

# DEVELOPING A MIGRATION POLICY FOR SCOTLAND: THE COMPETING IDEOLOGIES AND STRATEGIES OF POLITICAL PARTIES AT HOLYROOD AND WESTMINSTER

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## INTRODUCTION

Historically, Scotland has been a country of net out-migration. However, this has changed in recent years and, since 2002, it has consistently experienced net in-migration. This has been assisted by a variety of factors including freedom of movement from an expanded European Union, a relatively liberal UK immigration policy under the Labour administration at Westminster during the first decade of the twenty-first century, and the positive approach to immigration taken by successive Scottish Governments. This paper considers immigration to Scotland in the context of these different approaches and reflects on how these in some instances dovetail, and in others conflict, with each other. It also considers how approaches to immigration policy might change in future, particularly with reference to the referendum on Scottish independence, due to take place in autumn 2014.

The paper begins with a general analysis of the pressures that influence political parties' responses to immigration, both in the UK and beyond, and provides a brief historical context for particular Scottish responses to immigration by considering the changing approaches adopted by the UK Government at Westminster. The remainder of the paper focuses on Scotland. It has only been in recent years, subsequent to the creation of a devolved Scottish Parliament in 1999, that Scottish policy makers have sought to develop strategies in relation to immigration, albeit within the context of a system that is controlled by the UK Government.<sup>1</sup> The most significant development in this regard has been the Fresh Talent Initiative (FTI) and the paper considers this strategy before exploring possible developments in Scottish immigration policy if the electorate votes for independence or if further powers are devolved from Westminster to Holyrood.

## POLICY RESPONSES TO IMMIGRATION

Immigration issues have long been high on the agenda for political parties, both in the UK and beyond. In the UK, opinion polls regularly show that a majority of the British public favour a reduction in immigration. For example, a recent poll showed that an increasing proportion of those surveyed – up to 68% from 65% in 2010 – view immigration as more of a problem than an opportunity, while 57% said that the UK has too many immigrants (Transatlantic Trends, 2012).<sup>2</sup> The press surely has an impact in this regard and various research studies have highlighted the role of the media, and newspapers in particular, in shaping and influencing negative attitudes towards immigration (see, for instance, Crawley, 2005). That is not to say that concerns about immigration are mere media constructs. As Bale (2009a) puts it, “[i]t is the real world...and not just the fevered imaginings of demagogues and ill-informed, culturally threatened voters, that poses real policy questions for politicians” (p. 4-5). And there are many issues to contend with in the ‘real world’, including “increased labour migration and asylum-seeking, stretched border security, welfare and criminal justice systems, the threat of terrorism, and the evident...unease about

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<sup>1</sup> The Scottish Parliament was founded following a referendum on devolution in 1997 and the subsequent passing of the Scotland Act by the UK Parliament in 1998. The Scotland Act details those matters that are devolved to the Scottish Parliament and those that remain ‘reserved’ to Westminster. Reserved matters tend to be issues with a UK-wide or international concern, such as the immigration system and border controls.

<sup>2</sup> However, the survey also highlighted misconceptions regarding the actual numbers of immigrants in the country, while research by the Migration Observatory at the University of Oxford (2011) has shown that the views of the public are a lot more nuanced than the polling headlines often suggest.

cultural differences in some segments of the self-styled 'native' population" (p. 4). Politicians have struggled to get to grips with these issues in a manner that satisfies the electorate and, as a result, immigration has often become what Boswell (2003) describes as a "lightning rod" (p. 4) for a wide variety of social and economic concerns.

