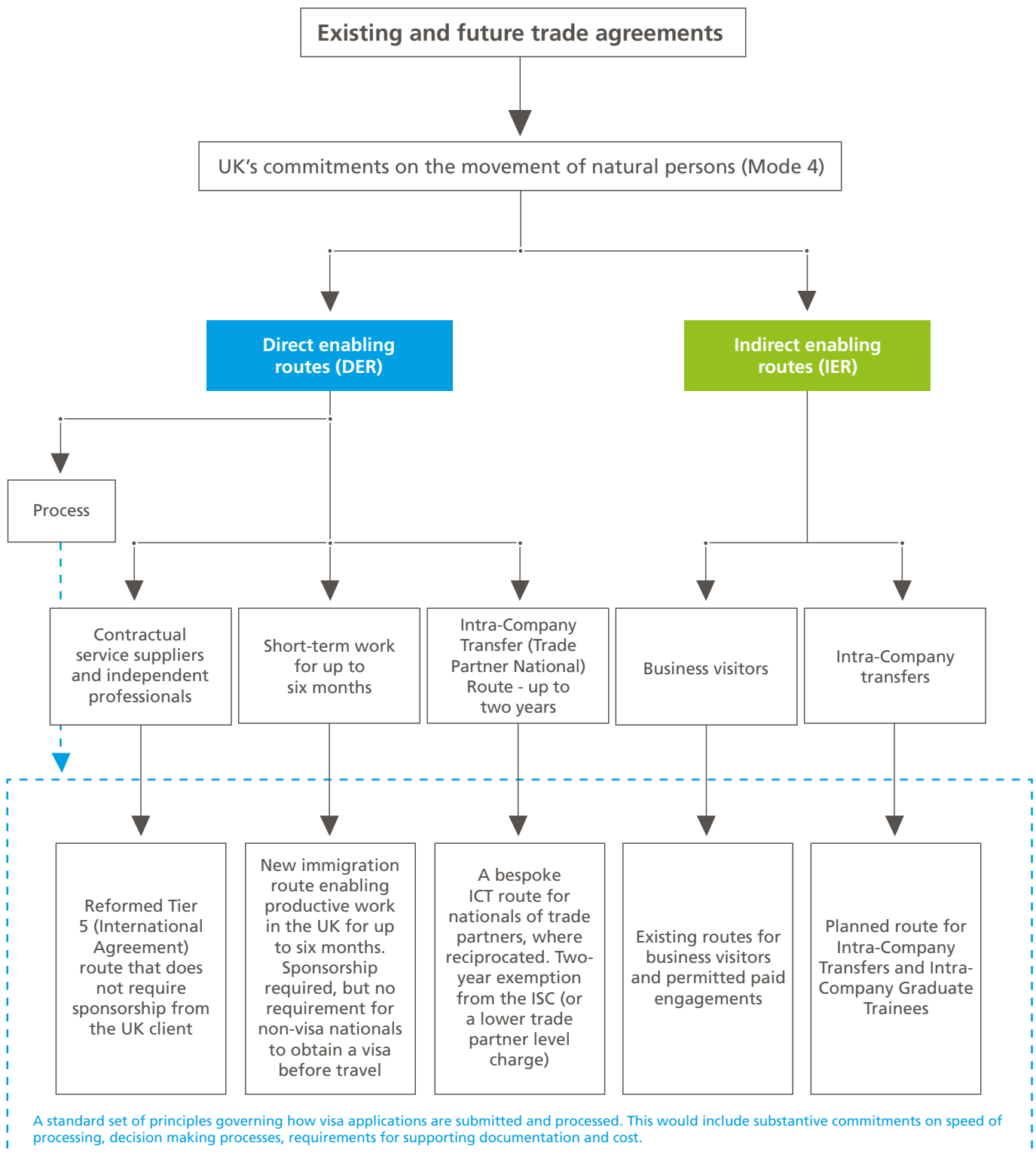
## From FTA to UK immigration rules: the view now



Visa Name	T5 (Temporary Worker - International Agreement) - Contractual service suppliers and independent professionals	Tier 2 Intra Company Transfer (ICT) - Long Term Staff	Tier 2 Intra Company Transfer (ICT) - Graduate Trainee	Business visitors	Business visitors ('permitted paid engagements')
Eligibility to work	Yes - to deliver services under a contract between a UK based client and an independent professional or organisation based overseas	Yes - for the sponsor in the job described in the Certificate of Sponsorship	Yes - for the sponsor in the job described in the Certificate of Sponsorship	No - some business activities allowed, but productive work generally prohibited	Yes – but only within one of the 5 highly prescriptive scenarios outlined in the Immigration Rules
Processing time	~ 3 weeks	~ 3 weeks	~ 3 weeks	~ 3 weeks	~ 3 weeks
Ability to bring dependents	Yes	Yes	Yes	No - they must apply in their own right	No - they must apply in their own right
Government fees	For 6 month visa Sponsor: £21 (+£536 for a Sponsor Licence if not already held) Applicant: £244	For 2 year visa Sponsor: £2,199 (+£1,476 for a Sponsor Licence if not already held) Applicant: £1,858	For 1 year visa Sponsor: £199 (+£1,476 for a Sponsor Licence if not already held) Applicant: £1,106	For 6 month visa Applicant: £95	For 1 month visa Applicant: £95
Sponsorship required	Yes - from UK based client	Yes - from UK branch of employer	Yes - from UK branch of employer	No	De facto - the applicants must be 'invited' by a qualifying UK organisation

Limited by sector	Yes - as stipulated within the relevant trade agreement	No	No	No	Yes – as stipulated in the Immigration Rules
Limited by role or person specification	Applicants are normally required to hold a university degree or technical qualification showing knowledge at the same level of their role, as well as 3 years' experience (if a contractual service supplier) or 6 years' experience (if an independent professional). Applicants employed by a contractual service supplier must have worked for the supplier overseas for at least a year	Yes - the role must be at RQF 6 skill level or above, and must meet minimum salary requirements. The applicant must normally have worked for an overseas branch of the sponsor for at least a year	Yes - the role must be at RQF 6 skill level or above, and must meet minimum salary requirements. The role must be part of a structured graduate training programme. The applicant must have worked for an overseas branch of the sponsor for at least 3 months	No	Yes – there are only 5 types of work that can be performed, e.g. Lawyers providing advocacy for a court or tribunal hearing
Maximum length of stay	6 months in any 12 month period	5 years (or 9 years if salary above £120k per annum)	1 year	6 months	1 month
Switching permitted	No	No	No	No	No
Extension of stay permitted	Only to bring the stay up to a total of 6 months (e.g. if issued less than 6 months)	Up to the maximum stay outlined above, in periods of up to five years	Only to bring the stay up to a total of 12 months (e.g. if issued less than 12 months)	Only to bring the stay up to a total of 6 months (e.g. if issued less than 6 months)	No
Does this category lead to settlement?	No	No	No	No	No

## From FTA to UK domestic immigration policy: what good would look like



## 1. BUSINESS TRAVEL

*"...[B]ankers need face to face contact to develop the relationships that have allowed us to be successful during lockdown... [O]ver time this accumulated capital will erode unless we re-establish those personal relationships with clients. Business travel will form part of that strategy."*

Member response

*"Covid-19 has abruptly put business travel to a complete stop. We are now seeing that we have been able to conduct our business just as effectively without engaging in 'corporate tourism'; there has been a very quick change in attitude among colleagues and among senior decision makers in particular. There will be no going back to pre-Covid-19 travel patterns. This is also linked to ESG considerations and the adoption of a number of technology-driven collaboration tools."*

Member response

As indicated by the contrasting views shown above, employers differ on the extent to which they see business travel rebounding in the future. We have however seen a common view amongst employers that business travel may or should be reduced (particularly to advance gains in ESG and D&I objectives) but that business travel is a core part of activity for the industry, particularly in building client relationships.

### What's the status quo?

#### Travel into the UK

The UK offers visa-free visits for up to 180 days per trip to citizens of around 56 countries<sup>62</sup> ('non-visa nationals'). The UK's prospective trading partners are typically already on this list.<sup>63</sup> The UK Government has stated that from January 2021, EU, EEA and Swiss nationals not already resident in the UK will be eligible for treatment as non-visa nationals<sup>64</sup>, and although they will not be able to work in the UK, they will be able to visit the UK under the conditions outlined above.

