



## Equality Impact Assessment

### 1. Name and outline of policy proposal, guidance or operational activity

#### *The UK's points-based immigration system*

The UK exited the European Union on 31 January 2020. Following the UK's exit from the EU, and after the transition period ends on 31 December 2020, free movement will end. This means EEA citizens and their family members and non-EEA citizens will both require permission to come to the UK and the Government will not distinguish between nationalities unless there is an objective reason to do so.<sup>1</sup> From 1 January 2021, the Government will institute a new border and immigration system to serve the UK public and support the economy. EU citizens who arrive before the end of the transition period on 31 December 2020, and relevant family members, will be eligible for the EU Settlement Scheme. They have until 30 June 2021 to make an application under the scheme.

This Equality Impact Assessment (EIA) sets out the consideration given to the public sector equality duty regarding policy formulation of the points-based system, with a specific focus on impacts arising from those aspects of the system that will be significantly changed and implemented from January 2021. It was originally published in July and since then Government has sought feedback from the advisory groups. This version takes on board some of that feedback where it fell within the scope of the EIA, and has also been updated with policy developments. This is an ongoing process and we will continue to keep the equalities impacts of the new system under review.

#### *Impact of Covid-19*

2020 has seen widespread disruption as a result of Covid-19. In response the Government has put in place a range of measures within the immigration system to support individuals in challenging circumstances due to Covid-19. For example, sponsors can temporarily reduce the pay of their sponsored employees if it's part of a company-wide policy to avoid redundancy and all workers are treated the same. Many of these measures are temporary and under review as the situation develops. It should be noted that this EIA focuses on the UK's points-based immigration system in non-pandemic circumstances, and measures developed in response to wider events will consider any equalities impacts in parallel.

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<sup>1</sup> For convenience of drafting, the term EEA in this document includes EU citizens, citizens of EEA countries and Swiss citizens

### *Points-based system - an overview*

The Government will deliver a points-based system. A fundamental aim of the new system is that EEA and non-EEA citizens will be treated equally, with the system prioritising the skills a person has to offer, not their citizenship. As the independent Migration Advisory Committee (MAC) has noted: “The problem with free movement is that it leaves migration to the UK solely up to migrants and UK residents have no control over the level and mix of migration. With free movement there can be no guarantee that migration is in the interests of UK residents”.<sup>2</sup> It will be open to EEA citizens on the same basis as non-EEA citizens, and individuals will need to meet specific criteria in order to enter the country. The new system will cater for skilled workers, students and a range of other routes, including those aimed at global talent and innovators, although many entry routes (such as Innovator) will not significantly change in 2021.

### *Entry routes to the UK*

From 1 December 2020 applications will open for the Skilled Worker route which will be employer-led, and all applicants will be required to have a job offer from an approved sponsor. The job will need to be at a minimum skill level of RQF3 (A-level or equivalent) and above, and applicants will need to meet the English language requirements. The level of English language ability required is set at the appropriate level for each relevant route based on the Common European Framework of Reference for Languages. The cap which currently applies to skilled workers will be suspended and the resident labour market test will be removed.

The MAC published its report on salary thresholds and points-based systems on 28 January 2020. The Government accepted the MAC’s recommendation to lower the general salary threshold applicable to the Skilled Worker route from £30,000 to £25,600. Migrants will still need to be paid the higher of the occupational specific salary threshold and the general salary threshold. There will continue to be different arrangements for a small number of occupations where the occupation-specific salary threshold will continue to be based on published pay scales. In line with MAC recommendations, salary thresholds for new entrants will be set 30% lower than the rate for experienced workers in any occupation. New entrants will need to be paid the higher of this reduced occupation-specific threshold or a reduced general threshold of £20,480. To be eligible for these reductions, a new entrant must be under the age of 26, a recent UK graduate, working in a postdoctoral role, or working towards a professional qualification.

For all Skilled Worker applicants, only the base salary (and not the allowances or pension contributions) will be used to determine whether the salary

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<sup>2</sup> Migration Advisory Committee: “EEA Migration in the UK: Final Report” September 2018

thresholds are met. There will also be no regional salary thresholds or different arrangements for different parts of the UK.<sup>3</sup>

Those applying under the Skilled Worker route will be able to trade points gained for specific characteristics against their salary. Applicants will be able to earn less than the £25,600 general salary threshold (or the going rate) if they are working in a shortage occupation or if they have a PhD relevant to their job or are a new entrant to the workforce. The Government may in due course extend the list of attributes that will score points and will continue to review and assess the equalities implications as and when changes are made.

There will be no limit on the number of years a person can stay under the Skilled Worker route. The salary requirement for those applying for settlement having completed 5 years under the Skilled Worker route will be revised downwards from £36,200 to the general salary threshold (currently £25,600) or the going rate for the occupation, whichever is higher, subject to the minimum salary floor in all cases. Tradeable points discounts to the going rate will not apply at settlement.

The following conditions will be removed from the Skilled Worker route:

- The 12-month and six-year 'cooling off' period;
- The requirement to be contracted to work for a minimum of 30 hours will be removed for workers in shortage occupations;
- The limit on the number of years a person can stay on the Skilled Worker route.

Students will also be covered by the UK points-based system and will need to demonstrate that they have an offer from an approved educational institution, speak English and are able to support themselves during their studies in the UK. There will be no limit on the number of international students who can come to the UK. Study time limits will no longer be applied to study above degree level. Additionally, there will be a new graduate route enabling international students who have completed their studies in the UK to remain in this country for two years.

The Government will not implement a dedicated route for employers to recruit at or near to the national minimum wage. The Government will also not be creating a dedicated route for self-employed people, who will continue to be able to enter the UK under the Start-Up and Innovator routes.

Under the current immigration rules, there are a range of other immigration routes including those aimed at innovators, ministers of religion and sports people. The Government recently launched the Global Talent route which

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<sup>3</sup> With the exception of occupations that have salary thresholds based on public sector pay bands, since within each pay band there is slight variation in pay for each UK region.

facilitates migration of those with a background in science, engineering, mathematics and the arts.

Those who wish to visit the UK for up to six months will be able to enter the country under the visitor route. This is an existing route that allows people arriving in the UK as visitors to undertake a wide range of activities relating to tourism, business visits and study. Changes to the route include incorporating study in the UK for up to six months, harmonising the visa extension rules for academic visitors and making minor changes to provide more clarity on the scope of activities that are permitted under the visitor rules. There will be no substantive change to the current short-term study eligibility requirements, which have been incorporated within the visitor rules. The main change is under which immigration route the provisions sit. The existing dedicated route for short-term study solely on English language courses lasting between 6 and 11 months will remain open as a separate route. EEA nationals will be able to make an application for entry clearance under this route to study such a course at an accredited provider. The requirements of the route itself will remain the same and EEA nationals will not be subject to any differentiated treatment when assessed as to whether they meet these.

The Government's broad approach for January 2021 will be that EEA citizens should avail themselves of these immigration and visa routes that are already open to non-EEA citizens. This will include family and private life routes. From 1 January 2021, the family and private life Immigration Rules will apply to anyone wishing to make the UK their permanent home on the basis of their genuine relationships or their continuous residence in the UK.

### *Requirements*

From January 2021, most EU citizens will not need to attend a Visa Application Centre (VAC) to enrol their biometrics and will instead provide facial images using a smartphone self-enrolment application form. At this stage we will, in most cases, not be requiring EU citizens to enrol their fingerprint biometrics to visit the UK, but building the capability to allow for self-enrolment is part of our longer-term vision.

Non-EU citizens, and some EU citizens applying on specific routes or who are unable to use the self-enrolment option, will need to attend the global network of VACs, or if they are applying in the UK the in-country equivalent, to provide facial images and fingerprint biometrics.

There are changes to simplify a number of requirements that feature in a range of immigration routes and therefore will have an impact across many immigration routes. As part of the Immigration Rules, most people coming to the UK are required to prove that they can maintain themselves financially. This is to ensure that they can support themselves and their family and will not have to rely on public funds. As part of our simplification of the Rules, financial requirements have been altered across many routes so that they are

more coherent, and the application process is simplified for both entrants and decision makers.

The new requirements are as follows:

1. Applicants will only be required to show funds to meet the financial requirement when applying for entry clearance or if they have been living in the UK for less than a year.
2. The financial requirement on work routes are being revised to better reflect the cost of maintaining and accommodating a family unit in the UK. These have been pegged (pro-rated) to the minimum income requirement in the family routes. This means that individual applicants entering on economic routes will need to show they have at least £1,270 in a suitable bank account for at least 28 days, rather than the current amount of £945. However, a dependant partner will need to show an additional £285, with an extra £315 for their first child and £200 for each additional child, rather than £630 each. Although this is an increase for individuals, applicants with partners and dependents would require less than the current required amount.
3. A-rated sponsors will continue to be able to certify that they will support the migrant and their dependants as an alternative way of meeting the financial requirement.
4. The financial requirement for Students is being updated in line with student loans, to £1,334 inside London and £1,023 outside.

In addition, the criteria for people to be able to switch between migration routes in country is being relaxed. The previous system limited the ability to switch, and people often had to leave the UK to apply for a change in status. Under the new Immigration Rules we will allow switching for long term work and study routes, and this will include the Skilled Worker route, Global Talent, the Student route and Graduate route. However, there will be no right to switch in the UK for work or study for those on the following short-term routes:

- Visitor/short term study;
- Seasonal Workers;
- Those on specific concessionary routes outside of the Immigration Rules;
- Overseas Domestic Workers.

This maintains the current policy in relation to these categories. These routes were not included in the relaxation of the switching restrictions because migrants on these routes are only coming into the UK for a short time and the requirements of the routes include the intention to leave at the end of their stay. That requirement to leave is clear in the rules and guidance, which migrants should have read and be aware of this before they decide to apply. Therefore, any indirect discrimination of people with protected characteristics

in these categories that could potentially arise would be lawful and justified as it is proportionate to achieving a legitimate aim.

### *Criminality*

UK rules on criminality will apply to newly arriving EEA citizens from 1 January 2021 in the same way as they apply to non-EEA citizens. The criminality rules will also be tightened to provide that a custodial sentence of 12 months or more, in the UK or overseas, will be a mandatory ground for refusal of entry clearance, permission to enter or permission to stay in the UK. This will align immigration decision-making relating to criminality with the current automatic deportation threshold of 12 months (for UK offences), thus creating consistency across the border, immigration and citizenship system. There are also new rules allowing decisions on a discretionary basis to refuse or cancel permission on the grounds of breaching customs legislation, on the grounds of involvement in a sham marriage and on the grounds of rough sleeping. These changes will make it easier for migrants to understand exactly what impact their behaviour will have on their immigration status.

There have been no direct impacts found for any of the protected characteristics for these criminality policy changes. There may be indirect discrimination, for example on the basis of sex, as statistics show that the majority of the prison population are male, as are the majority of rough sleepers. Another example would be marriage and civil partnership, where those who have entered into a sham marriage would be affected. However, as criminality or adverse behaviour is the primary identification criteria, any indirect discrimination is not unlawful and can be justified as it is proportionate to achieving a legitimate aim.

### *Changes to individual circumstances*

The immigration routes in the new system allow a person to come to the UK if they meet specific requirements. This for example may include meeting a certain salary threshold or holding a job with a sponsor.