Generally speaking, the two main political parties in the UK – the centre-left Labour Party and centre-right Conservative Party – have, since the 1950s, sought to adopt muscular approaches to immigration which show them to be 'tough' on those who abuse the system and protective of the rights and entitlements of the 'native' population. This seems to be in line with the approach taken by many mainstream parties in Western Europe. However, there is a sense that it is the centre-right that is most preoccupied with the perceived and actual threats posed by what is characterised as 'uncontrolled immigration'. As Bale comments, "there are few centre-right parties that have showed much reluctance when it comes to talking up the issues concerned" (2009a, p. 9). Consequently, it seems to be the case that they have, more often than not, won the rhetorical battle as to who has the better handle on immigration policy issues, despite the fact that their policies often bear many similarities to those of their centre-left counterparts. This is clearly seen in the UK context where, as Smith (2009) puts it, "opinion polls have consistently shown that the [Conservatives] are more trusted in this area" (p. 106), despite Labour having often introduced restrictive legislation when in office.

That is not to say that the centre-right has it all its own way. As Schain (2009) explains, the centre-right must negotiate the conflicting interests of its supporters and reach a balance that allows it to "please its [pro-immigration] business interests, without at the same time alienating its [anti-immigration] identity wing" (p. 154). Centre-left parties face a dilemma too. Although there is often a presumption that they are more likely to support immigration, they must seek to avoid alienating native working class voters who may view immigrants negatively and see them variously as threats in the job market, suppressers of wages and strike breakers. The notion that there is a simple dichotomy between the positions of the right and left on immigration is therefore overly simplistic.

Also of relevance here is the particular threat from the various radical right wing parties that have emerged in Western Europe in recent decades and that take a particularly hard line approach towards immigration. Again, it would be overly simplistic to suggest that this threat alone has been responsible for what has been a general drift towards more restrictionist approaches. As Bale (2009a) argues, this wrongly implies "that Europe's mainstream parties are somehow incapable of coming to their own conclusions on the seriousness of the issues and the policy direction they should take on them" (p. 6). And he points to various examples of mainstream parties in the likes of France and the Netherlands taking anti-immigration stances long before the rise of the radical right. However, it is perhaps valid to suggest that the threat of the radical right – whether perceived or actual – has caused mainstream parties, on both the left and the right, to redouble their efforts in addressing concerns regarding the negative impacts of immigration.

### **Particular approaches to immigration in the UK**

In the UK, it would seem that there is a blurring of the position of both left and right towards immigration and there is little material difference between the approaches that the two main parties take. As Smith (2009) puts it, "[w]hile the British Conservatives have traditionally been seen as 'strong' on immigration, the reality is that the mainstream parties have espoused broadly similar policies in practice over the last 40 years, even if their rhetoric has differed" (p. 102). Thus, "[c]ontemporary debates often seem to be just that – wars of words highlighting rhetorical differences rather than signalling a genuine intention to implement distinctive policies" (p. 102). Bale (2009b) makes a similar point regarding the manner in which they compete to win ground on the issue of immigration: "partly because it is so concerned not to cede too great an advantage to the Conservative Party on the issue of immigrant control,

Labour has for decades tried to sound (if not always act) as tough as the Tories, while the Tories have always been wary of pursuing their populist impulses too far lest they alienate moderate opinion and damage what used to be called ‘race relations’” (p. 142).<sup>3</sup>

That said, the election of Tony Blair’s Labour government in 1997 did see a shift in policy direction. There was a move away from the restrictive immigration policies of the previous three decades towards a more liberal approach that saw, in the first decade of the twenty first century, “the largest scale migration to the UK in its history” (Carey & Geddes, 2010, p. 852). This policy shift was primarily in recognition of the role of migration in filling gaps in the labour market and stimulating the economy, although it was recognised, if not generally articulated, that migration could also offset negative effects of demographic change such as a shrinking working age population and rising health and welfare costs. Thus in the early 2000s various measures were introduced which allowed easier access to the country for various categories of migrant. And perhaps surprisingly given previous attitudes, there was little in the way of political or public opposition to this liberalising approach during the early years of the Labour administration – it seems that a buoyant economy and very low unemployment put paid to that. The policy was also cleverly packaged with tough rhetoric and action relating to asylum seekers and illegal immigrants. Indeed, the Home Secretary David Blunkett was to boast in 2002 that the government’s new asylum measures represented “one of the toughest yardsticks...in the developed world” (quoted in Boswell, 2003, p. 71). The Labour government had therefore subtly changed the UK’s approach to immigration policy, combining a more liberal policy with respect to legal labour migrants, with a much less tolerant approach towards irregular immigrants and asylum seekers.