Visitors are permitted to engage in a range of business-related activities, including meetings, negotiating contracts and internal-facing activities such as delivering training. Permissible activities, as well as prohibited activities, are set out clearly in the UK's Immigration Rules.<sup>65</sup> Generally speaking, visitors are not permitted to perform productive work, including the delivery of services or providing short-term cover, and they must not receive payment from a UK source, other than expenses. There are limited exceptions for visitors conducting 'permitted paid engagements', i.e:

- a) Academics participating in student examinations or chair selection panels.
- b) Experts delivering lectures at the invitation of a relevant UK body.
- c) Pilot examiners assessing UK based pilots against overseas aviation regulations.
- d) Qualified lawyers providing advocacy for a court, tribunal hearing or arbitration.
- e) Professional artists, entertainers, musicians and sports persons carrying out activities related to their profession.

It would be fair to say that these very specific exceptions are designed to address very specific concerns by individual sectors. Of these exceptions, only b) and d) above are relevant to the financial and related professional services industry.

#### SME Impact

The business visitor rules themselves do not differentiate between small and large employers. It is frequently cited however, that SMEs can struggle to navigate the complexity of the UK's immigration system and processes, and that without economies of scale (e.g. a large multinational with hundreds or thousands of visitors per year), this is very inefficient.

<sup>62</sup> Home Office, 'Immigration Rules', (July 2020), Appendix V – Appendix 2, available at: <https://www.gov.uk/guidance/immigration-rules/immigration-rules-appendix-v-visitor-rules>

<sup>63</sup> E.g. USA, Canada, Japan, Australia, New Zealand. South Africa and India are notable exceptions where nationals are required to obtain a visit visa before travelling to the UK (£95) Link to rules

<sup>64</sup> Home Office, 'Visiting the UK from 1 January 2021', available at: <https://www.gov.uk/guidance/visiting-the-uk-from-1-january-2021>

<sup>65</sup> Home Office, 'Immigration Rules', (July 2020), Appendix V, available at: <https://www.gov.uk/guidance/immigration-rules/immigration-rules-appendix-v-visitor-rules>

## Travel out of the UK

British Citizens enjoy visa-free travel to around 180 countries and territories. The position of the UK's main prospective trading partners is as follows:

Country	Visa requirements for British Citizens	Cost	Maximum length of visit
EU, EEA and Switzerland	Visa-free, with implementation of electronic travel authorisation system (ETIAS <sup>66</sup> ) proposed for 2022*	£0* (ETIAS: ~ £6)	90 days*
USA	Visa-free, with electronic travel authorisations system (ESTA)	~ £11	90 days
Canada	Visa-free, with electronic travel authorisations system (ETA)	~ £4	6 months
Japan	Visa-free	£0	90 days
Australia	Electronic visa required	£0	90 days
New Zealand	Visa-free, with electronic travel authorisation system (NZeTA)	~ £5	6 months
South Africa	Visa-free	£0	90 days
India	Electronic visa required	~ £79	180 days

\*These conditions will apply from January 2021 once freedom of movement has ended.

For reasons that underline the challenge faced by UK business travellers outbound to the EU, it is not possible within the confines of this report to go into detail on the specific activities that each of these countries permits and prohibits for business visitors and how these compare or contrast with the UK. Suffice to say there is vast disparity across EU member states. Notable points include:

- The principle that basic business activities such as meetings are permitted while productive work is prohibited is commonplace. Distinctions arise as to exactly where that line is drawn.
- Despite the existence of the Schengen zone, its members are not entirely aligned on which activities are permissible and which are prohibited. In addition, and unlike the UK, many EU member states do not publish a clear list of permitted and prohibited activities. By way of an example, Denmark publishes detailed guidance on permitted and prohibited activities<sup>67</sup> and B2B marketing activities are generally permitted as a visitor. Conversely, France does not publish clear guidance on permitted and prohibited activities, and in practice, B2B marketing activities will often require a work permit. By contrast, marketing activities are permitted in the UK, providing they do not involve selling directly to the public. This uncertainty can cause significant challenge and unnecessary cost in financial services where short-term travel is critical.

## What provisions exist in other agreements?

### General Agreement on Trade in Services

As discussed earlier in the report, GATS does not impose the same rules on all 164 members of the WTO, and thus does not function to create a level playing field. Instead, GATS operates as the framework under which WTO members can make whatever commitments they choose on market access, including mobility provisions and rules on business travel.

The EU's commitments under GATS include provisions relating to the entry of service personnel, defined as:

Representatives of a service supplier... seeking temporary entry for the purpose of negotiating for the sale of services or entering into agreements to sell services for that service provider, where those representatives will not be engaged in making direct sales to the general public or in supplying services themselves.<sup>68</sup>

<sup>66</sup> European Commission, 'Migration and Home Affairs', (September 2020) available at: [https://ec.europa.eu/home-affairs/what-we-do/policies/borders-and-visas/smart-borders/etias\\_en](https://ec.europa.eu/home-affairs/what-we-do/policies/borders-and-visas/smart-borders/etias_en)

<sup>67</sup> The Danish Immigration Service, 'Visa (short-term) or work permit?', available at [https://www.nyidanmark.dk/en-GB/Words-and-concepts/US/Visum/Visa-\(short-term\)-or-work-permit/](https://www.nyidanmark.dk/en-GB/Words-and-concepts/US/Visum/Visa-(short-term)-or-work-permit/)

<sup>68</sup> Abridged, and this definition excludes specific conditions and carve outs by individual EU member states - WTO, 'GATS/SC/157 - European Union schedule of specific commitments', (May 2019) available at: <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/SCHED/GATS-SC/SC157.pdf&Open=True>



Those establishing a commercial presence:

*Persons in a senior position [...] who are responsible for the setting up, in a Member State, of a commercial presence of a service provider of a Member when:*

- *the representatives are not engaged in making direct sales or supplying services*
- *the service provider has its principal place of business in the territory of a WTO Member other than the Communities and their Member States and has no other representative, office, branch or subsidiary in that Member State.*<sup>69</sup>

Various EU member states have then applied additional conditional overlays and carve outs. By way of an example, for most member states, the commitment stipulates that the duration of stay within this category is defined by member states in documents external to the GATS commitments. Estonia specifically limits this to 90 days per six-month period, while Lithuania limits stay to up to three months a year.

It is important to reiterate that these commitments specify the bound levels of conditions that EU member states may apply to the entry of nationals of WTO members under GATS Mode 4. The applied levels operating in practice may be — and often are — more generous. Further to the example given above, in practice, non-EU nationals are typically permitted to enter Lithuania for a period of up to 90 days in any six-month period — a more generous offer than the commitment within GATS.

## EU-Canada Comprehensive and Economic Trade Agreement (CETA)

CETA contains commitments on mobility, and, in particular, rules for business visitors that are significantly more detailed (and in many cases, more generous) than those under GATS, although no more favourable than the UK's existing visitor rules.

Article 10.9<sup>70</sup> EU-Canada CETA includes commitments on:

- permissible activities as a business visitor<sup>71</sup>
- prohibited activities e.g. selling goods or services to the general public
- process – namely, that a work permit should not be required
- the maximum length of stay as a business visitor – 90 days in any six-month period.

These commitments are certainly more granular than those under GATS, but it is still the case that they are not particularly progressive. EU member states already offer business visitor schemes at least as generous as these commitments to all nationalities.<sup>72</sup> The UK for example (an EU member state until March 2020) allows business visitors to stay for up to six months.

In conclusion, there are two key points to note when considering how this type of commitment impacts a country's immigration policy. Firstly, business travel and mobility commitments in trade agreements rarely represent an improvement from the status quo (i.e. the immigration rules that a country offers on a unilateral basis), and more often represent a codification of the status quo designed to prevent regressive policy changes. Secondly, by extension, to understand the gaps and challenges associated with business travel and mobility, it is necessary to look at the immigration rules and processes that applicants and employers use on a daily basis – more often than not the origin of these rules and processes will not be commitments made in trade agreements, but rather the country's own domestic immigration policy, developed independently. In other words, even where there are bound commitments, these are not necessarily a guide to applied rules and processes.

<sup>69</sup> Supra n9

<sup>70</sup> European Commission, Comprehensive and Economic Trade Agreement (CETA), available at [https://ec.europa.eu/trade/policy/in-focus/ceta/ceta-chapter-by-chapter/index\\_en.htm](https://ec.europa.eu/trade/policy/in-focus/ceta/ceta-chapter-by-chapter/index_en.htm)

<sup>71</sup> Supra n11, Annex 10-D

<sup>72</sup> Albeit some nationalities are required to obtain a visa prior to travel

## What is an appropriate solution for the UK in trade negotiations and how can it be achieved?

### A clear, standardised list of permissible and prohibited activities

At the time of writing, both the UK<sup>73</sup> and EU's<sup>74</sup> draft negotiating documents contain blank placeholders for lists of activities permissible as a business visitor. As a starting point, the UK should seek to negotiate, on a mutually agreed basis, a list of permissible activities that is at least as clear and comprehensive as that contained within the UK's own Immigration Rules. This is of most importance in relation to the UK's negotiations with the EU - UK based employers with branches and clients in Europe rely on the ease and certainty with which they can currently send staff to the continent. These employers accept that there will be some changes from 2021, but increased certainty in the form of a standardised, uniform list of permissible activities across all EU member states would be welcomed greatly.