There will be occasions where migrants face changes in circumstances which may affect their ability to meet the ongoing immigration requirements. The immigration system does have some flexibility in recognition of this and there are long-standing, specific rules for supporting applicants facing changes in life circumstances. These include rules around absence from work and settlement rules. For example, visa holders are permitted to have unpaid time off work (for longer than 4 weeks) from a list of acceptable reasons for absence, including sickness. This would mean, for instance, that it is still possible within the rules for someone on long term cancer treatment to be sponsored. Another example is that settlement rules allow someone to exceed the usual 180-day maximum time spent outside the UK, if the excess absence was because of life-threatening illness of the applicant or a close family member.

However, if someone on a visa loses their job with their sponsor, the sponsor will need to inform the Home Office, and the migrant's leave will be curtailed. In this situation they will have 60 days starting from the date the decision to curtail is made to leave the country or to get permission to stay with a different employer under one of the work routes.

This could indirectly discriminate by age as the youngest (16-24) and oldest (50+) age groups generally have higher redundancy rates than average.<sup>4</sup> It could also indirectly discriminate by sex as redundancy rates are lower for women than they are for men.<sup>5</sup>

Some of the changes to the immigration system will provide mitigation in these circumstances. The changes to switching policy will mean that a migrant won't need to leave the country to change jobs or switch immigration routes. For example, a person on the ICT route could now switch to the Skilled Worker route in-country during the 60-day period, whereas previously they would have had to leave the UK to do so. The cooling off period has also been removed meaning that a migrant who has their leave curtailed can reapply straightaway, instead of waiting a year.

However, the Government views it as proportionate and justified that if a migrant on a work route loses their job and is unable to find a new one within the allowed time frames, that they will be required to leave the country.

## **2. Summary of the evidence considered in demonstrating due regard to the Public Sector Equality Duty.**

This document reflects the main equalities considerations for the key routes in the new points-based system, in particular the provision that will be made for skilled workers and students. In line with the on-going public sector equality duty, we will continue to consider the impact of the policy as it develops.

- The policies outlined in this EIA have been arrived at following:
  - consideration of all the relevant information, including this EIA and the analysis that has been produced in this EIA;
  - engagement with employers of migrants and third sector organisations who interact with migrants;
  - detailed consideration of the operational feasibility of a new immigration system;
  - evidence received from the MAC; and
  - consideration of previous and current EIAs which have been drafted for each different policy areas.

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<https://www.ons.gov.uk/employmentandlabourmarket/peoplenotinwork/redundancies/datasets/redundanciesbyindustryagesexandemploymentratesred02>

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<https://www.ons.gov.uk/employmentandlabourmarket/peoplenotinwork/redundancies/datasets/redundancieslevelsandratesseasonallyadjustedred01sa>

### 3. The public sector equality duty

The public sector equality duty under s149 of the Equality Act 2010 provides that public authorities must, when exercising their duties, have due regard to the need to:

- Eliminate discrimination, harassment, victimisation and any other conduct prohibited by that Act;
- Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
- Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

Under the Equality Act 2010, the nine specified protected characteristics are **age; disability; gender reassignment; pregnancy and maternity; race (including ethnic or national origins, colour or nationality); religion or belief; sex; sexual orientation; and marriage and civil partnership (although this final characteristic is only required to be considered in relation to the first limb of the public sector equality duty).**

Schedule 18 to the Equality Act 2010 sets out exceptions to the public sector equality duty. In relation to the exercise of immigration and nationality functions, s149(1)(b) of the Act (to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it) does not apply to the protected characteristics of age, race (insofar as it relates to nationality or ethnic or national origins) or religion or belief.

Schedules 3 and 23 to the Equality Act 2010 permit the authorisation of discrimination in relation to age, nationality, ethnic or national origins, or place or duration of residence in certain circumstances. This includes where the discrimination is authorised by the Immigration Rules.

However, although those provisions of the Equality Act 2010 mean that direct discrimination in such circumstances is lawful, we have still considered the justification for any such discrimination. This EIA therefore goes further than required by the public sector equality duty and considers all the proposals - regardless of whether any discrimination would be rendered lawful by operation of the Equality Act 2010 - through the framework of that Act.

#### **3a. Consideration of limb 1 of the duty: Eliminate unlawful discrimination, harassment, victimisation and any other conduct prohibited by the Equality Act.**

This EIA looks first at the overarching impact of the requirements of the immigration system on EEA citizens. It then goes on to consider the potential for direct and indirect discrimination in relation to the system as a whole, considering the potential impact to each protected characteristic in turn. For some characteristics there is no evidence, at present, to indicate that the



proposal will have differential impacts in relation to that characteristic, but this will be kept under review.

### **Impact on EEA Citizens**

As EEA citizens are currently able to come to the UK to visit, work, study or join family members under EU Free Movement rules, EEA citizens who may in the future want to come to the UK for the purposes of work and study are the cohort that is likely to feel the biggest impact from the requirements of the new immigration system. This impact flows primarily from the end of free movement on 31 December 2020, following the end of the transition period. EEA citizens will no longer have rights under EU law to come to the UK. As such, the Government does not think there is any objective justification for continuing preferential treatment and the Government believes that it is fair and appropriate to impose the same requirements on EEA citizens as on non-EEA citizens wishing to come to the UK.

The agreements the UK has reached with the EU, Switzerland, European Economic Area and European Free Trade Association states mean that citizens of those countries resident in the UK before the end of the transition period on 31 December 2020, and their family members, are able to continue to live and work in the UK. Their rights to healthcare, work arrangements and access to benefits continue, and their existing close family members currently living outside the UK are able to join them in future. They can apply to the EU Settlement Scheme, which is open until 30 June 2021.

EEA, Swiss and non-EEA citizens who are not covered under the agreements described above will require permission to come to the UK and the Government will not distinguish between nationalities unless there is an objective reason to do so. This will include visit, work, study, family and other immigration routes.

The most recent data suggests in the year ending March 2020<sup>6</sup> long-term net migration to the UK was 313,000, made up of net inflows of around 316,000 non-EU citizens and 58,000 EU citizens<sup>7</sup>, and a net outflow of 61,000 UK citizens. In the year to March 2020 immigration to the UK by EU citizens was 195,000, while emigration from the UK by EU citizens was 137,000, equivalent to an overall net migration to the UK by EU citizens of +58,000. Immigration of non-EU citizens was 437,000 while emigration was 121,000, giving net migration of non-EU citizens of +313,000.

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<sup>6</sup> ONS August 2020 Migration statistics quarterly report, <https://www.ons.gov.uk/peoplepopulationandcommunity/populationandmigration/internationalmigration/bulletins/migrationstatisticsquarterlyreport/august2020>

<sup>7</sup> Statistics in this section includes Irish citizens but do not include Liechtenstein, Icelandic, Norwegian (i.e. EEA but not EU nations) or Swiss citizens

A person's decision on whether to and where to migrate can be influenced by a wide range of factors, with the migration policy of the receiving state being just one of these factors. It is important to take account of these external factors when assessing the impacts of migration policy.

The Impact Assessment for Changes to the Immigration Rules for Skilled Workers<sup>8</sup> assesses the impact of the new Immigration Rules<sup>9</sup> for the Skilled Worker route on long-term EEA work-related migration. It assesses, with several important caveats, that the annual inflows of EEA long-term workers are estimated to reduce around 70 percent following the impact of the skill threshold and salary threshold; reducing inflows to between 20,000 and 40,000 per year in the first five years of the proposed policy.<sup>10</sup> This particular range is an initial assessment of impacts and does not consider potential behavioural responses of firms or the impacts of Covid-19.<sup>11</sup> It is estimated around 50 per cent of resident EEA migrants work within occupations with a skill level below RQF3.<sup>12</sup> Long-term inflows to these occupations would not be eligible for the Skilled Worker route.

While the modelled impact on long-term EEA work-related inflows is expected to be substantial, baseline EEA inflows represent a relatively small proportion of the total resident workforce. Shares range from around 0.1 to 1.4 per cent of overall sector workforce depending on the sector considered.<sup>13</sup>

This impact on EEA citizens is justified. The Government will be introducing a skills-led immigration system for both EEA and non-EEA citizens; welcoming individuals based on the skills they offer and how they will contribute to the UK's economy and not their nationality. EEA citizens arriving after the end of freedom of movement are not in a comparable position to those who arrived before the UK left the EU or during the transition period, both in terms of their entitlements and their expectations. They are effectively in the same position as any other citizen wishing to migrate to the UK to work or to study and it is right that there is a single global system that applies to them. This ensures fair and consistent treatment of applicants, whatever their nationality.

The Government wants to attract talent from across the world to complement the skills already here and to drive the British economy forward, including

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<sup>8</sup> <https://www.gov.uk/government/publications/supporting-documents-for-skilled-worker-immigration-rules>

<sup>9</sup> <https://www.gov.uk/government/publications/statement-of-changes-to-the-immigration-rules-hc-813-22-october-2020>

<sup>10</sup> Range around projected inflows based on the average predicted error (Root Mean Square Error) of regression. This is a measure of how well the projection predicted historical data points but does not capture all uncertainty. For further detail see Technical Annex published alongside this document. Rounded to the nearest 10,000

<sup>11</sup> However, the impacts of these two factors are analysed separately as sensitivity tests within the Impact Assessment.

<sup>12</sup> Home Office analysis of ONS Annual Population Survey 2016-2018.

<sup>13</sup> Impact Assessment for Changes to the Immigration Rules for Skilled Workers, located here: <https://www.gov.uk/government/publications/supporting-documents-for-skilled-worker-immigration-rules>

scientists, innovators, health professionals, construction workers, academics and teachers.

The new skills threshold and salary threshold will be applied equally to both EEA and non-EEA citizens. This will represent a change in the thresholds that non-EEA citizens are currently required to meet, as well as a change for EEA citizens who had previously come to the UK to work under freedom of movement rules. Predicting the impact of changing the salary threshold and skills threshold is highly uncertain as it is dependent on employers' behaviour and the potential supply of eligible non-EEA labour, which are unknown. However, the Impact Assessment for the Immigration and Social Security Co-ordination (EU Withdrawal) Bill 2020 provided a number of illustrative scenarios which suggest an annual increase in non-EEA workers of between 10,000 to 30,000, depending on modelling scenarios.<sup>14</sup> The policy may therefore offer greater opportunities to employers looking to source skilled labour from outside the UK and EEA. The characteristics of these migrants are unknown as the pool of eligible non-EEA citizens who meet the requisite skill and salary threshold is unknown.

EEA visitors will not need to apply for a visa and they will continue to use e-gates and be granted leave to enter as a non-visa national. They will be able to stay in the UK for up to 6 months to undertake a range of permitted activities, including short term study. The Impact Assessment for the Immigration and Social Security Co-ordination Bill 2020 looked at the overall impact on EEA visitors. There were over 21 million visits from EEA citizens in the year to September 2019.<sup>15</sup> Over 15 million visits (over 70 per cent of all visits) by EEA citizens were for holiday, visiting family or friends or other reasons<sup>16</sup>; all of which are permitted under the new system. In addition, it is estimated around 95 per cent of visits to the UK by EEA citizens for any reason in the year to September 2019 are for less than 15 days<sup>17</sup>; and of all visits to the UK by people from EU countries (not just EU citizens) in 2018 only 0.1 per cent were for longer than six months.<sup>18</sup> This indicates a limit on the duration of stay for EU visitors to six months may have a minimal impact on tourism, or other visits to the UK.