The Labour government stance hardened towards the end of their time in power in the light of growing criticism that immigration was getting ‘out of control’ and the country was becoming a ‘soft touch’ for illegal immigrants and ‘bogus’ asylum seekers. Indeed it could even be said that Labour were taking a harder line than their Conservative counterparts with their ‘British jobs for British workers’ rhetoric (Bale *et al*, 2011), while they also introduced a points-based system in 2008 as a means of curbing non-EU immigration in the light of the global economic downturn. Thus, “[t]he same UK government that significantly expanded labour immigration in the early 2000s because of its ‘enormous economic benefits’ [now] claimed...that ‘it’s been too easy to get into this country in the past and it’s going to get harder’” (Ruhs and Anderson, 2010, p. 1). Meanwhile, the Conservative opposition questioned the government’s competence and credibility and successfully portrayed Labour as being unable to manage the system and tackle the abuses that were being regularly reported in the press. They had also shifted their own policy away from an overtly populist position to one which was portrayed as a balanced analysis of the economic impacts of immigration. With the moderate Damian Green appointed as the party’s spokesperson on the issue, their emphasis was now on attracting ‘better and fewer’ immigrants. While the ‘brightest and best’ would still be welcomed under a Conservative government, the ‘uncontrolled’ immigration that was said to characterise the Labour approach would not be tolerated.

Following their success in the 2010 General Election the Conservatives have formed a coalition with the Liberal Democrat Party and have introduced a raft of changes to immigration policy and the points-based immigration system. They have also made a commitment to reduce levels of net migration to the tens of thousands by the end of the current Parliament (that is, to the levels of net migration that existed in the mid-1990s when they were last in power), while still seeking to attract the ‘brightest and best’. As Damian Green, now Minister of State for Immigration, put it recently:

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<sup>3</sup> Boswell (2003), Hampshire (2005) and Smith (2009) provide particularly useful insights into the approaches of successive Labour and Conservative governments to immigration since the end of the Second World War.

*What we need is a system that ... goes out to seek those people who are either going to create jobs or wealth or add to the high-level artistic and cultural aspirations we have. Getting the number down is the absolute key but what I am aiming at is fewer and better* (quoted in The Telegraph, 29 January 2012).

However, they have not had the easy ride they may have hoped for. Indeed, even although they insisted in their coalition agreement that all of the immigration policies they had committed to in their pre-election manifesto should be adopted – despite the Liberal Democrats, in their election campaign, having pushed for more progressive immigration policies including an earned amnesty for illegal immigrants – they have fallen foul of many of the same accusations of mismanagement that Labour faced before them. They have also had to face questions regarding the sustainability of their net migration commitment and the potentially deleterious economic impact of such an approach, while in other areas they have found themselves being constrained by powers that member states must cede to the EU with regard to immigration policy.<sup>4</sup> It seems, therefore, that they are experiencing first hand what Boswell (2003, p. 4) describes as the “unfeasible political demands” associated with immigration policy. Indeed, despite their shift away from overtly populist rhetoric towards supposedly balanced economic arguments, they are perhaps still struggling to bridge what Boswell goes on to describe as the “populist gap”; that is the “gap between what can feasibly be done to restrict migration in liberal democracies and the often unrealistic and ethically unacceptable demands of populist politics” (p. 4). Whether or not they will be able to successfully negotiate the complex web of conflicting interests and pressures associated with this policy area in the years to come remains to be seen.