*"I think that we may be more impacted by EU/UK nationals who are accustomed to travelling (working) between the two on business trips and managing the potential risks that the grey area between business trips and what constitutes work is difficult."*

Member response

On the basis that the UK and EU's draft negotiating texts already contain a placeholder for this list, it is likely that any successfully negotiated agreement will contain such a list. And on the assumption that agreement on the substance of the list is possible, attention should be directed to the form of the list, on the understanding that a greater level of detail offers employers and individuals a greater level of certainty, reducing the friction associated with business travel and increasing its economic value. None of this is to say that the agreement should take away from the parties' ability to exercise a reasonable level of discretion at the border when assessing a visitor's credibility.

We would also recommend that agreements contain a commitment to review the list of permissible and prohibited activities at least every five years to ensure the agreement reflects changes to the global economy and working patterns.

We propose a similar focus on *form* in negotiations with other trading partners, and the UK should seek to include an equivalent list of activities in future agreements. We see this as a more viable approach than attempting to negotiate an upgrade to other countries' commitments under GATS. Agreement on which activities are to be included on the list should be straightforward – alignment between the UK's business visitor rules and those of our main potential trading partners is significant. On this basis, focusing on providing a higher level of detail in the text of the agreement is likely to generate considerable benefits to all parties.

### A time-based rather than activity-based model?

One of the issues that comes up regularly in the context of business visitors is whether a whole-scale reset is required for this category of travellers. Traditionally, as set out above, the ability to enter a jurisdiction as a business visitor is first and foremost tied to the nature of activity to be performed as a visitor. What if business travel was time rather than activity based, whereby a business traveller could enter the destination country for unrestricted activity but would be limited to a prescribed period? There are clear challenges with this approach – not least that it would represent a sea change, across all jurisdictions. If we take a one-month period as an example, in relation to the UK, such a policy would see visitors unable to enter as a visitor for in-house training lasting six weeks, but able to enter as a visitor to deliver services on behalf of an overseas company for three weeks. Practically, the level of time control that would warrant the political shift might defeat the flexibility businesses would need for this to be a significant improvement on the current system, however, the idea merits further consideration. In many ways the Permitted Paid Engagements route represents such a compromise, but in a highly restricted context.

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73 UK Government, 'DRAFT UK-EU Comprehensive Free Trade Agreement (CFTA)', (17 February 2020), Annex 11-B, available at: <https://www.gov.uk/government/publications/our-approach-to-the-future-relationship-with-the-eu>

74 EU Commission, 'Draft text of the Agreement on the New Partnership with the United Kingdom', (18 March 2020), Annex SERVIN-3BIS, available at: <https://ec.europa.eu/info/sites/info/files/200318-draft-agreement-gen.pdf>

## Expand the Permitted Paid Engagements (PPE) rules?

As explained above, the PPE rules allow visitors to the UK to perform paid work for up to one month in five very specific scenarios, e.g. lawyers providing advocacy at a UK court or tribunal hearing at the invitation of a client. Consequently, the scope for employers and individuals to make use of this route is extremely limited, and there have been numerous, credible calls to expand these rules to cover a wider range of scenarios. There are good reasons to do so and the architecture is already built into the UK's immigration system and could flex accordingly. There are, however, clear challenges associated with any such expansion, particularly in the present context — the main one being that the PPE rules are currently set up to act as a series of sector-specific carve-outs. Expanding these carve-outs to a wider range of sectors would provide relief against some of the challenges outlined above but would necessarily require significant resources to engage with each sector independently, and in ensuring equity across sectors. This would be an innovative approach, and one requiring the political will to fundamentally shift thinking around business travel. A more readily achievable solution, and one we recommend, is a cross-sector approach that leverages existing systems and combines the speed of the business visitor system (that non-visa nationals do not need to apply for a visa before travelling to the UK) with the controls of a sponsored work system – a hybrid model.

## Combine the efficiency of a visa-free business travel regime with the flexibility of a short-term work scheme to create a new Direct Enabling Route

UK-based employers often talk with frustration of managing the distinction between activities that require a work visa (e.g. in the UK a Tier 2 sponsored visa) and those that are permissible as a business visitor. The frustration stems from the fact that a relatively minor shift in activities often results in a drastic increase to the cost, timescale and administration associated with compliance with the immigration regime.

*“EU short-term assignments tend to be quick and agile solutions (inbound or outbound to/from UK). Having no EU arrangement in place would add additional work and possibly prohibit fluidity and reduce our ability to respond to talent gaps or client needs.”*

Member response

By way of an example, a US citizen visiting the UK branch of their employer to work on an internal project for six weeks would be eligible to enter the UK as a visitor, with no requirement to apply for a visa before travelling to the UK. If that same US citizen were instead to be coming to the UK for four weeks to provide short-term cover for an internal facing role, even if they were performing the same activities as in the first example, they would fall outside the scope of the business visitor rules and would require a work visa. This would normally be a Tier 2 sponsored worker visa, which would take around three to four weeks from start to finish and cost at least £809.<sup>75</sup>

We recommend the negotiation of a mutually recognised immigration route to bridge this gap, to reduce the friction associated with sending and receiving staff to and from overseas branches on short-term assignments of up to six months. In our 2018 report: ‘The UK’s future immigration system and access to talent’<sup>76</sup>, EY and TheCityUK called for the introduction of such a scheme, to enable international staff to transfer to their employer’s UK office for up to six months.

Permissible activities should include:

- taking up a training or work experience role in the UK to support the individual’s career within the global organisation
- providing short-term cover for a UK role
- supporting internal projects
- delivering services to a UK-based client.

<sup>75</sup> Comprising £199 for a Certificate of Sponsorship and £610 for the visa application. Additional fees are payable where the individual is coming to the UK for more than six months

<sup>76</sup> TheCityUK, ‘The UK’s future immigration system and access to talent’, (May 2018), available at: <https://www.thecityuk.com/research/the-uks-future-immigration-system-and-access-to-talent/>

The scheme should be similar in operation to the current business travel rules, with non-visa nationals being able to travel without first obtaining a visa. As recommended in 2018, it would be appropriate to require the in-country sponsor (typically the local branch of the individual's overseas employer) to meet certain administrative requirements which could be similar to those in place for existing intra-company transfer immigration routes. For example, in the UK, a two-stage process could ensure both speed and adequate controls:

- **Stage 1.** The sponsor could be required to assign a Certificate of Sponsorship prior to travel, confirming that the placement meets certain Tier 2 criteria, including a minimum salary threshold. This ensures there is sufficient oversight and control of the sponsored worker and the work they are undertaking.
- **Stage 2.** The applicant enters the UK without applying for a visa prior to departure. Sponsor notifications are made on departure.

Implementation of this scheme would necessitate two key adaptations of the Immigration Rules

1. Ensure citizens of all trade partners are considered non-visa nationals, meaning they are not required to apply for a visa before travelling to the UK. The majority of the UK's main prospective trade partners are already on this list, with the exception of South Africa and India.
2. Create a new sub-category within the existing Tier 2 (Intra-Company Transfer) provisions and give Immigration Officers at UK ports of entry the power to grant Leave to Enter within this category on arrival in the UK, without requiring the applicant to hold Entry Clearance.

Since 2018 the UK's immigration system has made advances in utilising technology to eliminate administrative parts of the visa application process and appears committed to further improvements over the next few years, particularly in relation to the border.<sup>77</sup> These developments could well be leveraged to implement the scheme we recommend here, and as a result, our recommendation is now more achievable than ever before.

We recognise that such a scheme is a distinct departure from the typical form of mobility arrangement found within existing FTAs. It is questionable whether the EU currently is in a position to negotiate or enforce such an agreement on behalf of its member states – this would benefit from further analysis. In the context of the EU, our proposal is that each member state would retain its own administrative procedures for a local sponsor to declare that it is sponsoring a short-term assignee. This may be an electronic notification (as in the case of the UK), or it may be a paper-based application. The core benefit of our proposal is that once this sponsorship has been declared, the individual is permitted to travel immediately without first needing to apply for a visa. The EU already has harmonised rules for allowing entry without a visa – the question is whether it would require further negotiation with each member state to expand the scope of visa-free entry to the scenario outlined above.