Business visitors are also expected to be largely unaffected by restrictions on the duration of stay. There were an estimated 6 million business visits by EEA

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<sup>14</sup>[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/885682/2020-05-18\\_IA\\_ImmSSC\\_Bill\\_v21\\_with\\_Signature.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/885682/2020-05-18_IA_ImmSSC_Bill_v21_with_Signature.pdf)

<sup>15</sup> Data calculated using Visit Britain 'Latest Quarterly Data for UK overall' (based on ONS International Passenger Survey). Data is for the year to September 2019 and covers EEA (excluding Irish and including Swiss) citizens visiting for any reason

<sup>16</sup> See footnote 1.

<sup>17</sup> See footnote 14.

<sup>18</sup> ONS Travepac 2018 analysis see: <https://www.ons.gov.uk/peoplepopulationandcommunity/leisureandtourism/datasets/travepac>

citizens to the UK in the year to September 2019, and, similar to non-business visits, around 98 per cent of these were for less than 15 days.<sup>19</sup>

EEA citizens will no longer be able to travel to the UK on identity cards and will instead need to use passports from 1 October 2021. The Impact Assessment for Immigration and Social Security Co-ordination (EU Withdrawal) Bill 2020 included indicative analysis to understand what proportion of EEA citizens travel to the UK using passports or identity cards. The analysis suggests that two thirds of EEA citizens (excluding Irish but including Swiss) currently use identity cards instead of passports.<sup>20</sup> However, two important caveats apply to this result:

- The analysis is based on case notes stored within an operational database to identify which ID documents were submitted with residency applications between October 2016 and December 2017, so focuses on EEA citizens who have interacted with the Home Office, which is unlikely to be the same as the wider EEA population arriving to the UK in future.
- The analysis assumes EEA citizens who use passports as an identity document for travel will have the same likelihood of using a passport as those EEA citizens and their family members who use it to apply for Permanent Residence or a UK Registration Card. Therefore, this may over or under-estimate the likelihood for use of passports as an identity document by EEA citizens when travelling to the UK.

It could be assumed that requiring a passport to travel to the UK is less likely to deter longer term work or study migrants but could deter short term visitors who do not have passports, and instead choose to travel to other EEA countries where they are not needed. However, this policy is justified as it will bring the requirements for EEA citizens in line with those for non-EEA citizens. The change will also enhance border security because EEA identity cards are among the least secure documents seen at the border and are, as a rule, not as secure as corresponding national passports. They continue to dominate detection figures for document abuse at the border. It will also be beneficial for passengers and for passenger flows at ports of entry as national identity cards (unlike biometric passports) are not compatible with our e-Gates.

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<sup>19</sup> See footnote 14.

<sup>20</sup> EEA citizens who apply for permanent residency or registration certificate must supply an ID document to prove their identity. This analysis uses case notes in an operational database to identify which ID documents were submitted with residency applications during October 2016–December 2017. This analysis estimates the usage of passports and may not reflect passport ownership.

## Age

### *Direct discrimination*

The Skilled Worker route is aimed at migrants coming to the UK to take up employment, usually on a full-time basis. It will directly discriminate on the basis of age as it will only apply to those aged 18 and over, reflecting the majority of existing economic migration routes. Schedule 3 of the Equality Act 2010 permits direct discrimination on the basis of age in relation to the exercise of functions by ministers or other authorised persons under the Immigration Acts. However, we have still considered the justification for such discrimination and the impact on equalities and any mitigations.

This discrimination between those under the age of 18 and those aged 18 and above is justified on the basis of protecting minors from potentially exploitative working conditions. The term 'child' is considered to include anyone under the age of 18. The competent authority guidance, which advises staff in the Single Competent Authority<sup>21</sup>, notes the added vulnerability of children and acknowledges that it is not possible for a child to give informed consent to potentially exploitative employment conditions. In light of this, restricting these routes to people aged 18 and over is justified and lawful.

Both the visit and short-term study routes place additional evidential requirements upon those aged under 18. This is justified as these requirements are in place to ensure that permission from a parent or guardian is in place for them to travel and that adequate reception and accommodation arrangements are in place. This ensures that we can meet our duty under section 55 of Borders, Citizenship and Immigration Act 2009. Section 55 requires the Home Office to carry out its existing functions in a way that takes into account the need to safeguard and promote the welfare of children in the UK.

Some of those arriving under this proposed policy will be able to use ePassport gates, however this is limited by age. Only those aged 12 years and over may use the ePassport gates. This is justified because the faces of children under 12 are still changing and so matching is less effective. In addition, 12 to 17-year olds must be accompanied by an adult if using ePassport gates and unaccompanied 12 to 17-year olds are directed to the manned Primary Control Point. This is justified as it is to ensure that an officer can be satisfied that the child is travelling with permission from a parent or guardian and that there are no other safeguarding concerns. This is to assist in meeting our child safeguarding duty under section 55 of Borders, Citizenship and Immigration Act 2009.

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<sup>21</sup> [https://www.antislaverycommissioner.co.uk/media/1059/victims\\_of\\_modern\\_slavery\\_-\\_competent\\_authority\\_guidance\\_v3\\_0.pdf](https://www.antislaverycommissioner.co.uk/media/1059/victims_of_modern_slavery_-_competent_authority_guidance_v3_0.pdf)

## *Potential indirect discrimination*

### *Skilled Worker route*

The MAC's recommendations on skill and salary levels represent a change in restrictions for non-EEA citizens coming to the UK through the current Tier 2 (General) route. The policy may therefore offer greater opportunities to employers looking to source skilled labour from outside the UK and EEA. In 2018/19 around 7% of Tier 2 (General) out of country visas issued were under 24; 67% were aged 25-34; and 27% were aged 35 or over.<sup>22</sup> From 1 January 2021, EEA citizens will also need to meet the criteria in the Immigration Rules, including the skills and salary thresholds. EEA citizens in the UK tend to be young or of working age. Home Office estimates based on the Annual Population Survey (APS January - December 2019) suggest that just under 20% of the resident population of EEA citizens (excluding Irish citizens) are aged under 16, just under 80% are aged 16-64 and the remainder are aged 65 or over.<sup>23</sup> The skills and salary thresholds may have a particular impact on younger EEA workers and, although they broaden out the route for non-EEA citizens, may continue to have an impact on younger non-EEA workers.

However, the characteristics of future migrants who will be affected by the change in policy restrictions are unknown as the pool of eligible non-EEA citizens who meet the requisite skill and salary threshold is unknown.

Imposing salary thresholds on both non-EEA and EEA citizens may disproportionately affect younger workers, who tend to earn less. Amongst the UK workforce, there is a strong relationship between earnings and age. Annual Survey of Hours and Earnings (ASHE) 2019 data indicates that male and female median full-time gross annual earnings increase with age until reaching the 40-49 age group, where it subsequently begins to decrease. As an example, the ASHE data indicates that UK full-time annual gross pay for the 22-29 age group is £25,057, but this increases by 38% to reach £34,633 for the 40-49 age group.<sup>24</sup>

Under the Skilled Worker route, the Government is proposing to lower the general salary threshold from its current level to £25,600 and in addition to this will apply 30% lower thresholds for new entrants, to a lower limit of £20,480. The new entrant threshold is based on MAC analysis which considered the median earnings of new entrants (those up to three years after leaving full-time education) relative to overall median earnings.<sup>25</sup> These changes are considered proportionate and justified to protect sponsored

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<sup>22</sup> Internal Home Office analysis

<sup>23</sup> Home Office analysis of Annual Population Survey January – December 2019.

<sup>24</sup> <https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/datasets/agegroupashtable6> Table 6.7a

<sup>25</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/860669/PBS\\_and\\_Salary\\_Thresholds\\_Report\\_MAC.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/860669/PBS_and_Salary_Thresholds_Report_MAC.pdf)

workers from being unfairly exploited and underpaid by sponsors. They will help ensure sponsored workers are paid enough to support themselves, given they will not have access to public funds.

When modelling an RQF3+ skills threshold in combination with these proposed salary thresholds for the Skilled Worker route<sup>26</sup>, Home Office analysis suggests that it could disproportionately affect younger workers, with the main affected group being between 20-29. Using APS 2016-2018 data, it is estimated that around 35% of baseline EEA worker inflows under freedom of movement are under the age of 26, but this decreases to around 30% when applying skill and salary thresholds. However, it is estimated that around 75% of current EEA worker inflows under freedom of movement are under the age of 35 and this remains so when estimating the impact of the Skilled Worker route thresholds.<sup>27</sup> These estimates carry considerable uncertainty, as they are based on high-level analysis of the age profile of recent EEA inflows who came to the UK for work-related reasons.

The skill and salary thresholds are necessary elements of the points-based system to ensure that the system is facilitating the migration of skilled workers, that those migrants are treated fairly when they arrive by receiving appropriate wages for their level of work, and that wages of UK residents are protected. The general salary threshold of £25,600 has been set at the 25th percentile of the full-time annual earnings distribution for all Tier 2 (General) eligible occupations drawn from the Annual Survey of Hours and Earnings (ASHE) which is updated annually by the Office for National Statistics, normally at the end of October. The 'going rates' for individual occupations are also based on the 25th percentile of earnings from the ASHE. A general salary threshold sets a minimum floor to ensure that migrants make a positive fiscal contribution to the UK and are able to support themselves while in the UK. The £25,600 threshold is likely to result in a positive net fiscal contribution and is a high enough bar to ensure that individuals are able to support themselves while in the UK.

As outlined in the MAC report on a points-based system and salary thresholds<sup>28</sup>, salary thresholds, including the going rates, are intended to prevent undercutting in the labour market and help ensure migrants provide positive fiscal contributions.

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<sup>26</sup> In the modelling the experienced thresholds are set at the highest of the general threshold of £25,600 or the occupation specific threshold set at the 25th percentile. It also includes new entrant thresholds set at 30 per cent below the experienced threshold, to a lower limit of £20,480 - except for 24 public sector occupations, where public sector pay bands are used for both experienced and new entrant workers.

<sup>27</sup> To estimate the age profile of worker inflows, the analysis of 2016-2018 APS data considers the age on arrival of those who say their main reason for migrating to the UK was for work and who arrived in 2012 or later, split by current occupation, using nine major occupation groupings (1-digit SOC codes). For further detail see Technical Annex here: <https://www.gov.uk/government/publications/supporting-documents-for-skilled-worker-immigration-rules>

<sup>28</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/860669/PBS\\_and\\_Salary\\_Thresholds\\_Report\\_MAC.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/860669/PBS_and_Salary_Thresholds_Report_MAC.pdf)

In its report, the MAC concluded that “salary thresholds can help ensure that migrants are helping to improve the public finances: of every extra pound in earnings approximately 50p goes to the state, and they can help realise the ambition of the UK as a high wage, high skill, high productivity economy”.<sup>29</sup> Although setting the salary threshold at the proposed levels may impact on certain age groups, the Government considers it is justified in order to protect the level of wages earned in the UK and to ensure that migrants on work or study routes make a positive fiscal contribution to UK.

### *Students*

The student routes are mostly used by those under 30 so any amendments to these routes may disproportionately affect younger adults and children, both EEA and non-EEA citizens. The Higher Education Statistics Agency (HESA) provides data on students at HE level. It found that the total number of international students in HE in the UK has increased by around 10 per cent between 2014/15 and 2018/19<sup>30</sup>, with the latest data suggesting around 140,000 EU domiciled<sup>31</sup> and 340,000 non-EU domiciled students were enrolled in higher education institutions (HEIs) in the UK.<sup>32</sup> HESA data (2018 – 2019)<sup>33</sup> suggests that, within higher education, the majority of EEA Undergraduates and Postgraduates (taught) are 24 years old or younger. For EEA Postgraduates (research) the majority of students are under 30 years old. If the Government assumes that this is the age profile of future prospective inflows of both EEA and non-EEA citizens who will be impacted from the new rules on student migration, younger age groups are likely to be disproportionately affected. However, this reflects the general trend that people are more likely to study when they are younger, and we do not prevent older students accessing the student route. There is no upper-age limit on individuals who wish to study to in the UK, providing they can meet the criteria set out in the Immigration Rules; that they have an offer from a licensed student sponsor, speak English and are able to support themselves during their studies in the UK.