## **THE SCOTTISH CONTEXT**

It is in this wider UK context that immigration to Scotland must be considered. Unlike its southern neighbour Scotland has experienced population loss throughout its modern history, with significant numbers of Scots emigrating from their homeland going as far back as the thirteenth century (Devine, 2011). Even in recent history, the numbers involved have been very large. For instance, for the period 1951 to 2006, net migration loss was about 825,000 people; “a staggering amount when one remembers that in this period the total population was around 5 million people” (Wright, 2008, p. 13). However, the gap between immigration and emigration began to close towards the end of the twentieth century and since 2002 Scotland has consistently experienced net in-migration. EU enlargement has been particularly influential in this regard, as significant numbers have migrated from the Central and Eastern European countries that joined the EU in 2004. The most recent projections assume that the pattern of inward migration will continue until at least 2035, with an estimated net migration figure of 17,500 year on year (National Records of Scotland, October 2011). That said, the country continues to experience significant demographic challenges as a result of a shrinking working age population and an increasing dependency ratio. Given the low levels of natural growth in Scotland, the current Scottish Government has a target to match average European (EU15) population growth over the period from 2007 to 2017 and, along with Scotland’s Council of Economic Advisers, has identified inward migration as the key means of achieving this and of driving future economic growth (Scottish Government, 2011; Scottish Council of Economic Advisers, 2010).<sup>5</sup>

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<sup>4</sup> An interesting issue is currently emerging in relation to the Eurozone crisis. Home Secretary Theresa May has suggested that means of restricting European immigration are being considered in the event of a financial collapse (The Telegraph, 25 May 2012). However, it remains to be seen whether such restrictions would be permitted under European law.

<sup>5</sup> The latest statistics suggest that progress is being made on both fronts: the population is now at a record high and the net migration figure of 25,400 in the year to June 2011 was the highest since records began in 1991-92 (The Herald, 1 June 2012).

Despite the more positive picture that has emerged in recent years, the Scottish Government has limited ability to effect this inward migration through its own actions. It has very little control over the key levers that control levels of immigration into the country because, while there has been a devolved Scottish Parliament since 1999, border controls and the immigration system are still 'reserved' to the UK Parliament at Westminster. However, specific Scottish initiatives have been permitted in recent years and these have, to a certain extent at least, enabled Scottish policy makers to make interventions to address Scotland's particular demographic and skills needs. The clearest example of this is FTI, introduced by the Scottish Executive in 2004.<sup>6</sup>

### **The Fresh Talent Initiative**

In 2003, in the context of growing concerns around Scotland's declining and ageing population, the then First Minister of Scotland, Labour's Jack McConnell articulated the need to attract more people to live and work in the country when he made the following statement during a speech at a conference on the future of Scotland's cities:

*I believe in-migration into Scotland can play an important role in helping our economic future. Not at the expense of older people, or those currently in the labour market. Nor somehow disregarding the talent we already have. In addition to our own talent though, we should look to fresh talent (Scottish Executive, 2004, p. 3).*

Further to the First Minister's speech, a project team and steering group were established to consider migration to Scotland in the context of the UK Government's immigration policy. This led to the publication, in February 2004, of a report entitled *New Scots: Attracting Fresh Talent to Meet the Challenge of Growth*. In the foreword to this, the First Minister set out the rationale for what was to become the FTI. Outlining the country's demographic challenges, he stated that "if we are to make Scotland even better, if we are to compete – and succeed – in the global economy, we need a constant flow of fresh talent to flourish alongside our home-grown talent" (Scottish Executive, 2004, p. 1). However, the *New Scots* document itself did not set out in any great detail what FTI would entail and how it would develop; rather it was a broad policy statement that would underpin the future work of the Scottish Executive / Government in this regard.

Perhaps the most complete analysis of the various elements of FTI has been provided in an FTI progress report produced for the Scottish Executive by Rogerson *et al* in 2006. This set out the key aims and actions associated with FTI, as well as the key groups that were being targeted. There were five key target groups – students; people seeking employment; entrepreneurs and the self-employed looking to start up businesses in Scotland; Scottish businesses looking to recruit from overseas; and expatriate Scots looking to return home – while the key aims and actions can be summarised as follows:

#### Key aims

- to address the projected falling population and increasing age demographic in Scotland by encouraging and enabling people to relocate to Scotland, allowing ongoing stays by students, and other measures;
- to bolster the dynamism and cosmopolitanism of Scottish life and the economy; and
- to promote Scotland as an ideal place to live, study, work and do business.