Even if it is not achievable within the scope of the UK's current negotiations with the EU, we consider this proposal to be a bold and innovative policy option that should be considered in future negotiations with all trading partners as a way of encouraging trade without posing a risk to countries domestic labour markets.

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<sup>77</sup> UK Government, '2025 UK Border Strategy - Public Consultation, (July 2020), available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/90274/0/2025-Border-Strategy-Condoc.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/90274/0/2025-Border-Strategy-Condoc.pdf)

## 2. SERVICE DELIVERY

### What's the status quo?

#### Travel into the UK

Where an organisation based outside of the UK agrees a contract with a UK-based client for the delivery of services, the organisation will often need to send one or more members of staff to the UK to facilitate the delivery of these services. This is known as Mode 4 supply of services.<sup>78</sup> Where the staff are not themselves British Citizens<sup>79</sup>, they will typically seek to enter the UK via one of the following immigration routes:

#### Visitor status

Although the UK's business visit rules permit activities related to the negotiation and marketing of services, including information gathering and requirements briefings, the delivery of services itself is specifically prohibited, with a small number of notable exceptions, including:

- Employees of foreign manufacturers or suppliers who may install, dismantle, repair, service or advise on equipment, computer software or hardware where they have a contract of purchase or supply or lease with a UK company or organisation.<sup>80</sup>
- Qualified lawyers who may provide advocacy for a court or tribunal hearing, arbitration or other form of dispute resolution for legal proceedings within the UK, if they have been invited by a client.<sup>81</sup>

Opportunities for increased flexibility within the UK's visitor rules are discussed in detail in the business travel section of this report.

#### Tier 2 sponsorship

Where the organisation delivering the service has a UK branch, the most practical option is often to transfer the staff needed to facilitate the service delivery to the UK via the Tier 2 (Intra-Company Transfer) route. This visa enables the holder to work in the UK for up to five years<sup>82</sup>, although it does require the applicant to earn a minimum annual salary of £41,500 (or the minimum specified in the occupational Codes for the role, whichever is higher) while in the UK, as well as attracting the Immigration Skills Charge of £1,000 per year. Feedback from employers suggests that the Tier 2 (Intra-Company Transfer) route generally works well, although like other sponsored worker routes it is seen as administratively burdensome, particularly for short-term assignments. We discuss how the UK's sponsorship system could further support working in the UK for up to six months (including the delivery of services) in the business travel section of this report.

#### Tier 5 (International Agreement)

The biggest challenge is reserved for organisations based overseas who wish to deliver services to a client based in the UK but who do not have a UK commercial presence. The UK's commitments under GATS, inherited from the EU, include a commitment to facilitate the entry of contractual service suppliers within certain sectors<sup>83</sup>, and the UK has implemented this commitment via the Tier 5 (International Agreement) route. The main challenge associated with utilising this immigration route is that, in order for the service supplier to apply for a visa, the UK-based recipient of the services must first apply for a Sponsor Licence under Tier 5 and issue the supplier with a Certificate of Sponsorship. Applying for a Tier 5 Sponsor Licence involves significant administrative hurdles, takes around eight weeks and costs up to £536, all to facilitate the sponsorship of the person(s) supplying the services. Retaining the Sponsor Licence incurs further administrative responsibilities and agreement that the Home Office can conduct an unannounced audit to monitor compliance with Sponsor duties at any time.

<sup>78</sup> Defined within the General Agreement on Trade in Services (GATS) as the delivery of services "by a service supplier of one Member, through the presence of natural persons of a Member in the territory of any other Member"

<sup>79</sup> Until the end of 2020, EU citizens are free to exercise freedom of movement to deliver services in the UK without the need to apply via one of the immigration routes described above. From 1 January 2021, EU citizens will need to qualify under one of these routes

<sup>80</sup> Supra N4, Para 9, Visitors Appendix 3 s

<sup>81</sup> Supra N4, Visitors Appendix 4

<sup>82</sup> Where the visa holder earns a salary of £120,000 or higher, they are permitted to remain in the UK for up to nine years

<sup>83</sup> Supra N9

The challenges associated with utilising this immigration category become self-evident when viewed in the context that, of over 31,000 organisations holding a Sponsor Licence in the UK, only 131 hold a Tier 5 (International Agreement) Sponsor Licence enabling them to sponsor service suppliers.<sup>84</sup> In the year to March 2020, only 465 visas were issued in this category.<sup>85</sup>

### SME Impact

The current implementation of the Tier 5 (International Agreement) certainly dissuades SMEs from contracting with service providers based outside of the UK, since they are required to apply for a Tier 5 Sponsor Licence, which the vast majority of UK employers do not already have. UK based SMEs facilitating the delivery of services by their overseas branches to UK-based clients via the Tier 2 ICT route are faced with a sponsorship system that does not differentiate in its complexity between small and large employers. As outlined elsewhere in this report, the UK's sponsorship processes are often considered complex and a particular hurdle for SMEs who may be using the system infrequently.

UK employers delivering services to clients based outside of the UK are faced with a wide range of immigration schemes in different destinations, as detailed in the following section. Naturally, SMEs have fewer resources than multinationals to familiarise themselves with multiple immigration systems in their clients' home countries.

### Travel out of the UK

As demonstrated by the UK example given above, there can be a gap between a country's Mode 4 commitments and the practical implementation of the country's immigration scheme. For this reason, we have compared the burdens arising from the UK's practical implementation with those in three additional countries below.

Country	Administrative burden on recipient of services	Cost to recipient of services	Administrative burden on applicant / service supplier	Cost to applicant / service supplier
Norway	Recipient of services must sign a form and inform the service supplier of relevant requirements, including Norwegian minimum wage rules	£0	Applicants are advised to apply for a visa before travel (where planning to be in Norway for up to 90 days), although some nationalities can technically apply for a residence permit once arrived (but will not be able to work until granted)	NOK 6,300
Netherlands (EU)	Recipient of services or service supplier must register the contract with the Dutch labour office	£0	No requirement to apply for visa before travel (where planning to be in Netherlands for up to 90 days) for some nationalities. Apply for residence permit either before travel or once arrived Recipient of services or service supplier must register the contract with the Dutch labour office	€290
Canada	Recipient of services must provide details of the contract via the Canadian Employer Portal	C\$230	Service supplier can apply for work permit either in advance of travel or in some circumstances, at a Canadian port of entry	C\$240

*Table continued overleaf*

<sup>84</sup> UKVI, 'Register of Sponsors', available at:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/901938/2020-07-20\\_Tier\\_2\\_5\\_Register\\_of\\_Sponsors.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/901938/2020-07-20_Tier_2_5_Register_of_Sponsors.pdf). The majority of these 131 organisations are embassies making use of another part of the Tier 5 (International Agreement) category to sponsor employees of overseas governments

<sup>85</sup> UK Government, 'Immigration statistics' (May 2020) available at:

<https://www.gov.uk/government/publications/immigration-statistics-year-ending-march-2020/why-do-people-come-to-the-uk-to-work>.



UK	Where the recipient of services does not already hold a Tier 5 (International Agreement) Sponsor Licence, they must first apply. This typically takes eight weeks and is administratively burdensome. They must then assign a Certificate of Sponsorship to the applicant via their online Sponsor Management System and accept various responsibilities in relation to the migrant delivering the services	£21 (CoS) + £536 (cost of Sponsor Licence if not already held)	Visa application always required before travel, regardless of nationality	£244
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All three jurisdictions examined above offer advantages for overseas contractual service suppliers over the UK's systems. In addition to enabling service suppliers to enter without first obtaining a visa, typically less responsibility is placed on the recipient of the services, reducing friction that might otherwise prevent the award of a contract for services to an overseas supplier.

*"We wouldn't expect our clients to become involved in sponsoring our staff from a visa perspective, and we would not want to place this burden or expectation on them."*

Member response

## What's an appropriate solution for the UK and how can it be achieved?

### A better implementation of existing and new commitments

We recommend that the UK seeks to negotiate mutually agreed principles governing the implementation of existing and newly negotiated Mode 4 commitments. While we would certainly advocate for a substantive expansion of Mode 4 commitments, both at the horizontal level and by way of an expansion into additional sectors, this is a notoriously complex and slow-moving area of trade relations. Instead, our focus is on ensuring that once said commitments have been made, their purpose is not frustrated by impractical implementation within parties' immigration schemes that risks creating trade distortion.