The route for child students is not open to applicants over the age of 18 and the general student route is only open to applicants over the age of 16. Although there are some differences in the requirements for each of these routes, most of these are to ensure that a sufficient level of safeguarding of children via proposed care arrangements is met. This is in line with various

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<sup>29</sup>[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/860669/PBS\\_and\\_Salary\\_Thresholds\\_Report\\_MAC.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/860669/PBS_and_Salary_Thresholds_Report_MAC.pdf)

<sup>30</sup> This is rounded to the nearest 5%.

<sup>31</sup> EU domiciled students include Irish students. However, they will not be subjected to immigration restrictions under FBIS. Of the individual domicile data that is available on HESA, it indicates that Irish students only account for a small proportion of EU students (around 5%) so it is unlikely to significantly impact the overall results.

<sup>32</sup> Higher Education Statistics Agency (HESA) 2018/19 “Where students come from and go to study” Figure 8. Figures may not sum to rounding and are rounded to the nearest 10,000.  
<https://www.hesa.ac.uk/news/16-01-2020/sb255-higher-education-student-statistics/location>

<sup>33</sup> Home Office analysis of 2017/18 HESA data, <https://www.hesa.ac.uk/data-and-analysis/students/where-from>



UK legislation around statutory duties of care that applies to schools, carers and parents. There is also a duty for the Secretary of State to safeguard and promote the welfare of children under section 55 of the Borders, Citizenship and Immigration Act 2009.

### *Visit and short-term study*

Those applying for entry under short term study are more commonly in the younger age brackets. This is thought to be down to cultural norms in society when most education takes place when younger. In the 2018/19 academic year, 69% of students enrolling in Higher Education institutions in the UK were aged 24 and under.<sup>34</sup>

There is nothing in the policy which directly favours those who are younger. Indeed, visitors tend to be more evenly distributed in terms of age. It is assumed that moving the short-term study route to visitors will mean that, in line with the current general age cohort of the study route, there may be more younger users of the visit route. However, given the overall numbers that use the visit route, it is not considered that there will be a significant impact on the overall age demographic of the visit route.

Most entry clearance applications are made online and this may have a disproportionate impact upon older people who may be less familiar with making online applications.<sup>35</sup> UKVI allow other people to apply on behalf of applicants and have other systems in place in order to mitigate these possible issues.

### *Interaction with other immigration routes*

Non-EEA citizens are already required to meet the requirements of the immigration routes to work in the UK.

Up until the end of December 2020 EEA citizens at all skill levels can come to the UK to work. From January 2021 EEA citizens that do not meet the required skills threshold for the Skilled Worker route or the criteria for other permanent routes will primarily rely on temporary routes, currently in Tier 5, that allow work. Tier 5 routes cater for relatively niche areas of the labour market, including charity, religion, creative and sport. Limiting flows of short-term employment of EEA citizens to Tier 5 routes may disproportionately affect younger adults. This suggests following the end of free movement and opening up of Tier 5 routes to EEA citizens, volumes of short-term EEA citizen work flows reduce from the baseline. Should short-term EEA citizen work

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<sup>34</sup> Higher Education Statistics Agency (HESA) 2018/19 "Who's studying in HE?" <https://www.hesa.ac.uk/data-and-analysis/students/whos-in-he>

<sup>35</sup> Based on the proportion of applicants in each age group using Assisted Digital Appointments. The data shows that visa and EUSS applicants from older age groups are more likely to use Assisted Digital Appointments than those from younger age groups.

flows reflect the age profile of longer-term EEA migrants, then they may predominantly be younger adults with few dependants.

Separately, there is no designated route for self-employed workers under the new system. Data shows the proportion of self-employed workers increases with age and could imply that older age groups may be disproportionate affected. Annual Population Survey data suggests that around 50% of economically active over 70's are self-employed, compared to around 10% of 20–35-year olds being self-employed.<sup>36</sup>

The main work routes available require a sponsor to employ a migrant. As there is no designated self-employed route, this may have an impact on older EEA citizens who could be more likely to be subject to discrimination in the recruitment process. ONS data shows there is a general increase in the levels of self-employed workers in the UK, in particular for those aged 65 and above.<sup>37</sup> Survey data shows that age discrimination is widely considered a problem in the UK and over a third of UK citizens believe age discrimination towards those aged over 55 is commonplace.<sup>38</sup> Research by Anglia Ruskin University showed that older workers over 50 were 4.2 times less likely to be selected for interview than their 28 year old counterparts, despite having more experience<sup>39</sup>, and that this bias was more pronounced for women than men<sup>40</sup>. There is also research to suggest that older job seekers find modern methods of recruitment more difficult to navigate.<sup>41</sup>

However, it is unknown what proportion of EEA migrants who come to the UK are self-employed and may be able to switch to employed work and thus continue to migrate through the Skilled Worker route. Furthermore, self-employed individuals will continue to be able to enter the UK under the Global Talent and Innovator routes and will in due course be able to benefit from the proposed unsponsored route for highly skilled workers.

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<sup>36</sup> Home Office analysis of Annual Population Survey January - December 2019.

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<https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/articles/trendsinselfemploymentintheuk/2018-02-07#the-characteristics-and-income-of-the-self-employed>

<sup>38</sup> Government Office for Science (2016) analysis of European Social Survey data, [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/816458/future-of-an-ageing-population.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/816458/future-of-an-ageing-population.pdf)

<sup>39</sup> House of Commons Women and Equalities Committee (2018) Older people and employment, Fourth Report of Session 2017-19

<https://publications.parliament.uk/pa/cm201719/cmselect/cmwomeq/359/359.pdf>

<sup>40</sup> Centre for Ageing Better (2018) Becoming an age-friendly employer: Evidence report <https://www.ageing-better.org.uk/sites/default/files/2018-09/Being-age-friendly-employer-evidence-report.pdf>

<sup>41</sup> <https://www.equalityhumanrights.com/sites/default/files/recruitment-of-workers-into-low-paid-occupations-and-industries.pdf>

## **Requirements**

The new EEA process is entirely digital which will mean that most EEA citizens will not need to travel to a Visa Application Centre (VAC). However, some EEA citizens may not be able to access the technology for biometric enrolment, and if they are elderly travel to a VAC may not be as easy. To mitigate against this, we have mobile enrolment facilities that may be used in exceptional circumstances in the UK where travel would otherwise be a barrier to enrolment. These facilities are not available out of country.

In the changes to maintenance requirements there may be indirect impacts on age given that there is a correlation between age and income. OECD data shows variation in the extent of age gaps in income between countries.<sup>42</sup> To the extent that there may be indirect discrimination it is considered proportionate to achieve the policy aims of ensuring migrants have sufficient funds to maintain and accommodate themselves while they are not yet earning in the UK.

This is justified because those seeking to establish their life in the UK must do so on a basis that prevents burdens on the State and the UK taxpayer. The public interest in migrants being financially independent and not being a burden on the state is long established and protected by successive governments. No Recourse to Public Funds (NRPF) has been a long-standing condition applied to those staying here with temporary immigration status in order to protect public funds and to promote integration. The maintenance requirement is set as a logical consequence of this policy. It is needed to ensure that migrants will not face destitution once they are in the UK. The proposal to peg maintenance funds to a monthly rate based on the minimum income requirement relies on the Migration Advisory Committee research into the level of funds that a migrant relies on in order to not need access to public funds.<sup>43</sup> There is also mitigation in place on some routes where sponsors or endorsing bodies can certify that they will provide maintenance (meaning that the applicant does not need to show they meet the requirement through savings), and for students who can rely on student loans and official financial sponsorship.

## **Disability**

### *Skilled Worker route*

An income threshold is already a feature of the current immigration rules and the general salary threshold for the Tier 2 (General) route is set at £30,000. Under the new system, applicants for a Skilled Worker route will usually be required to earn £25,600, or the 'appropriate rate' for their occupation,

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<sup>42</sup> Age gap data from OECD Employment database – Earnings and wages  
<https://www.oecd.org/employment/emp/employmentdatabase-earningsandwages.htm>

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[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/257244/family-migration-route.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/257244/family-migration-route.pdf)

whichever is higher. As under the previous system, applicants will need to be sponsored by an employer.

The Government is aware that prescribing a minimum salary threshold may have differential impacts on people on the basis of whether they have a disability. Labour market data shows a disability employment gap, with roughly half of disabled people in employment (53.2%) in 2019 compared with just over four out of five non-disabled people (81.8%).<sup>44</sup> Research by the Equalities and Human Rights Commission suggests that part of this gap could be attributed to discriminatory employment practices.<sup>45</sup> Internal Home Office analysis found that median annual pay was consistently higher for non-disabled employees than for disabled employees, meaning that people with a disability may find it disproportionately more difficult to meet the salary threshold. In 2019, median pay for non-disabled non-UK national employees in skilled occupations (RQF 3+) was 17% higher than disabled non-UK employees in skilled occupations. For disabled EEA national employees in skilled occupations, the gap is 12%. For non-EEA citizens, the gap is 35%; a significantly higher difference than their EEA counterparts.<sup>46</sup>

The Government is proposing to lower the general salary threshold from its current level to £25,600, which will reduce and mitigate the scale of impacts on people with a disability (although will not completely eliminate it). Both the general and the occupation specific thresholds 'going rates' are set at the 25<sup>th</sup> percentile of the relevant full-time earnings distribution, as recommended by the MAC.<sup>47</sup> This means that a migrant will need to be paid at or above the level of the bottom 25% of earners in that category, and that 75% of people in those roles are paid more. The bar being set at a lower level relative to the full-time earnings distribution reduces the likelihood of the thresholds being a barrier to meeting the requirements of the route. The Government maintains that the salary threshold is an important feature of the Immigration Rules both to protect the level of wages earned in the UK as well as ensuring that migrants can support themselves and make a positive net contribution to the UK. As such, any indirect discrimination is considered proportionate and justified.

This policy proposal may also indirectly discriminate on the basis of disability as migrants travelling on economic migration routes are not likely to be

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<https://www.ons.gov.uk/peoplepopulationandcommunity/healthandsocialcare/disability/bulletins/disabilityandemploymentuk/2019>

45 <https://www.equalityhumanrights.com/sites/default/files/recruitment-of-workers-into-low-paid-occupations-and-industries.pdf>

46 Internal Home Office analysis of Annual Population Survey January - December 2019. APS is not the primary data source for earnings analysis in the UK – that is ASHE data. APS is self-reported and as such is likely to be subject to a higher degree of recall error. APS also has relatively small sample sizes as earnings questions are asked only to employees and only in 40% of the interviews carried out in each quarter. However, APS provides a greater range of personal and household characteristics; making APS more suitable for analysis purposes, in this case, over ASHE.

47 [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/873155/PBS\\_and\\_Salary\\_Thresholds\\_Report\\_MAC\\_word\\_FINAL.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/873155/PBS_and_Salary_Thresholds_Report_MAC_word_FINAL.pdf)

eligible to access public funds. This may mean that individuals with a disability who rely on public funding to support their daily living may not be able to make full use of some of all immigration routes. The Government believes that this potential indirect discrimination is justified due to the necessity of protecting the public finances from migrants travelling to the UK with the purpose of accessing state benefits.