#### Key actions

- provide information in countries of origin about opportunities in Scotland and specifically about the support provided to enable talented individuals to come and work in Scotland;

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<sup>6</sup> Following the 2007 Scottish parliamentary election, the new SNP minority administration changed the name of the Scottish Executive to the Scottish Government. Both terms are therefore used in this paper – Scottish Executive when referring to pre-2007 administrations and Scottish Government thereafter.

- advice and support to assist applicants to gain entry into Scotland and, through interaction with the Home Office, reduce some of the barriers to entry into Scotland for talented migrants;
- encouragement to specific groups of international migrants (especially international students) to remain in Scotland and gain access to and experience of the Scottish labour market;
- encourage employers to engage more with channels of international migration as part of their employment strategy; and
- enhance the quality of the welcome and information returnees can access on entry into Scotland (taken from Rogerson et al, 2006, p. 14-15).

In terms of the practical outputs associated with FTI, there were a variety of core elements. Central to the initiative was a Relocation Advisory Service (RAS) that was set up in conjunction with the Home Office to provide advice to students, workers and businesses on visas and work permits, and the various opportunities for relocation to Scotland that existed. A Fresh Talent Working in Scotland Scheme (FTWiSS), which entitled international graduates from Scottish universities to live and work in Scotland for two years following the completion of their studies, was also established, as was an International Scholarship Programme. Then there were a variety of smaller initiatives focused on the marketing of Scotland's international image. This saw the involvement of Fresh Talent staff in international careers and trade fairs, the creation of promotional web portals and the establishment of a variety of networks that would forge global educational, cultural and business links.

Many aspects of FTI, including the RAS and the various web portals, continue to this day and can be placed in a wider policy context that seeks to promote Scotland as an attractive and welcoming place to live, work and do business. A variety of initiatives have been introduced in this regard, including policies aimed at enhancing racial equality and educating the resident population with respect to the contribution that people from 'different' cultures can make in Scotland. These include the *One Scotland Many Cultures* campaign which ran during the first half of the last decade and, more recently, the *One Scotland: No Place for Racism* campaign. Other initiatives are more outward looking, focussing on the integration of migrants in Scotland; a policy area that *is* devolved to the Scottish Parliament. For instance, in 2007, the Scottish Executive introduced an Adult English for Speakers of Other Languages (ESOL) Strategy in order to give "all Scottish residents for whom English is not a first language...the opportunity to access high quality English language provision so that they can acquire the language skills to enable them to participate in Scottish life" (Scottish Executive, 2007, p. 4). Initiatives have also been introduced for migrants 'on the margins', such as the Scottish Refugee Integration Action Plan and the associated Refugee Integration Fund.

What is particularly interesting about FTI is the cross party support that it has received in the Scottish Parliament, despite it not necessarily dovetailing with the views of the same parties at Westminster. FTI was established by a Labour / Liberal Democrat coalition government at Holyrood and it may not be surprising that it received the necessary support from the Labour government at Westminster given that it, as has already been outlined, was avowedly pro-immigration at the time. Indeed, First Minister McConnell was able to say in the foreword to *New Scots* that he was "grateful to the [UK] Home Secretary, David Blunkett, for his support for [the] proposals" (2004, p. 1), while the Home Office's five year plan, published in February 2005 also acknowledged the utility of the scheme, stating that FTI could help to address Scotland's demographic challenges by "attracting bright, hardworking and motivated people to live, study and work in Scotland and make a positive contribution to the economy and society (Home Office, 2005, p. 15). Nor is it surprising that the SNP have continued supporting FTI since they came to power. Like Labour, the SNP can also be categorised as a centre-left party, and it is their stance on Scottish independence more than anything else that drives an