From analysis of several immigration routes for contractual service suppliers, our recommendations are that the following principles are adopted in the implementation of immigration routes to meet commitments in this area:

- Clear published designation of a specific immigration route for the purpose of facilitating entry as a contractual service supplier, with detailed information on process, cost and timeframes.
- The mandatory administrative burden placed on the recipient of the services should be minimised as far as possible, and should not exceed:
  - a requirement to sign an application form (either on paper, or preferably online) to confirm that they are the recipient of said services
  - a requirement to inform the service supplier of any local requirements, including minimum wage requirements and make adherence to those conditions a contractual requirement.
- The remaining administrative requirements should be met primarily by the applicant and their overseas employer (i.e. the service supplier), including:
  - requirements to demonstrate experience and/or qualifications
  - payment of application fees
  - requirements to demonstrate rate of remuneration while in-country.
- The above should not preclude the recipient of the services from being given the option of playing a larger role and certifying any of the above requirements where this represents an appropriate balance between compliance requirements and efficiency.

The status quo is that some potential trade partners (e.g. Canada) operate more accessible immigration routes for UK suppliers delivering services into that country than the UK offers to overseas service suppliers delivering services into the UK. This means that financial and related professional services industries in other key financial centres gain a competitive advantage over the UK through their enhanced access to international talent pools. An offer by the UK to implement more accessible immigration routes that are more closely aligned with other countries' implementations could be deployed as negotiating capital to secure advantages in other areas, leading to other benefits for UK organisations, including those identified in the business travel section of this report. Such changes would have the added benefit of offering UK based customers wider choice, since the delivery of services by an overseas supplier will involve less friction and should therefore be more competitive cost-wise.

### A new branch of the Intra-Company Transfer scheme for Trade Partner Nationals as a Direct Enabling Route

We recommend that the UK introduce a bespoke ICT route for nationals of trade partners, to be made available where reciprocated by the trade partner. There would be two key differentiators from the current Tier 2 (Intra-Company Transfer) scheme that would deliver significant benefit to the UK industry:

1. The applicant would be required to be a current employee of an overseas branch of the UK sponsor, but would not need to have worked for them for any specific length of time (this was one of the flexibilities available under the Tier 2 ICT Skills Transfer visa).
2. The route would offer a two-year exemption from the Immigration Skills Charge (ISC), saving employers up to £2,000 per person sponsored under this route. Alternatively, a reduced rate could apply.

Either the category could be limited to two years, or where an assignee extends their assignment beyond two years or localises, the ISC should be payable from that point onwards.

The ISC was implemented to reduce demand for migrant labour and incentivise employers to invest in training UK Staff.<sup>86</sup> The principle of Mode 4 commitments is that natural persons making use of these provisions are not entering the resident labour market, and therefore do not represent a threat to the local labour market that the implementation of the ISC should seek to resolve.

The introduction of a new bespoke route as described above would offer international organisations with branches in the UK and overseas greater flexibility, both in arranging short-term assignments and facilitating the delivery of services by their overseas branch to a UK customer.

Where equivalent payments form part of the immigration system of the UK's trade partners, these exemptions should apply retrospectively.

This would give the UK greater flexibility to negotiate favourable agreements for UK outbound movement.

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<sup>86</sup> Home Office, 'Press Release - Government's new Immigration Skills Charge to incentivise training of British workers', (March 2016), available at: <https://www.gov.uk/government/news/governments-new-immigration-skills-charge-to-incentivise-training-of-british-workers>

### 3. YOUTH MOBILITY

#### What's the status quo?

##### Travel into the UK

The Tier 5 (Youth Mobility Scheme) immigration route is part of the UK's current Points Based System, in place since 2008, and enables 18 to 30-year olds of certain nationalities<sup>87</sup> to come to the UK for tourism and work<sup>88</sup> for up to two years. In the year to March 2020, almost 20,000 visas were granted under this category. In addition to nationality and age requirements, applicants are required to demonstrate £1,890 in savings at the time of application and must not have any children for whom they are financially responsible.

Nationality	Numerical cap	Number of visas issued in year to March 2020	% of cap utilised
Australia	30,000	9,425	31%
Canada	5,000	3,090	62%
Japan	1,000	820	82%
Monaco	1,000	4	0.4%
New Zealand	13,000	3,534	27%
Hong Kong	1,000	1,227*	Data not available*
Republic of Korea	1,000	859	86%
Taiwan	1,000	783	78%

Source: Immigration Statistics, ONS<sup>89</sup>

\*Home Office data for applicants from Hong Kong does not differentiate between those with Hong Kong (SAR) status and those with British national (overseas) status. The numerical cap displayed above only applies to applicants with Hong Kong (SAR) status. Applications from British overseas citizens, British overseas territories citizens and those with British national (overseas) status are uncapped.

In its 2018 White Paper<sup>90</sup> on the UK's post-Brexit immigration system, Mrs May's administration identified a reciprocal expansion of the Youth Mobility Scheme (YMS) to a wider range of countries (in particular the EU) as a way of providing *"an additional source of labour for the UK labour market and [...] continuing opportunities for British people to gain experience of living and working in the EU"*.<sup>91</sup>

Very little data is available on the outcomes for YMS visa holders in the UK – the skill and salary level of jobs they perform while in the UK, and the number that end up continuing their stay in the UK at the end of their two year visa. Since 2008, visa holders who wish to apply for a long-term work visa, e.g. Tier 2, have been required to return to their home country to reapply to enter the UK. The Home Office allowed in-country switching exceptionally as part of its Covid-19 response and intends to allow in-country switching from this route in the 2021 system.

87 Citizens of Australia, Canada, Japan, Monaco, New Zealand, Hong Kong, Republic of Korea and Taiwan, British overseas citizens, British overseas territories citizens and those with British national (overseas) status

88 The Tier 5 (YMS) visa permits work in any role, at any skill level, without a minimum salary threshold (other than normal minimum wage requirements) and also permits self-employment, although there are restrictions on employing others and owning and using property and equipment through the business

89 ONS, 'Immigration Statistics', (March 2020), available at: <https://www.gov.uk/government/publications/immigration-statistics-year-ending-march-2020/why-do-people-come-to-the-uk-to-work>

90 Home Office, 'The UK's future skills-based immigration system', (19 December 2018), available at: <https://www.gov.uk/government/publications/the-uks-future-skills-based-immigration-system>

91 Supra N30, para 6.59

The data that is available around this route, notwithstanding the above, combined with anecdotal evidence supports the following assertions:

- YMS visa holders are typically qualified and highly skilled<sup>92</sup>, albeit usually at the start of their careers.
- YMS visa holders bring international insight and cultural awareness from their home country — something employers tell us time and again is extremely valuable.
- The YMS encourages circular migration. It is a temporary route, and those who decide not to stay in the UK return to their home country with additional skills, experience and insight that can benefit future employers and enhance mutual trade.
- Once in the UK, YMS visa holders form part of the labour market, and employers seeking to attract talent face significantly less friction in recruiting them inside the UK than recruiting the same individual based in their home country.
- YMS visa holders are on average, by virtue of their age and absence of dependent children, less reliant on public services and thus more likely to have a more positive net impact on public finances.<sup>93</sup>

These factors suggest that were a large-scale public survey to be conducted, it might well find that youth mobility enjoys higher levels of public support than other immigration routes that allow the visa holder to perform jobs at any skill level.

Despite its advantages, the YMS is not perfect. Employers have historically experienced frustration with the processes required to transition from a YMS visa to a more permanent visa - typically Tier 2 (General):

- Employers who do not hold a Sponsor Licence must first obtain one.
- Employers must conduct a resident labour market test (RLMT) to demonstrate that there are no suitable settled workers who can perform the role.
- To switch to a Tier 2 (General) visa, YMS visa holders must return to their home country to submit the application and wait there while it is being processed, typically for around two weeks.

*"We have experienced difficulties engaging individuals [on YMS visas] on a long-term basis as there is no natural visa category to progress them to. There are no guarantees for success in applying for a Tier 2 General visa – should be greater flexibility on that."*

Member response

It's also important to note that these challenges disproportionately impact SMEs, who are typically less familiar with how the UK's immigration system works, less likely to hold a Sponsor Licence and less likely to be able to accommodate a key member of staff leaving the UK for two to four weeks to obtain their Tier 2 visa.