Under the previous system those in lower paid occupations were affected more by settlement rules because they had to earn a salary of at least £35,800 to qualify for settlement. If a migrant was earning close to the salary threshold at the beginning of their time on the Skilled Worker route, and in an occupation without regular pay progression, this could have been difficult to achieve, potentially having a disproportionate impact on those with a disability who are more likely to be in lower paid occupations. We are addressing this by closely tying the settlement salary requirements to the Skilled Worker route's salary requirements. This means that a worker in a lower paid profession who has been paid the going rate is still able to qualify and would not require a significant increase in their pay to qualify for settlement.

The removal of the six-year rule will mitigate further the issues facing those who still will not meet the revised salary requirements or do not wish to permanently settle by no longer requiring them and their family to switch into another immigration category or leave the UK after six years.

People who have a disability are more likely to work part-time than non-disabled people (34.1% of disabled workers compared with 23.1% of non-disabled workers, according to the Annual Population Survey 2019).<sup>48</sup>

The change to the minimum working hours rule for those on the shortage occupation list would enable more individuals to be able to undertake part-time work and thus reduce the risk of indirectly discriminating against particular groups with protected characteristics such as women or individuals with a disability, who are more likely to work part-time albeit this is likely to benefit those in higher earning occupations who are able to pro-rate their going rate whilst still meeting the salary threshold.

### *Students*

No impacts have been identified to indicate that those falling within the protected characteristic of disability will be particularly affected by the proposed policy and Rules changes on students as set out in section 1 above. However, this, along with the rest of the EIA, will be kept under review.

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<https://www.ons.gov.uk/peoplepopulationandcommunity/healthandsocialcare/disability/bulletins/disabilityandemploymentuk/2019>

### *Visit and short-term study*

Whilst we expect that a significant proportion of those arriving under this proposed policy will be able to use ePassport gates, due to the design of the gates not all those who have some form of disability will be able to use the gates. The physical design of a standard ePassport gate does not allow for users of a wheelchair or those with other disabilities affecting their ability to stand/walk or those whose disabilities relate to sight.

At some ports (Heathrow Terminal 2, Gatwick North Terminal and Brussels) there is a wider ePassport gate which provides for access by wheelchair users/those with a disability which would otherwise limit their ability to stand and/or walk. The Home Office considers the installation of wider accessible gates upon request from ports.

However, whether or not there is a wider ePassport gate does not affect the ability of disabled persons to cross the UK border with ease. Wheelchair users and others with disabilities can access an assisted service at all ports, where they are able to go to the front of the queue, and, where available, use a fast-tracked medical assistance lane.

### *Interaction with other immigration routes*

As set out above, those who are unable to meet the requirements of the Skilled Worker route or other permanent immigration routes but who still wish to work in the UK will rely primarily on temporary work routes, primarily in Tier 5, which allow work. This is currently the position for non-EEA citizens, but there could be a new impact on those with a disability who would previously have been able to rely on free movement but who do not meet the requirements of these routes. We have not identified any other specific impacts, but will keep this under review.

### *Requirements*

The new EEA process is entirely digital which will mean that most EEA citizens will not need to travel to a VAC. This means that in most instances EEA citizens with disabilities will not need to travel to a VAC. EEA citizens with disabilities, who need to use a VAC to enrol their biometrics, may have mobility problems and travel to an enrolment centre may be difficult. We have mobile enrolment facilities that may be used in exceptional circumstances in the UK where travel would otherwise be a barrier to enrolment. These facilities are not available out of country.

The changes to maintenance requirements may have an indirect impact on disability. There is a disability pay gap in the UK, and this pattern is likely to be seen internationally, although a World Health Organisation report in 2011 concluded that more research needed to be done in developing countries.<sup>49</sup>

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<sup>49</sup><https://www.who.int/publications/i/item/world-report-on-disability>

To the extent that there may be indirect discrimination it is considered proportionate to achieve the policy aims of ensuring migrants have sufficient funds to maintain and accommodate themselves while they are not yet earning in the UK.

The relaxation of the switching requirements should benefit disabled migrants, who might find international travel difficult because of their condition, as they are less likely to need to leave the country to change immigration routes.

### *General*

The digitisation of the application process may disadvantage some disabled persons with accessibility needs. Assuming UK residents reflect future applicants' use of the internet, the ONS survey referenced above of 'Internet users in the UK', for Q1 2019, found that 18% of disabled adults had never used the internet.<sup>50</sup> Details of the system's accessibility are yet to be announced but aim to minimise negative impacts of the digitalisation of the process for protected characteristic groups, such as the disabled.

To mitigate this the Government, as it has with all current visa/immigration routes, will ensure that all online forms are tested and designed to ensure, as much as practicable, accessibility for those with literacy and capability restrictions, meeting the Government Digital Service's Accessibility Standards.

The Home Office will also continue to provide an Assisted Digital Service for those who are eligible to apply in-country. Customers who do not have the access, skills or confidence to use digital services on their own can contact the Assisted Digital Service by telephone, text or email. Their requirements are discussed to establish their eligibility (no immigration advice is provided), and customers are triaged to one of 3 types of support:

- telephone support to complete the online form;
- face-to-face support at a library (with a library staff member) to access and complete the online form – either at an appointed time, or walk-in;
- face-to-face support at home to access and complete the online form with a 'tutor'.

The Assisted Digital Service is a further mitigation. It is available to anyone in the UK, free of charge. However, skilled worker applicants, along with other sponsored migrants, including students, are expected to seek the assistance of their UK-based sponsor in the first place.

### **Gender Reassignment**

No impacts have been identified that would indicate that those falling within the protected characteristic of gender reassignment will be particularly

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<sup>50</sup> <https://www.ons.gov.uk/businessindustryandtrade/itandinternetindustry/bulletins/internetusers/2019>

affected by the proposed policy and Rules changes set out in section 1 above. However, this, along with the rest of the EIA will be kept under review.

## **Marriage and Civil Partnership**

### *Points-based system*

The points-based system will be open to EEA citizens on the same basis as non-EEA citizens. It will cater for skilled workers, students and a range of other routes including those aimed at global talent and innovators. If an individual is dependent on a main applicant, they will need to qualify via a dependent visa, the family route, or on their own study or work visa

As is the case currently, non-EEA citizens, including those who are married or who are in a civil partnership, will be able to apply to come to the UK under the UK's points-based immigration system, as long as they meet the requirements for their chosen route. These rules will also apply to EEA citizens arriving from January 2021 under the new points-based system. This represents a change for those who would, if they arrived now, be exercising free movement rights, and may mean more stringent criteria apply that would be the case if they chose to exercise their current rights. However, the Government considers this is justified on the basis that it is fair and appropriate to have a single global system that is applied consistently to all nationalities. Separate arrangements are available for those who are eligible for the Settlement Scheme.

No other specific impacts have been identified but this will be kept under review.

## **Pregnancy and Maternity**

The points-based system will be open to EEA citizens on the same basis as non-EEA citizens, including those who fall within the protected characteristic of pregnancy and maternity. It will cater for skilled workers, students and a range of other routes including those aimed at global talent and innovators.

### *Skilled Worker route*

The salary requirement for the Skilled Worker route could have an impact on those who are pregnant or who are on maternity. Those on maternity leave will not usually receive full pay. This could impact their earnings and their ability to meet the salary threshold requirement. While pay reductions during maternity leave itself are provided for, there is no current allowance for phased return or reduced hours.

The MAC has looked at part-time workers. In its latest report on a points-based system and salary thresholds, the MAC recommended not adjusting general threshold levels to accommodate part-time working. It suggested that adapting the system in this way could result in increased abuse and that



where part-time earnings are high enough to meet the full-time threshold, migrants will still be able to enter the UK and work. However, the Government is keeping its policy on thresholds for those returning from maternity leave under review.

The Government will lower the general salary threshold from its current level to £25,600, which will reduce the scale of the differential impact (although will not completely eliminate it). Going rates for individual occupations may be pro-rated; it is only the general threshold which may not.

The Government believes that the salary threshold is an important feature of the Immigration Rules both to protect the level of wages earned in the UK as well as ensuring that migrants can support themselves and make a positive net contribution to the UK.

### *Students*

No impacts have been identified that would indicate that those falling within the protected characteristic of pregnancy and maternity will be particularly affected by the proposed policy and Rules changes on students as set out in section 1 above but this will be kept under review.

### *Interaction with other routes*

There is no designated route for the self-employed under the new system. Research by Citizens Advice in 2015 found that over a 10-year period from 2004-05 to 2014-15 'self-employment has become more female and more part-time'.<sup>51</sup> Self-employment may offer more flexibility to parents with small children. However, it could also be because of prejudices in the recruitment process. In 2018 research into the experiences of employers and mothers found that 59% of employers agree that a woman should have to disclose she is pregnant during interview and 41% agreed that pregnancy in the workplace puts an unnecessary cost burden on the workplace.<sup>52</sup> However, self-employed individuals may continue to be able to enter the UK under the Global Talent and Innovator routes and will in due course be able to benefit from the proposed unsponsored route for highly skilled workers. The Government is also committed to tackling pregnancy discrimination in the workplace more broadly across the UK labour market.<sup>53</sup>

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<sup>51</sup>

<https://www.citizensadvice.org.uk/Global/CitizensAdvice/Work%20Publications/Whoaretheselfemployed.pdf>

<sup>52</sup> <https://www.equalityhumanrights.com/en/managing-pregnancy-and-maternity-workplace/pregnancy-and-maternity-discrimination-research-findings>

<sup>53</sup>

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/773179/extending-redundancy-protection-for-pregnant-women.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/773179/extending-redundancy-protection-for-pregnant-women.pdf)

## *Requirements*

The relaxation of the rules on switching could be a positive change for pregnant migrants who may find overseas travel a barrier during pregnancy, as they are less likely to need to travel abroad to change immigration routes.

## **Race (including ethnic or national origins, colour or nationality)**

### *Direct discrimination*

By creating a single system, where EEA citizens will largely be subject to UK immigration control in the same way as non-EEA citizens, the Government will be promoting equality of nationalities within the points-based system.

However, as was the case in the previous system, the Government will continue to authorise direct discrimination on the grounds of nationality in three ways as a necessary and justified part of the system:

1. Irish citizens will continue to be treated differently from other nationalities;
2. Distinctions will sometimes be made between nationalities on the basis of international agreements; and
3. Distinctions will sometimes be made between nationalities on the basis of objective evidence about compliance and security risk.

Schedules 3 and 23 of the Equality Act 2010 permit direct discrimination on the basis of nationality, ethnic or national origins, place of ordinary residence and duration of presence or residence in relation to the exercise of functions by ministers or other authorised persons under the Immigration Acts. We have nevertheless considered the justification for that discrimination.

### *Irish citizens*

The number of Irish citizens residing in the UK is estimated at around 300,000.<sup>54</sup> The rights of Irish citizens in the UK will be protected given the longstanding historical and political context which means that Ireland and the UK have a unique relationship. These rights are rooted in existing legislation (the Ireland Act 1949) and as provided for by the Belfast ('Good Friday') Agreement. The rights of Irish citizens to work, study, and reside in the UK will continue as now.

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<sup>54</sup> Unpublished Home Office analysis of Annual Population Survey January - December 2019. Data is rounded to nearest 0.1m.

### *International agreements*

As part of our negotiations with trading partners, the Government may agree specific provisions on mobility that will result in citizens of those countries being treated differently from others.