ideological wedge between themselves and Labour.<sup>7</sup> However, what may be surprising is the support that the Conservative Party also seemed to give to the initiative. On a Scottish level, they contributed to the Parliament's cross party European and External Relations Committee Report which welcomed FTI and its contribution "to the efforts to improve Scotland's demographic problems and economic performance" (2005, p. 7), while the party's UK leader commented on its utility in a speech he delivered in Scotland the following year (Cameron, 16 October 2006). On the other hand, it was perhaps recognised that FTI would have only a limited impact on the Conservatives' overall aims on immigration, given that it was making very little difference to actual immigrant numbers. Today, the main facets of FTI are still unlikely to be viewed as a threat by the Conservative government. Indeed, the only element of FTI that had a direct impact on the number of immigrants to Scotland – namely FTWiSS – is no longer permitted under the current regulations.<sup>8</sup>

### **Current approaches to immigration in Scotland**

The current SNP administration at Holyrood continues to view immigration as an important driver of economic growth and a means of tackling Scotland's demographic challenges, despite considerable progress regarding the latter in recent years. This position is summarised in the Scottish Government Economic Strategy, published in September 2011. It highlights that Scotland's population is projected to age more rapidly compared to the UK as a whole, while growth in the working age population is projected to be considerably lower. As such, the Scottish Government argues that "maintaining recent levels of net migration...will be crucial to delivering our ambitions on growing Scotland's population" (Scottish Government, 2011, p. 74). Both Labour and the Liberal Democrats also continue to be supportive of positive net migration to Scotland and this has been reflected in recent statements from both parties, such as those quoted in an article in The Scotsman newspaper on 25 August 2011:

*The pressures that an increase in migration can bring are surely balanced out by the economic and cultural benefits for Scotland (Liberal Democrat MSP Alison McInnes);*

*Immigration to Scotland in recent times has been beneficial for our economy and added to Scotland's culture (Labour spokesman).*

On the other hand, the Scottish Conservative position is now more reflective of the UK Government's 'fewer and better' approach and their target to bring net migration down to the tens of thousands by the end of the current parliament:

*We want the brightest and best workers to come to Scotland, make a strong contribution to our economy while they are here, and then return home. A small number of exceptional migrants will be able to stay permanently but for the majority, coming here to work will not lead automatically to settlement in Scotland and elsewhere in the UK. Under Labour, immigration got out of control which is why the UK government is taking action to control numbers (Conservative MSP David McLetchie, quoted in The Scotsman, 25 August 2011).*

The Scottish Government agree that they, too, want the 'brightest and best', but where they differ from their UK Government counterparts is in how this is to be achieved. They argue that the restrictions introduced by the coalition government are "too blunt an instrument" (Scottish Government, 2011, p. 74) to address Scotland's economic needs, as well as their current population growth target.

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<sup>7</sup> The SNP's brand of nationalism is civic rather than ethnic in origin and the party's policies are described as being "amongst the most liberal of any mainstream party in the United Kingdom on citizenship, emigration, and multiculturalism" (Mitchell et al, 2012, p. 116).

<sup>8</sup> FTWiSS was initially replaced by a UK-wide Post Study Work element within the points-based system, before that was also abolished by the current UK administration.

In an attempt to bridge the gap between the policy positions of the two governments, the Scottish Government has, since the Conservative-Liberal Democrat coalition came to power in 2010, proposed the introduction of various flexibilities in the UK system that would, they argue, benefit Scotland without impacting negatively on the UK Government's overall approach to immigration. Specifically, they have called for a Scottish opt-out from the cap on the number of visas that can be introduced under the skilled immigrant tier of the UK's points-based system. This 'Scotland Skilled Workers Flexibility' would provide Scotland with a distinct annual allowance, apart from the overall UK allowance, that would be responsive to particular Scottish economic needs.<sup>9</sup> They have also called for the introduction of a 'Fresh Talent Scotland Visa' that would once again allow non-EU students to work in Scotland for up to two years following the completion of their studies. Further flexibilities have been sought with regard to the minimum wage levels associated with certain elements of the points-based system, in order that these reflect Scottish wages rather than the higher wages more common in London and the south-east of England, while concern has been expressed at the economic impact of the restrictions that the UK Government has been placing on student immigration. The level of consensus that has developed within Scotland regarding these matters is illustrated by the fact that key representatives from a number of Scottish public sector and business organisations (including the Convention of Scottish Local Authorities, the Institute of Directors in Scotland, the Federation of Small Businesses, Universities Scotland and the Scottish Trades Union Congress) have expressed their support for the approach taken by the Scottish Government. Indeed, they were co-signatories with Fiona Hyslop, Scottish Government Minister for Culture and External Affairs, of a letter to Damian Green in December 2010, calling for the UK Government to recognise Scottish economic needs with regard to immigration policy. However, this and subsequent approaches to the UK Government regarding Scottish flexibilities have so far been rebuffed.