*"We already make use of the YMS for many secondees from Australia, New Zealand and Hong Kong. However, the fact that this route does not lead to settlement or allow switching to Tier 2 is disappointing and something that would be useful to be reconsidered."*

Member response

Fortunately, as above, the government has listened to these concerns and in its most recent policy announcements<sup>94</sup>, has confirmed that from 1 January 2021:

- The requirement to conduct a RLMT will be abolished.

<sup>92</sup> Consterdine, Erica, 'Youth Mobility Scheme: the panacea for ending free movement?' (2019), available at: <http://sro.sussex.ac.uk/id/eprint/82863/> - A closed study of 75 Australians with YMS status in 2019 found that 69% held a bachelor's degree or higher, with a clear majority working in skilled professions, albeit on a temporary basis:

<sup>93</sup> Migration Advisory Committee, 'EEA migration in the UK: Final report' (September 2018), Figure 4.2, available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/741926/Final\\_EEA\\_report.PDF](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/741926/Final_EEA_report.PDF)

<sup>94</sup> Home Office, 'UK points-based immigration system: further details statement', (July 2020), available at: <https://www.gov.uk/government/publications/uk-points-based-immigration-system-further-details-statement>

- YMS visa holders will be permitted to switch to the new skilled worker route (the replacement for Tier 2) from within the UK, without needing to return home.

These changes will resolve two of the biggest challenges identified above and increase the attractiveness of YMS visa holders and the scheme in general to UK employers of all sizes.

### SME Impact

The Tier 5 (Youth Mobility Scheme) visa enables the holder to work for an employer of any size, in any sector. However, at the end of the two years, where the employer wishes to switch their employee from a Tier 5 (Youth Mobility Scheme) visa to a Tier 2 visa, as explained above this has often necessitated a sponsor licence application (where not already held), a RLMT and allowing the employee to return to their home country for several weeks to apply for the Tier 2 visa. SMEs often need to invest significant resources to navigate these processes for the first time. With the changes from 2021 outlined above, switching employees over to the Skilled Worker route will become significantly easier, and thus more attractive to SMEs.

### Travel out of the UK

Public support for an expanded YMS is likely to be further strengthened by the fact that Youth Mobility Schemes are reciprocal, and are a form of mobility that young British Citizens are traditionally keen to take up – in the year to March 2020, over 20,000 British citizens entered Australia as working holidaymakers.<sup>95</sup> In the year to June 2020, a further 9,000 British Citizens were granted working holidaymaker visas for New Zealand.<sup>96</sup>

We have summarised the key youth mobility or working holidaymaker schemes open to British Citizens below.

Destination	Requirements		Length of stay	Cost	Notable work restrictions	Quota for British Citizens
	Age	Other requirements				
<b>Australia</b> (working holiday visa)	18-30	~ A\$5,000 plus a return ticket or equivalent funds	1 year	A\$485	Can typically work for each employer for up to six months	Uncapped
<b>Canada</b> (IEC Work Permit - Working holiday subclass)	18-30	~ C\$2,500 plus a return ticket or equivalent funds	2 years	C\$153	None	2,500
<b>Japan</b> (working holiday visa)	18-30	~ £2500 plus a return ticket or equivalent funds	1 year	£21	Visa holders are allowed to engage in employment as an incidental part of their travel for the purpose of supplementing their funds.  Visa holders are prohibited from working at bars, cabarets, nightclubs, gambling establishments and other premises affecting public morals in Japan.	1,000

<sup>95</sup> Australian Government, 'Temporary visa holders in Australia', available at: <https://data.gov.au/data/dataset/temporary-entrants-visa-holders>

<sup>96</sup> New Zealand Government, 'Work visa applications decided', (03/07/2020), available at: <https://www.immigration.govt.nz/documents/statistics/statistics-work-applications-decided>. This figure is down significantly on previous years (typically between 12-14k), likely due to the Coronavirus pandemic

<b>New Zealand</b> (working holiday visa)	18-30	At least NZ\$350 for each month, plus a return ticket or equivalent funds	1 year or 23 months	NZ\$280	Visa holders cannot accept a permanent role and must not work for more than 12 months in total	Uncapped
<b>Hong Kong</b> (working holiday visa)	18-30	~ HK\$22,000 plus a return ticket or equivalent funds	1 year	HK\$230	Primary intention must be to holiday in Hong Kong, although temporary employment is permitted	1,000
<b>USA</b> (J1 visa)*	No specific requirement	- English language requirement - Sponsor required - this generally means a confirmed offer of employment	As defined by the sponsor - typically 3-4 months	US\$220 plus sponsor fees, where relevant	Visa holders can only work in the role approved as part of their application, and can only move jobs with express permission	Uncapped

\*Unlike the other working holiday schemes identified above, the US J1 visa does not offer the holder the opportunity to look for work once they are in-country. We include details of the J1 scheme here primarily to illustrate that the US does not have a working holidaymaker scheme that is equivalent to those offered by other developed economies.

It is clear that with the exception of the US J1 scheme, there is a broad consensus over the positive aspects of the international working holiday schemes identified above, both in terms of the requirements and the opportunities available to participants.

Most EU member states offer a working holiday scheme that operates on a similar basis to those identified above. For example, Germany offers a one year visa to applicants aged between 18 and 30 (18-35 for Canadian citizens), although some nationalities are prohibited from entering self-employment and some nationalities may only work for up to six months with each employer.

Owing to freedom of movement within the EU, there has never been a need for British Citizens to seek permission to work in EU member states. With the end of freedom of movement in December 2020, the question of how British Citizens can qualify to work in EU member states will suddenly become very real. It should be noted that youth mobility and working holiday schemes are prescriptive in defining the nationalities that are eligible to apply. By default, British citizens will not be eligible to apply under existing working holiday schemes operated by EU member states, and EU citizens will not be eligible to apply to the UK's YMS.

## What's an appropriate solution for the UK and how can it be achieved?

We recommend that the UK prioritises the negotiation of reciprocal youth mobility schemes with all trading partners where such a scheme does not already exist. The two most pressing candidates are thus the EU and the US, with the former likely being more viable than the latter.

Expanding the scope of the UK's existing schemes represents a genuine opportunity to support UK employers in filling the skills gaps, at all skill levels, which may arise over time once freedom of movement has ended. Given the significant 'value-add' associated with youth mobility, we anticipate that such a move would attract higher levels of support than other options for allowing EU citizens flexible access to the UK labour market such as the temporary visa outlined in the December 2018 White Paper which has since been abandoned.

Finally, agreement between countries on the implementation of reciprocal youth mobility schemes does not necessarily need to take the form of a provision in a free trade agreement. Many schemes have been implemented as the result of informal agreements or memoranda of understanding. Providing there is political will on both sides, agreeing an expansion of reciprocal YMS should be relatively straightforward.

## 4. PROCESS

### What's the status quo?

#### Travel into the UK

In 2008, the UK introduced an Australian style Points-Based immigration System (PBS) with the aim of creating “a more efficient, transparent and objective application process”.<sup>97</sup> While there are undoubtedly still challenges associated with the UK's immigration system, many large employers tell us that it is a system with which they are now familiar and can use reasonably efficiently:

*“The changes [from January 2021] will mean that EU nationals will need go through the clearance and approval process currently in place for non-EU entrants. This brings bureaucracy, but it is a process with which firms are familiar and can usually navigate.”*

Member response

The impact around cost in particular will remain to be seen, given the 17% reliance on EU talent in financial services<sup>98</sup>, rising to 28% for FinTech.<sup>99</sup>

In comparing the UK's system with international comparators, several features of the UK's system stand out as being advantageous to employers:

- The UK's immigration system is largely objective in its decision-making processes. The Home Office publishes immigration rules in full, as well as detailed guidance for applicants and Home Office decision makers. Decisions are taken in accordance with these documented rules and processes.
- Optional priority processing is widely available, albeit often at significant cost. The UK compares positively with other countries' immigration systems in terms of speed, even without priority processing.<sup>100</sup>
- As a function of the factors identified above, employers enjoy a high degree of certainty over the outcomes (both in substance and speed) of immigration applications. Very few applications are refused for reasons that are not apparent at the point of application (e.g. missing documents that are specifically identified as mandatory in rules and guidance).

However, it is important to point out that this certainty is more relevant to frequent users of the system, e.g. large employers.

*“Organisations with limited experience of the current system for non-EU personnel may struggle with the new system, as they must register to be sponsors and have to learn how it operates.”*

Member response

Employers frequently cite the following as challenges associated with the UK's system

- The system is complex, particularly for infrequent users. This is perhaps the downside of a highly objective decision-making process – if the employer or applicant doesn't follow the process exactly, the application may be refused, not because of a substantive problem with the application, but, for example because an applicant submitted a supporting document in the wrong format.