Further analysis will be undertaken as and when agreements are made.

### *Risk assessment of nationalities*

Some proposed policies might apply only to some nationalities on the basis of risk. These policies include, but might not be limited to, allowing access to e-gates, visa regimes, in-country switching and reduced documentary requirements for students. These could apply to low-risk nationalities either if the Government decides to implement these unilaterally (in which case they could be reconsidered at any time) or as part of reciprocal binding commitments within an international agreement.

The immigration system already differentiates by nationality, authorised by the Equality Act 2010. This includes through visa regimes, visa waivers, ministerial authorisations, and the differential evidence requirement (setting out the different levels of evidence that students must submit, based on their nationality).

The Home Office uses objective evidence to differentiate by risk. Decisions on whether a country's citizens are deemed low risk or not are made considering a wide range of factors using both open source and internal data. This can include, but is not restricted to, data relating to security issues, criminality issues, compliance with the UK's immigration system, and the ability to return a country's citizens. The differentiation based on nationalities is therefore justified by security and immigration risk-based assessments of the relative risk that a country's citizens pose to the UK's border and national security. The level of discrimination is therefore justified and reasonable.

Ultimately, the aim is to mitigate this by moving to a more person-centric system, whereby the level of individual risk that a migrant would be perceived to pose to the UK would depend on a range of factors, including past compliance and nationality.

### Differential evidence requirement

Citizens of countries listed under the differential evidence requirement in the Immigration Rules, or who hold a passport from a relevant competent authority, are subject to reduced documentary requirements when applying under the Student route. EEA citizens are included in this list. Discrimination is limited to only a reduced requirement for documentation to be submitted in respect of applicants from those countries. All applicants still need to meet the full requirements of the route and we can request the full documentation if

required. Furthermore, a random sample of applicants are automatically asked to provide all documents as part of the application process.

#### Assessing which citizens should be included in the differential evidence requirement

The selection of countries to be included is based on an objective risk-based method.

Countries with fewer than 100 Tier 4 applicants in the 12-month period reviewed have been excluded from inclusion in the differential evidence requirement. This is because any country with a low number of applicants does not have a statistically relevant pool of applicants which can be used to assess whether they present a low risk.

We believe that it is reasonable and rational to consider factors relating to national security, when making a final decision on whether to include a given country in the list, when those factors relate to the promotion of other important Home Office policy objectives.

We believe that the policy objective of reducing documentary requirements for low risk applicants is rational and that the criteria used to select the countries which are included in the differential evidential requirement are objective and rational.

Data used to determine risk and inclusion is not currently held on EEA citizens. As these citizens may currently enter the UK for study without being subject to immigration control and there is no current data to suggest that they will present a significant risk in the new system, we have decided that inclusion in the differential evidence requirement is a proportionate means of delivering an immigration system for international students that represents value for money to the public. The composition of the differential evidence requirement will be subject to regular review.

#### *Visit and short-term study*

General visit rules discriminate directly based on nationality. Some nationals have to apply for a visa in advance of travel and some nationals can apply for entry at the UK border. The intended policy outcome is to facilitate genuine visitors into the UK, whilst securing the UK border and controlling immigration.

This discrimination is lawful as it is authorised by both the Immigration Act 1971 and the Immigration Rules. The Immigration Rules for visitors apply to all those subject to immigration control (i.e. those who are not British or who do not have the right of abode). Further, the visa-national/non-visa national measure is proportionate to safeguard national security. The level of discrimination is also rational, i.e. fair and reasonable, as the visa requirement decisions are always taken in the round and reflect key facts of the bilateral relationship with the country concerned. These will vary globally, but often

include security, compliance, returns, reciprocal arrangements for UK nationals and prosperity.

The new rules will apply equally to those who have to apply for a visa in advance and those who apply for entry at the UK border.

Only applicants who are EEA citizens and nationals of Australia, Canada, Japan, New Zealand, Singapore, South Korea and the United States are able to obtain leave to enter by passing through an ePassport gate.<sup>55</sup> This decision was taken on the basis of risk, volumes and other factors such as levels of co-operation with the UK on border matters. They were assessed as being lower risk for immigration purposes, which justified them receiving preferential treatment over other non-visa nationalities.

### *Potential Indirect Discrimination*

Where differential treatment has the potential to impact on those who possess one or more protected characteristics, consideration has been given to the proportionality of that impact in achieving the legitimate aim of creating an immigration system that delivers value for money, operating to the public good and bringing economic prosperity to the UK. It is the Government's view that where these impacts have been identified, the proposed policy changes can be objectively justified as proportionate in delivering a legitimate aim.

### *Skilled Worker route*

The introduction of an employer-led points-based system will require applicants to meet the English language requirements. This will naturally favour nationalities who come from predominantly English language speaking countries. It is the Government's belief that this difference is justified on the basis that the ability to speak English to a reasonable level is necessary to allow a migrant to conduct daily life in the UK, to make a contribution to the labour market and the economy and to encourage social cohesion in the communities that they join. A study conducted by the Ministry of Housing, Communities and Local Government found that the provision of Community-Based English Language (CBEL) can promote social integration.<sup>56</sup> Additionally, the MAC (2014) found that "lack of English language skills [...] can create barriers to migrant workers reporting incidents of exploitation".<sup>57</sup>

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<sup>55</sup> The Immigration (leave to enter and remain) Order 2000 (as amended), made under the Immigration Act 1971, allows nationals of Australia, Canada, Japan, New Zealand, Singapore, South Korea and the United States to be able to obtain leave to enter as a visitor by passing through an ePassport gate.

<sup>56</sup>

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/690084/Measuring\\_the\\_impact\\_of\\_community-based\\_English\\_language\\_provision.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/690084/Measuring_the_impact_of_community-based_English_language_provision.pdf)

<sup>57</sup> The MAC report (2014) gathered evidence from engagement with the Forced Labour Monitoring Group (FLMG) -

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/333083/MAC-Migrants\\_in\\_low-skilled\\_work\\_Full\\_report\\_2014.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/333083/MAC-Migrants_in_low-skilled_work_Full_report_2014.pdf)

Therefore, the English Language requirement could help reduce exploitation of migrant labour. The English language requirement will continue to be set at level B1 (intermediate), meaning there is no change from the current Tier 2 (General) category requirement.

There is an ethnicity pay gap in the UK. Across England and Wales, the latest data shows that the ethnicity pay gap has narrowed to its smallest level since 2012, being 2.3% in 2019, although there is significant variation among different ethnic minorities.<sup>58</sup> There is evidence for an underlying discrepancy in pay based on ethnicity, which would require a significant shift in the wider labour market. It is therefore unlikely that the immigration system itself can be used to address it directly and Government is committed to addressing the race pay gap across the UK more broadly.<sup>59</sup> However, there is some mitigation within the system as both the general and the occupation specific thresholds are set at the 25th percentile of the relevant full-time earnings distribution, as recommended by the MAC.<sup>60</sup> The bar being set at a low level relative to the full-time earnings distribution reduces the likelihood of the thresholds being a barrier to meeting the requirements of the route. However, it will not eliminate it entirely. Any indirect impact is justified as the salary threshold is an important feature in the points-based system to avoid undercutting the labour market and ensure that workers are paid at an appropriate level for the job.

As under the previous system, the salary threshold will be set nationally. People from BAME backgrounds are more likely to live in some regions of the country than others. According to 2011 census data, people from BAME groups were most likely to live in London including 58% of Black people, 36% of Asian people, 33% of people with mixed ethnicity, and 50% of people from 'Other' ethnic groups. In contrast, 10% of White people live in London.<sup>61</sup> According to ASHE 2019 data<sup>62</sup>, full-time annual gross pay was around 28% higher in London compared to the UK average, which may mean that on average it is more likely migrants working in London will be able to meet the salary thresholds than those who work in other regions of the UK. However, London has wider ethnicity pay gaps than other regions of the UK, with BAME employees who were not born in the UK being paid up to 16.5% less than

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<https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/articles/ethnicitypaygapsingreatbritain/2019>

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[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/747546/ethnicity-pay-reporting-consultation.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/747546/ethnicity-pay-reporting-consultation.pdf)

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[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/873155/PBS\\_and\\_Salary\\_Thresholds\\_Report\\_MAC\\_word\\_FINAL.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/873155/PBS_and_Salary_Thresholds_Report_MAC_word_FINAL.pdf)

<sup>61</sup> 2011 Census statistics summarised at <https://www.ethnicity-facts-figures.service.gov.uk/uk-population-by-ethnicity/national-and-regional-populations/regional-ethnic-diversity/latest>

<sup>62</sup> <https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/datasets/regionbyoccupation2digitsocashetable3>

their White counterparts<sup>63</sup>, so this is less likely to be true for migrants from ethnic minority backgrounds. It is worth noting that London is an outlier and broadly salaries in other regions are similar across the rest of the UK, ONS data shows that average earnings in London are 26% greater than the UK average.<sup>64</sup>

Tradeable points for educational qualifications may indirectly discriminate against certain nationalities due to variations in the difficulty of verifying the equivalency and genuineness of qualifications from different countries. We will work with UK NARIC to minimise these variations as far as possible. To the extent that difficulties remain, the Government considers that they are likely to be justifiable to maintain the integrity of the immigration system against abuse. However, this will be kept under review.

### *Student route*

Proposed changes to both the General and Child sub-categories of the Student route may discriminate indirectly based on the protected characteristic of race. Consideration that has been given to the impact of these policies is detailed below.

### Safeguarding

Changes to sponsor guidance regarding safeguarding of children could lead to different treatment of sponsored international students compared to those with home student status if a sponsor applies a different standard of care to students who are not British citizens or who are not settled in the UK. This would not however, be a decision made by the Home Office.

### Academic engagement

The existing attendance monitoring policy (which imposes a duty on sponsors to inform UKVI if a sponsored student ceases to attend academic activities related to their course) is being replaced by a new academic engagement policy. This duty requires sponsors to implement an institution-wide policy to track all sponsored students' academic engagement with their course. Sponsors will be required to report to UKVI if a sponsored student falls below an acceptable level of engagement, and explain what action is being taken. This policy could lead to different treatment of international students arising from the protected characteristic of nationality. This policy is proportionate in achieving the aim of delivering an immigration route for students that ensures

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<sup>63</sup>

<https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/articles/ethnicitypaygapsingreatbritain/2019>

<sup>64</sup>

<https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/bulletins/annualsurveyofhoursandearnings/2019>

a migrant complies with the conditions of their leave around study in the UK and to guard against abuse from non-genuine students.

The other proposed changes to policy and Rules outlined above are not considered to have a particular impact on those possessing the protected characteristic of race.

#### *Other immigration routes*

As set out above those who are unable to meet the requirements of the Skilled Worker route or other permanent immigration routes but who still wish to work in the UK will primarily rely on temporary routes. The temporary routes focus on particular sectors and roles and there may be an impact on the protected characteristic of race (for both EEA and non-EEA citizens) where, for example, there is a disproportionate representation of some ethnicities compared to others in a particular sector. This will depend on the specific routes. No specific impact of the immigration measure has been identified but this will be kept under review.

#### General

Most entry clearance applications are made online and have to be completed in English. This may have a disproportionate impact upon some people from non-English speaking countries where English is not commonly taught as a second language. Although many users of the short-term study route come to the UK to undertake English language courses and so a requirement to complete applications in English may impact this group. UKVI allow other people to apply on behalf of applicants or assist with applications in order to mitigate these possible issues.

#### **Religion and belief**

The new system intends to bring EEA citizens and non-EEA citizens under the same UK laws and Immigration Rules. The Government will be promoting equality of nationalities within the new system which is justified for the reasons set out above. Direct discrimination based on nationality might potentially lead to different impacts based on religion/belief. This is most likely to be because of a correlation between nationality and religion. For example, maintaining the Common Travel Area may favour Christians as that is the predominant religion in Ireland. However, this can be justified as proportionate in achieving the aims of protecting the rights of Irish citizens in the UK given the longstanding historical and political context of Ireland and the UK's unique relationship.

English language requirements may also have an indirect impact on religion which stem from a correlation between nationality and religion. It is possible that English language requirements may disproportionately disadvantage EEA citizens from predominantly Catholic countries. Internal Home Office analysis of the English proficiency of EEA migrants living in the UK in 2011 showed



that the nationalities with the lowest levels of English tended to be from predominantly Catholic countries: with 72.4% of Polish citizens proficient, 80.8% of Portuguese and 86.9% of Spanish. This contrasted with 99.9% of Swedish and 99.8% of Danish citizens having English proficiency.<sup>65</sup>

For non-EEA citizens the skills threshold being lowered to RQF3 will open up the route to a wider pool of applicants, however the English language requirements may provide a greater barrier than before if fewer applicants at RQF3 can speak English than those at RQF6. International data on English proficiency shows that applicants from countries with predominantly Muslim populations may be disadvantaged as English proficiency levels tend to be lower.<sup>66</sup>

This is proportionate and justified because, as set out in the Home Office Indicators of Integration Framework, the ability to speak English to a reasonable level is necessary to allow a migrant to conduct daily life in the UK, to make a contribution to the labour market and the economy and to encourage social cohesion in the communities that they join.<sup>67</sup>

Nothing else has been identified that would indicate that those falling within the protected characteristic of religion or belief will be particularly affected by the proposed policy and Rules changes.

## **Sex**

### *Skilled Worker route*

The International Passenger Survey 2018<sup>68</sup> estimates roughly half EU inflows in 2018 were male (49%) and half female (50%). Similarly, 52% of non-EU inflows were estimated to be female and 48% male.

An income threshold is already a feature of the current immigration rules. Applicants for a Tier 2 work visa are currently required to earn £30,000 or the 'appropriate rate' for their occupation - whichever is higher.

The MAC's recommendations from its report on salary thresholds represent a change in restrictions for non-EEA citizens coming to the UK through the current Tier 2 (General) route. The policy may therefore offer greater opportunities to employers looking to source skilled labour from outside the UK and EEA.

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<sup>65</sup> This is based on internal HO social impacts analysis using data from the 2011 census.

<sup>66</sup> <https://www.ef.co.uk/epi/>

<sup>67</sup> Home Office Indicators of Integration framework (2019, third edition)

<sup>68</sup> <https://www.ons.gov.uk/peoplepopulationandcommunity/populationandmigration/internationalmigration/datasets/internationalpassengersurveycitizenshipbysectable305a>

The MAC did not find any evidence of gender discrimination in the Tier 2 system.<sup>69</sup> Their analysis found that given the occupational distribution of Tier 2 (General), one would expect 43% of RCoS to be for females. In reality the 2018/19 data shows around 47% of Tier 2 (General) out of country visas were issued to females and 53% to males.<sup>70</sup> This suggests that females actually make up a slightly higher proportion of Tier 2 (General) than would be expected given its current occupational mix. However, in the MAC's analysis of Tier 2 data they found significant variation across occupations. For example, 78% of nurses sponsored were female, compared to 25% of IT professionals.<sup>71</sup>

A higher proportion of female applicants in occupations where national pay scales are used (and which are not subject to the £25,600 general salary threshold) could reduce differential impacts of the salary requirements on the protected characteristic of sex. The changes will make the Skilled Worker visa open to more applicants than Tier 2 (General) was, however, the characteristics of future migrants who will benefit from a broadening of policy restrictions are unknown as the pool of eligible non-EEA citizens who meet the requisite skill and salary threshold is unknown.

The Government is aware that prescribing a minimum salary threshold could have differential impacts on individuals on the basis of their sex. Women may find it disproportionately more difficult to meet the threshold than men. Although the gender pay gap for all employees is gradually closing, it is still present, for all employees it fell from 17.8% in 2018 to 17.3% in 2019. However, amongst full-time employees it stands at 8.9%, little changed from 2018, and a decline of only 0.6 percentage points since 2012<sup>72</sup>.

Both the general and the occupation specific thresholds are set at the 25th percentile of the relevant full-time earnings distribution, as recommended by the MAC.<sup>73</sup> This means that a migrant will need to be paid at or above the level of the bottom 25% of earners in that category, and that 75% of people in those roles are paid more. The bar being set at a low level relative to the full-time earnings distribution reduces the likelihood of the thresholds being a barrier to women meeting the requirements of the route. The salary thresholds are important in setting a minimum floor to ensure that wages aren't undercut, and that those with protected characteristics aren't underpaid for the work that

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<sup>69</sup> <https://www.gov.uk/government/publications/migration-advisory-committee-mac-report-points-based-system-and-salary-thresholds>

<sup>70</sup> Internal Home Office management information

<sup>71</sup> <https://www.gov.uk/government/publications/migration-advisory-committee-mac-report-points-based-system-and-salary-thresholds>

<sup>72</sup> <https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/bulletins/genderpaygapintheuk/2019>

<sup>73</sup>

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/873155/PBS\\_and\\_Salary\\_Thresholds\\_Report\\_MAC\\_word\\_FINAL.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/873155/PBS_and_Salary_Thresholds_Report_MAC_word_FINAL.pdf)

they do. It also fulfils a key policy principle that migrants are able to support themselves once in the UK.

The general salary threshold and going rates will be the same across the country. Data from the annual survey of hours and earnings shows that while the median salary for men working full-time across all the 13 regions of the UK in 2019 was above the general salary threshold, for women working full-time the median salary is only above the general salary threshold for 5 out of the 13 regions. Women may therefore be disproportionately affected by there not being any regional variation in salary thresholds.<sup>74</sup> In their January 2020 report, the Migration Advisory Committee again recommended a single national salary threshold. They also stated that this was in line with the approach taken by the Low Pay Commission on the minimum wage. The Government believes that any indirect discrimination as a result of having a national threshold is justified, as regional salary thresholds would overly complicate the immigration system and cause significant difficulties for employers who need the flexibility to deploy their staff across the UK. The Government also does not want to reinforce regional inequalities through the immigration system.

By closely tying the settlement salary requirements to those required to qualify initially under the route, a worker in a lower paid profession who has been paid the going rate is still able to qualify and would not require a significant increase in their pay in order to qualify for settlement. We are addressing the impact of current settlement rules (under Tier 2 (General)) which affect lower-paid occupations and those in rural communities and likely have a disproportionate impact on women who are more likely to occupy these roles.

The removal of the six-year rule, which previously meant that Tier 2 visa holders were only permitted to remain in the UK for up to six years, will mitigate further the issues facing those who still will not meet the revised salary requirements or do not wish to permanently settle by no longer requiring them and their family to switch into another immigration category or leave the UK after six years.

As the general salary threshold is not pro-rated, it may also disproportionately affect women who are more likely to work part-time. Latest ONS analysis of the Labour Force Survey (LFS)<sup>75</sup> found that 13% of men in employment work part-time whilst 41% of women in employment work part-time. Although, in the 3 months up until March 2020, the female employment rate was at a record high of 73% this was still 7 percentage points lower than their male counterpart.<sup>76</sup> It should be noted that part-time working is more prevalent in lower paid occupations where workers are less likely to meet the skills and

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<sup>74</sup> <https://www.nomisweb.co.uk/query/construct/submit.asp?forward=yes&menuopt=201&subcomp=>

<sup>75</sup> <https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/datasets/fulltimeparttimeandtemporaryworkersseasonallyadjustedemp01sa>

<sup>76</sup> ONS analysis Labour market overview, UK: May 2020

salary thresholds for the Skilled Worker route: in 2018/9 a quarter of UK employees were part-time workers, yet this percentage rose to two-thirds of employees on the minimum wage.<sup>77</sup> Furthermore UK labour market figures show that in 2019 the median salary for a male full-time worker was £32,217 and for a female full-time worker £26,311, whereas for male part-time workers it was £10,435 and for female part-time workers £10,628.<sup>78</sup> This would suggest that simply pro-rating the general salary threshold may not have an impact on the majority of part-time workers.

As under the existing system, going rates for individual occupations can be pro-rated depending on the applicant's working pattern, as long as the total applicable general salary threshold (£25,600, £23,040 or £20,480) is met. The general threshold is a measure of the economic contribution an applicant will make to the UK. The MAC looked at the potential impact of the general salary threshold on part-time workers in its January 2020 report and recommended not adjusting general salary threshold levels to accommodate part-time working.<sup>79</sup> It suggested that adapting the system in this way could have significant enforcement issues: if salary thresholds were pro-rated there is a risk that some employers might claim a migrant is part-time so lower the salary threshold but then work the migrant more than the claimed hours. The immigration enforcement mechanism will be able to check that a worker is being paid at or above the threshold but is unlikely to be able to detect how many hours a migrant is working.

The Government has put mitigations in place within the system. The general salary threshold will be lowered from its current level to £25,600, which will reduce the scale of the different impact on women (although will not completely eliminate it). The change to the minimum working hours rule for those on the shortage occupation list will enable more individuals to be able to undertake part-time work where the going rate is above the (now lower) salary threshold and thus reduce the risk of indirectly discriminating against particular groups with protected characteristics such as women or individuals with a disability, who are more likely to work part-time.

While recognising the complexity of the issues around part-time work, and having put mitigations in place, the Government maintains that the salary threshold is an important feature of the points-based system. The minimum salary threshold floor ensures individuals are able to support themselves whilst in the UK and that overall migration has a net positive fiscal contribution to the economy. Going rates are intended to avoid exploitation of workers by preventing undercutting in the labour market. Overall these principles are to

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[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/866766/nlw-nmw-government-evidence-compliance-enforcement-2018-19.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/866766/nlw-nmw-government-evidence-compliance-enforcement-2018-19.pdf)

<sup>78</sup>

<https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/bulletins/annualsurveyofhoursandearnings/2019>

<sup>79</sup>[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/860669/PBS\\_and\\_Salary\\_Thresholds\\_Report\\_MAC.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/860669/PBS_and_Salary_Thresholds_Report_MAC.pdf)

help ensure that migration works in the best interests of the UK resident population. Therefore, these changes are considered proportionate and justified, and additional mitigations within the immigration system may entrench any equalities rather than eliminate them.

### *Students*

No impacts have been identified that would indicate that those falling within the protected characteristic of sex will be particularly affected by the proposed policy and Rules changes relating to students as set out in Section 1.

### *Interaction with other immigration routes*

As set out above those who are unable to meet the requirements of the Skilled Worker route or other permanent immigration routes but who still wish to work in the UK will primarily rely on temporary routes. The temporary routes focus on particular sectors and roles and there may be an impact (both EEA and non-EEA citizens) on the protected characteristic of sex where roles are associated more strongly with a particular gender. This will depend on the specific routes. We have not identified any specific impact, but this will be kept under review.

### *Conditions and requirements*

The changes to maintenance requirements may have an impact on sex. This is because there continues to be a wage gap between sexes in the UK and globally. Any increase in financial maintenance requirements for the individual may adversely affect female applicants to a larger extent than males. Under the proposed policy changes, individuals entering the country through economic routes will be required to prove that they have access to more funds than they do currently. This potentially puts individual female applicants at disadvantage. However, female applicants with a family will benefit from the lower requirement for dependants. There is no recent data on which applicants were female, or who were later joined by dependants.