<sup>97</sup> UK Government, 'A Points-Based System: Making Migration Work for Britain', (March 2006), available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/272243/6741.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/272243/6741.pdf)

<sup>98</sup> TheCityUK, 'Financial Services Skills Taskforce – Interim report', (June 2019), available at: <https://www.thecityuk.com/assets/2019/Report-PDFs/59b9da857d/Financial-Services-Skills-Taskforce-interim-report.pdf>

<sup>99</sup> Innovate Finance, 'Press release - Financial technology industry calls for clarity on immigration policy as new research reveals potential for 30,000 new jobs', (30 April 2018), available at: <https://www.innovatefinance.com/news/financial-technology-industry-calls-for-clarity-on-immigration-policy-as-new-research-reveals-potential-for-30000-new-jobs/>

<sup>100</sup> A study by EY and The City of London Corporation in 2018 found that of 17 major economies, only Canada and Dubai were consistently quicker than the UK's system – The City of London Corporation and EY, 'Streamlining success – Building a world class visa process for the UK', (20 November 2018), available at: <https://democracy.cityoflondon.gov.uk/documents/s122445/Visas%20Streamlining-success-the%20UK-visa-system.pdf>



- The system is expensive, both in absolute terms<sup>101</sup> and in comparison with other countries.<sup>102</sup> It is important that this is considered in the context of the value that immigration brings to UK based employers, which as identified elsewhere in this report, is considerable.

*"While the cost of immigration is considerable, immigration costs are largely budgeted for in advance and factored into business decisions."*

Member response

Over the last few years, the Home Office has made considerable efforts to make the UK's immigration system more user-friendly, and many of these changes have been welcomed by applicants and employers. There are too many to mention here, but by way of an example, the commitment to remove the requirement to complete a RLMT from 2021 has been well received by employers — not because they don't believe in looking for talent in the local labour market, but because the RLMT was a rather heavy-handed way of ensuring employers look to the local labour market first.

*"I think flexibility is key for financial services firms, and while cost is important, the most significant is for the process to be quick and straightforward."*

Member response

In July 2020 the Home Office also launched a consultation on its 2025 Border Strategy which will look at the mechanisms through which visa applicants and holders interact with the UK's immigration system, including digital identification systems. Finally, in March 2020, following recommendations by the Law Commission<sup>103</sup>, the Home Office has accepted 24 of 41 recommendations and partially accepted the other 17 recommendations to simplify the Immigration Rules — the regulations which underpin the UK's immigration system.<sup>104</sup>

## SME Impact

As outlined previously, complexity of process contributes significantly to the unattractiveness of the UK's immigration system to employers, and particularly SMEs. While larger employers that make more frequent use of the UK's immigration system benefit from economies of scale and the ability to employ HR and Mobility professionals with knowledge of the UK's immigration system, SMEs making use of the system for the first time often find it to be highly complex and time consuming to navigate.

## Travel out of the UK

It will come as no great surprise to learn that immigration systems in other countries operate very differently to the UK. In particular, the following factors show large variances between immigration systems:

- cost
- processing timeframes
- accessibility of immigration rules and guidance
- documentary requirements, both in substance (i.e. what documents must be submitted) and in process (i.e. in what format should those documents be)
- objectivity and certainty of decision making processes
- complexity — what level of understanding is required in order to successfully utilise the system
- appeal rights.

<sup>101</sup> From Autumn 2020, a five-year visa for a skilled worker and two family members sponsored by a medium or large enterprise will attract total costs of £18,234, all payable upfront at the time of the application

<sup>102</sup> A study by EY and The City of London Corporation in 2018 found that of 17 major economies, UK work visas were the most expensive - Supra N41

<sup>103</sup> The Law Commission, 'Simplifying the Immigration Rules', available at: <https://www.lawcom.gov.uk/project/simplifying-the-immigration-rules/>

<sup>104</sup> UK Government, 'Simplifying the Immigration Rules: a response' (March 2020), available at: <https://www.gov.uk/government/publications/simplifying-the-immigration-rules-a-response>

***Isn't immigration policy harmonised across EU member states?***

The EU does have competence to set rules in some areas of immigration policy, most notably the rules governing the nationalities that can visit without needing a visa (i.e. the Schengen visa rules). However, member states create their own policy and operate their own processes in most other areas of immigration, and in particular, processes and requirements for most work permits.

As detailed in our commentary above, the UK's system compares favourably to other countries' systems in respect of most of the factors identified above, the exceptions being cost, complexity and appeal rights.

Standardisation of these factors, to any extent, would be of great benefit to employers and internationally mobile talent. A UK business wishing to send a member of staff to Germany to deliver a service will clearly experience less friction in organising this mobility if they simply need to follow the same processes they went through six months previously when they sent the same person to deliver a service to a client in France.

To those who work with different immigration systems on a frequent basis, such standardisation seems improbable. That said, the potential benefits on offer make this an area worthy of further exploration and perhaps more achievable in the specific context of facilitating trade than more broadly. Standardisation of process does not preclude countries from making their own immigration policy on who should be eligible for a work visa, but rather rests on the principle that there should be an international best practice on how that visa should be applied for and processed. The principle is not entirely dissimilar to the concept of mutual recognition, which creates frameworks for assessing whether goods manufactured by one party and imported into the territory of the other part conform with local regulations<sup>105</sup>, or to disciplines for domestic regulation being developed in the WTO.

**To what extent are a country's immigration processes dictated by international agreements?**

International agreements covering mobility have historically not included detailed commitments on how countries' immigration systems should operate.

For example, the EU-Canada CETA<sup>106</sup>, often cited as standard setting, contains several high-level obligations as follows:

**Art 10.3.2**

*[Each party] shall apply those measures [applicable to temporary entry] so as to avoid unduly impairing or delaying trade in goods or services or the conduct of investment activities under this Agreement*

**Art 10.3.3**

*Each Party shall ensure that any fees for processing applications for temporary entry are reasonable and commensurate with the costs incurred*

**Art 10.4.1**

*Each party shall make available to the other Party explanatory material regarding the requirements for temporary entry*

<sup>105</sup> E.g. Agreement on mutual recognition between EU and Australia – European Commission, 'Agreement on mutual recognition in relation to conformity assessment, certificates and markings between the European Community and Australia', (January 2013), available at : <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:21998A0817%2801%29>

<sup>106</sup> Supra N11

Other international agreements on mobility provisions contain similar commitments. The UK's draft negotiating document (in its negotiations with the EU) contains similar clauses, notably:

**Art 11.3.2**

*Each Party shall apply its measures, including in relation to fees for processing applications for temporary entry [...] so as to avoid unduly impairing or delaying trade in goods or services or the conduct of investment activities under this Agreement*

**Art 11.3.3**

*Fees charged by competent authorities for the processing of applications for entry and temporary stay must not unduly impair or delay trade in goods or services or establishment or operation under the Agreement*

The provisions identified above are a good starting point, but they rarely bring about an improvement over the status quo. Perhaps the best example of this is that although the EU-Canada CETA entered into force in 2017, no changes were made to the UK's immigration system to implement the EU's commitments under the agreement. The UK (as a member of the EU) did not reduce visa application fees or improve the process for Canadian citizens entering the UK as contractual service suppliers, even though it could be argued that the difficulties outlined above in the Tier 5 (International Agreement) visa route do in fact impair trade in services.

## **What's an appropriate solution for the UK and how can it be achieved?**

We recommend that the UK seeks to agree with trade partners the adoption of a standard set of principles governing how visa applications are submitted and processed. At a minimum, these principles should be applied to visa applications submitted in relation to categories identified in a trade agreement, e.g. business visitors, contractual service suppliers and possibly YMS applicants, although countries would be welcome to expand their adoption of these principles to other application types and nationalities.

We have identified several priorities for this standard set of principles below. Agreement on the exact nature of the substantive element of each principle (e.g. how quickly an application should be processed) will clearly be subject to negotiation between the parties. In each case we have suggested a starting point that would represent an improvement to the status quo for travel into or out of the UK.