The proposed policy changes reduce the burden on female applicants in the UK. For those coming to the UK, it should be noted that the change is an increase in amount rather than a new requirement as all applicants must already show they either have funds or can maintain and accommodate themselves in the UK.

To the extent that there may be indirect discrimination it is considered proportionate to achieve the policy aims of ensuring migrants have sufficient funds to maintain and accommodate themselves while they are not yet earning in the UK.

### **Sexual Orientation**

No impacts have been identified that would indicate that those falling within the protected characteristic of sexual orientation will be particularly affected by

the proposed policy and Rules changes set out in section 1 above. However, this, along with the rest of the EIA will be kept under review.

**3b. Consideration of limb 2: Advance equality of opportunity** between people who share a protected characteristic and people who do not share it.

This limb of the duty does not have to be considered in relation to the exercise of functions by ministers or other authorised persons under the Immigration Acts in respect of race (excluding colour), religion or belief and age.

The Equality Act specifies that this limb involves having due regard to three specific aspects:

- removing or minimising disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;
- taking steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it; and
- encouraging persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

As set out above, the points-based system will be designed in such a way as to be practically accessible to all EEA and non-EEA citizens, including those with relevant protected characteristics, as a means of advancing equality of opportunity.

Ahead of the launch of the points-based system in January 2021, the Government is undertaking a programme of engagement to raise awareness of the new system, ensuring those affected by the changes are fully aware of what it means for them and understand how the system will operate. We are also working closely with stakeholders to understand their views on the implementation of the points-based system using engagement via multiple methods across the whole of the UK.

**3c. Consideration of limb 3: Foster good relations between people who share a protected characteristic and persons who do not share it.**

The Equality Act specifies that having due regard to this limb involves, in particular, considering the need to:

- (a) tackle prejudice; and,
- (b) promote understanding.

The new system intends to bring EEA citizens and non-EEA citizens under the same UK laws and Immigration Rules. The impacts of immigration are complex.

Migration, and changes in migration flows, can have impacts on communities. Community impacts include access to local housing, congestion, access to public services, environmental impacts and crime. These are particularly difficult to quantify, as the MAC has found.<sup>80</sup>

The perceived impact of the above proposals on the resident population and communities is unknown. Evidence on the impact of migration on communities is limited. Of the evidence available, there is little suggestion of migration having a significant impact, either positive or negative, on communities. The MAC concluded that “there is no evidence that migration has reduced the average level of subjective well-being in the UK”.<sup>81</sup> Where the MAC was able to draw conclusions, it suggested that “migration does not affect crime”.

As outlined above, the UK’s points-based immigration system will cater for the most highly skilled workers, skilled workers, students and innovators and a range of other specialist routes for global leaders in their field. The system is designed to increase the economic benefits of migration and to minimise disbenefits to the resident population. Where certain groups who share a protected characteristic may be particularly affected by certain aspects of the system, the Government has sought to mitigate this impact wherever possible.

Migrants will need to meet the criteria of a route within the UK’s points-based immigration system in order to qualify to come to live and work in the UK. A study by the Runnymede Trust analysing the factors that assist with the integration of new migrants found that two of the key factors (in terms of having a broad impact across several dimensions of integration) are employment and fluency in the native language.<sup>82</sup> The selection criteria within the points-based immigration system, such as requiring minimum levels of ability to use the English language and the skill threshold, will encourage integration. Furthermore, these individuals may not need as much support as other groups. Employment and native language are key components of integration, but integration is a complex and two-way process. ‘Meaningful’ social relations are needed with existing settled communities, as well as other support networks, such as employers and communities.<sup>83</sup>

Other criteria, such as the minimum salary threshold floor has been calculated to ensure individuals are able to support themselves whilst in the UK, given

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<sup>80</sup> Migration Advisory Committee, Analysis of the Impacts of Migration. January 2012. Page 94-96. [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/257235/analysis-of-theimpacts.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/257235/analysis-of-theimpacts.pdf)

<sup>81</sup> MAC 2018: EEA migration report

<sup>82</sup> <https://www.runnymedetrust.org/uploads/publications/pdfs/WhatWorksWithIntegratingNewMigrants-2010.pdf>

<sup>83</sup> <https://www.runnymedetrust.org/uploads/publications/pdfs/WhatWorksWithIntegratingNewMigrants-2010.pdf>

they will not have access to most public funds. As outlined in the MAC report on a points-based system and salary thresholds<sup>84</sup>, salary thresholds, including the going rates, are intended to prevent undercutting in the labour market and help ensure migrants provide positive fiscal contributions. As outlined above, the MAC concluded that “salary thresholds can help ensure that migrants are helping to improve the public finances: of every extra pound in earnings approximately 50p goes to the state, and they can help realise the ambition of the UK as a high wage, high skill, high productivity economy”.<sup>85</sup>

Alterations to maintenance requirements will mean that the Immigration Rules apply equally to more applicants. Developing a more coherent policy should result in more equitable treatment for people with protected characteristics who may apply across all routes, thereby fostering good relations between all. While there will be a difference in the maintenance requirement for work routes and students and their dependants, we consider this is justified based on the different nature of the routes, for example:

- a student is coming to study and will not, generally, be working or able to earn money to support themselves and must therefore show they have sufficient funds for 9 months (equivalent to term time) and that student loans are a transparent indicator of the amount they are likely to need.
- a worker will generally be paid a salary and therefore need to show they can meet their living costs for a short time (approximately 1 month where they have a job offer)
- the levels for dependants should be linked to the levels required of the main applicant, for example, a student dependant should show higher levels of maintenance because their family unit may need to be supported without an ongoing salary and may need to pay for additional accommodation (if the student is housed in student accommodation which often does not allow families).

There will be a difference in maintenance requirement between those who have been living in the UK for more than a year and those applying for entry clearance and who have been in the UK for less than a year. We consider this is justified as the difference will demonstrate that a migrant is able to support themselves here for a sufficient period and will have a net positive impact on the UK economy.

The Government has engaged and will continue to engage on the issue of migration and the points-based system. Extensive stakeholder engagement has been held in 2019 and 2020 which has contributed to the development of

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<sup>84</sup>[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/860669/PBS\\_and\\_Salary\\_Thresholds\\_Report\\_MAC.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/860669/PBS_and_Salary_Thresholds_Report_MAC.pdf)

<sup>85</sup>[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/860669/PBS\\_and\\_Salary\\_Thresholds\\_Report\\_MAC.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/860669/PBS_and_Salary_Thresholds_Report_MAC.pdf)



the above policy. Engagement has highlighted the need for businesses and migrants to be given time to adapt to change. We will continue to engage to inform users of the system of the proposed changes, ensuring those affected by the changes, such as migrants, businesses and education institutions, understand how the new immigration system will operate. We will to seek to emphasise the benefits of the changes, tackling prejudice and promoting understanding of the system.

The Government will continue to keep impacts under review. The anticipated impacts are considered to be proportionate and should not adversely affect good relations between people who share certain protected characteristics and those who do not.

**4. In light of the overall policy objective, are there any ways to avoid or mitigate any of the negative impacts that you have identified above?**

As the policy detail is developed on the points-based system, full consideration will continue to be given to ensuring that both direct and indirect discrimination is removed or mitigated wherever possible in the system.

**5. Review date**

Spring 2021

**6. Declaration**

I have read the available evidence and I am satisfied that this demonstrates compliance, where relevant, with Section 149 of the Equality Act and that due regard has been made to the need to: eliminate unlawful discrimination; advance equality of opportunity; and foster good relations.

**SCS sign off:** Philippa Rouse

**Name/Title:** FBIS Strategy, Design and Engagement Team

**Directorate/Unit:** FBIS Strategy, Design and Engagement

**Lead contact:** FBIS Strategy, Design and Engagement Team

**Date:** 1 December 2020

## APPENDIX

### Fees

The Home Office charges fees for a range of functions in connection with immigration and nationality, for example: applications for visas to enter the UK; and fees for optional, premium services. The border, immigration and citizenship system is predominately funded by the user, in line with Government policy that those who use and benefit directly from immigration should contribute appropriately, reducing the cost to the Exchequer and reducing the burden on the UK taxpayer. Income from UK Visas and Immigration Service fees are a vital part of funding for the immigration system. However, the Home Office does not make an overall profit and all revenue is used to fund the wider system.

With the end of Free Movement, EEA citizens will, in common with the rest of the world's citizens, need to meet specific criteria in order to enter and remain in this country, including obtaining visas for which they will need to pay a fee. Any impact on EEA citizens arises purely from the fact that they will no longer be able to benefit from the exemption created by freedom of movement (and therefore the standard requirements of these routes will become applicable to them for the first time).

As per the current system, all applications for each individual route will be subject to the same fee and these will be applied consistently in accordance with the fees legislation and not based on the nationality of the individual making an application or any other protected characteristic. This means that fees will apply to both EEA and non-EEA citizens and aligns with the fundamental aim of the new system for all applicants to be treated equally. As the intention is to apply fees to applicants globally, there is nothing, at the present time, to indicate that those holding protected characteristics as defined by the Equality Act 2010 will be directly discriminated against.

The exception to this fully aligned system is where direct discrimination on the grounds of nationality is lawful due to it being contained in primary legislation or the subject of a Ministerial Authorisation (as is the case in the current system) on the basis of: recognising the status of Irish Citizens; international agreements; and objective evidence about compliance and security risk. The impact this has on visa requirements may impact associated fees. Any policy decisions of this nature will be subject to individual Equality Impact Assessments. All fees and fee changes are set within the parameters of Section 68 (9) of the Immigration Act 2014 and subject to the agreement of HM Treasury and Parliament.

In terms of indirect discrimination, there is nothing, at the present time, to indicate that those holding the protected characteristics of: gender reassignment; marriage and civil partnership; religion or belief; and sexual

orientation will be particularly impacted by the application of fees. However, this, along with the rest of the EIA will be kept under review.

In terms of indirect discrimination for those holding the protected characteristics of: age; disability; pregnancy and maternity; and sex, the requirement to pay an application fee could have greater impacts on these protected characteristics; this is based on their ability to pay the application fee. In accordance with the data included in the main body of the EIA, younger people, people with a disability, those who are, or have recently been, pregnant and women may be more likely to earn less, which could negatively impact their ability to afford an application fee.

Ahead of the start of the points-based immigration system in January 2021, the Government has been undertaking a programme of engagement to raise awareness of the new system, ensuring those affected by the changes are fully aware of what it means for them and understand how the system will operate, including the application of fees. The Home Office also provides for exceptions to the need to pay application fees in a number of specific circumstances. These exceptions ensure that the UK's immigration and nationality fee structure complies with international obligations and wider Government policy.

The Government believes that any indirect impacts on EEA citizens are justified, as extending the application of fees to EEA citizens is a direct consequence of creating a single immigration system and the Government will be promoting equality of nationalities within the Future Border and Immigration System, by ensuring that fees are applied to both EEA and non-EEA citizens. All fees for immigration and nationality applications are kept under review.

With regard to Limb 2 and 3 of the Public Sector Equality Duty, the Government has had due regard to whether the setting and charging of fees will tackle prejudice and promote understanding and equal opportunity between people who share a protected characteristic and persons who do not share it. As the intention is to apply fees to all applicants equally, there is also nothing, at the present time, to indicate that it will have a negative impact. However, this, along with the rest of the EIA will be kept under review.