## Effective implementation: what good would look like

Principles	Substantive elements
Speed of processing	<ul style="list-style-type: none"> <li>• The processing of applications should be prioritised.</li> <li>• 90% of applications should be processed in no more than two weeks.</li> <li>• Service standards should be published.</li> <li>• Service standard performance should be published on a quarterly basis.</li> </ul>
Accessibility of legislation and clear guidance for applicants and employers	<ul style="list-style-type: none"> <li>• Routes should be promoted internationally.</li> <li>• An awareness campaign should follow the conclusion of agreements to prepare business for preferential options and avoid them resorting to unnecessary cost/less favourable processes.</li> <li>• The relevant government department's website should contain clear signposting for nationals of trade partner countries to guidance and legislation.</li> <li>• Immigration routes that facilitate mobility under the agreement should be clearly signposted.</li> <li>• Restrictions or red lines should be called out.</li> <li>• Guidance should be available in languages relevant to all parties to the agreement.</li> </ul>
Decision making processes	<ul style="list-style-type: none"> <li>• Decision making processes should be objective.</li> <li>• Discretionary/subjective decisions should be limited to those in the applicant's favour.</li> <li>• Guidance for decision makers should be published and clearly accessible via the relevant government department's website.</li> <li>• Appeal rights and processes should be clearly published.</li> </ul>
Format of supporting documents	<ul style="list-style-type: none"> <li>• Immigration authorities should accept electronic copies of documents where use of electronic documents is widespread in-country, e.g. bank statements and payslips.</li> <li>• Immigration authorities should not retain original documents for longer than is absolutely necessary.</li> <li>• Requirements that documents be legalised, apostilled or notarised should be avoided.</li> </ul>
Cost	<ul style="list-style-type: none"> <li>• Application fees should not exceed the reasonable cost to the relevant government department of processing the visa application.</li> <li>• These costs should be published on an annual basis, along with the methodology for how they are calculated.</li> <li>• Consideration should be given to whether a two year exemption from the Immigration Skills Charge should apply where a UK-based employer is making use of the Intra-Company Transfer provisions originating from a Mode 4 commitment in an internal agreement. The Immigration Skills Charge (ISC) was implemented to reduce demand for migrant labour and incentivise employers to invest in training British Staff.<sup>107</sup> The principle of Mode 4 commitments is that natural persons making use of these provisions are not accessing the resident labour market, and therefore do not represent a threat to the local labour market that the implementation of the ISC should seek to resolve.</li> </ul>

<sup>107</sup> Home Office, 'Press Release - Government's new Immigration Skills Charge to incentivise training of British workers', (24 March 2016), available at: <https://www.gov.uk/government/news/governments-new-immigration-skills-charge-to-incentivise-training-of-british-workers>

We have illustrated below the extent to which the UK's visa application fees exceed the cost to the Home Office of processing an application.

Application Type	Application Fee*	Cost to the Home Office of processing the application	% discount if fees were not to exceed cost
Tier 2 (Intra-Company Transfer) of up to 3 years	£610	£127	79%
Tier 2 (Intra-Company Transfer) of 3 to 5 years	£1,220	£127	90%
Tier 5 (International Agreement)	£244	£115	53%
Standard visitor (up to 6 months)	£95	£130	0%
Standard visitor (5 years multiple entry)	£655	£130	80%

\*These are fees for the visa application only, and exclude Immigration Skills Charge (ISC) and Immigration Health Surcharge (IHS) payments

Source: UKVI<sup>108</sup>

The granular principles outlined above do not contradict the high-level principles already contained within many existing trade agreements, and as a result, agreement on these granular principles would not necessarily require reopening the commitments in existing agreements. Instead, as suggested with our other recommendations, it may be more viable to add the more granular principles via a side agreement such as a memorandum of understanding once an agreement has been reached.

108 UKVI, 'visa fees transparency data', available at: <https://www.gov.uk/government/publications/visa-fees-transparency-data>

## Recommendations

Area of mobility	Challenges	Our proposals	Impact for UK businesses
Short-term business travel	Short-term business visits to other countries are often frustrated by a lack of clear information and guidance on permissible and prohibited activities. This issue will be exacerbated when freedom of movement for British Citizens within the EU ends in December 2020.	In free trade agreements, the UK should focus on the form of commitments in this area, e.g. FTAs should include a granular list of prohibited and permissible activities.	Increased certainty for UK businesses sending British staff to the EU and other countries on business visits.
	Where a visitor into the UK needs to perform productive work, with very few exceptions, they cannot enter under the visitor rules and must apply for a work visa, even where the work activities are incidental or for a very short period. There is a significant increase in administration, cost and timeframes associated with applying for a work visa, and there is no 'middle ground' between visitor status and a work visa.	Implement, potentially on a reciprocal basis, a new immigration route that combines the controls associated with sponsorship with the flexibility of visitor routes. Applicants would be able to perform productive work for up to six months with non-visa nationals being able to travel without first applying for a visa. We first made this recommendation in 2018 in a previous report – 'The UK's future immigration system and access to talent'.	Increased flexibility and speed to land and lower cost/administrative burdens.
Service delivery	The UK's implementation of its commitments to facilitate contractual service suppliers to enter the UK via the Tier 5 (International) Agreement is overly complex, infrequently used, and places an excessively high administrative burden on the UK company receiving the services.	Future trade agreements should provide more detail on the required implementation of commitments, to avoid the way in which they are implemented frustrating the purpose of the commitment which can result in trade distortion.	Simplified and more consistent immigration routes for service suppliers, reducing friction associated with delivering and receiving cross-border services.
Youth Mobility	The UK's Youth Mobility scheme works well and provides a convenient self-sponsored immigration route that gives employers some relief from reliance on the sponsored worker system. But to date the UK has not agreed reciprocal youth mobility arrangements with the EU and without such arrangements in place, the end of Freedom of Movement risks bringing about a potentially overwhelming reliance on the UK's sponsored worker system with its associated administrative burden and costs.	The UK should prioritise the agreement of reciprocal youth mobility arrangements with all trade partners, but particularly the EU.	Youth Mobility visa holders can proactively move to the UK and widening the scope of the route would help support a significant pool of UK-based international talent. Less reliance on sponsored worker systems.
Intra-Company Transfers (Trade Partner Nationals)	Short term assignments to the UK of between six months and two years under the Intra-Company Transfer scheme attract significant additional costs – the Immigration Skills Charge (ISC) - £1,000 per year. This additional cost increases friction associated with short-term assignments and reduces flexibility for UK employers with branches overseas.	The UK should offer introduce a bespoke ICT route for nationals of trade partners, where reciprocated. The key differentiator would be a two-year exemption from the ISC (or a lower trade partner level charge) where a UK based employer is making use of the new ICT Trade Partner Nationals route. Where the assignee extends their assignment beyond two years or localises, the ISC should be payable from that point onwards. Where equivalent payments form part of the immigration system of the UK's trade partners, these exemptions should apply retrospectively.	The introduction of an enhanced route directly enabling ICTs for trade partner national broadens the UK's ability to negotiate reciprocal outbound arrangements. Increased flexibility for employers in facilitating short-term assignments into and out of the UK.

Process	Employers tell us that the processes and procedures associated with visa applications, both into but particularly out of the UK, are often overly complex, with poor published guidance and high levels of uncertainty over when, if at all, visas will be granted. These challenges increase friction and the cost of administering applications, and decrease certainty.	The UK should seek to agree with its trading partners, via free trade agreements, the adoption of a standard set of principles governing how visa applications are submitted and processed. This would include substantive commitments on speed of processing, decision making processes, requirements for supporting documentation and cost.	Consistent application processes in different countries will greatly reduce friction associated with international mobility.
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# CONCLUSION

The UK has a unique opportunity to push traditional boundaries on international trade and immigration policy as it approaches new global trading partnerships and relationships. If the opportunity is taken, enhanced frameworks for the UK's financial and related professional services industry can be delivered. It is an opportunity that may well not reoccur.

With both immigration and international trade and investment policy in the UK at a momentous juncture, there is a fresh opening for new, constructive, and innovative approaches, working with the grain of existing systems, whether international or domestic, flexing current architecture in both.

One of the biggest risks the UK faces is not being ambitious enough with regard to services trade and missing an opportunity to be more creative in this area. UK policymakers should not simply be bound by international precedent and previous bilateral deals that potential trading partners have struck. There is space for the UK to be innovative in its services trade policy when concluding bilateral deals. With skillful handling, the UK can take a lead in setting normative standards with trade partners to bring about effective and mutually agreed immigration frameworks, implemented efficiently and transparently at domestic levels. They will be an essential contribution to fulfilling the objective of enhanced access to trade in services for the industry.

It is not yet clear what the cumulative impact of Covid-19, leaving the EU, and striking new trade agreements will be. However we are confident that our recommendations will help direct the UK's international trade policymaking towards an operationally achievable immigration strategy that provides business-friendly support for the financial and related professional services industry and the wider economy. Access to the global services market for all UK stakeholders will be enhanced. Action now will have a long-lasting impact on the UK's trading future.



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