### **Immigration policy in an independent Scotland**

Of course the current SNP government has ambitions for immigration policy that stretch much further than mere flexibilities within the UK system. As a nationalist party, the ultimate goal of the SNP is for Scotland to gain full independence from the UK and for it to have full control over its own borders and immigration policy. And it is in the context of the current debate on the constitutional future of the country, that they have outlined their position on a variety of policy issues, including immigration, in the white paper *Your Scotland, Your Voice: A National Conversation* (2009). From an SNP perspective, the current UK system is problematic as it does not reflect Scotland's particular demographic needs or address its current economic and skills challenges. They therefore propose a Scottish scheme that "could both place particular importance on required skills and give priority to immigrants who assist in meeting the demographic challenges, for example young people or families with children (p. 52), and point to the Australian and Canadian schemes as exemplars in this regard.

They also see an independent Scotland as a full member of the EU, with Scottish borders remaining "open to European Union nationals, just as Scots are free to move throughout the European Union" (p. 52). Finally, they wish to adopt a different approach to the UK in relation to asylum and humanitarian protection and outline their vision for a "fairer and more humane asylum system" (p. 52) which supports the country's commitment to human rights. However, aside from setting out general principles they have not, as yet, put flesh on the bones of what an independent Scottish immigration system might look like, although it is likely that they will

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<sup>9</sup> There is already a Scottish Shortage Occupation List within the points-based system that allows Scottish-based employers to recruit skilled workers from outwith the EU to posts for which there are not enough resident workers eligible to apply. This is in addition to a UK-wide list that is also in existence. However, the Scottish list currently contains only a very small number of posts in relation to paediatric medicine and, as such, does not have a significant impact on the Scottish economy.

face increasing pressure to do so in the lead up to the expected referendum on independence in 2014.

Despite the lack of detailed proposals, it is possible to speculate on the issues that civil servants are currently grappling with as they seek to develop a more substantive position with regard to immigration. For instance, it is likely that they are looking west and considering the approach taken by the Republic of Ireland. An independent Scotland, like Ireland, would share land borders with the UK and, as a result, would have to interact with the UK in a manner similar to Ireland. While the Schengen Agreement has facilitated freedom of movement between most EU countries, the UK and the Republic of Ireland have negotiated an opt-out which allows them to continue operating immigration controls with other EU states. However, the UK and Ireland operate a Common Travel Area (CTA) which means that internal borders within the CTA are generally free from immigration controls.<sup>10</sup> Thus, as Ryan (2001), Mac Éinrí (2002) and Smith (2009) highlight, British and Irish immigration policies are, for various practical and political reasons, closely aligned to each other. And it could be expected that a similar relationship would be required between Scottish and UK immigration policies under independence.

A number of commentators have suggested that Scotland is likely to face considerable pressure from the UK Government to 'dance to their tune' as far as immigration policy is concerned. Certainly there is a sense that Ireland is the junior partner in its relationship with the UK in this regard and has "tended to be involved in the implementation of British immigration policy rather than *vice versa*" (Ryan, 2001, p. 874). Thus Piaras Mac Éinrí, Director of the Irish Centre for Migration Studies at Cork University has suggested that the UK government "would seek to have a disproportionate degree of influence" on Scottish immigration policy, while Ronit Lentin, Head of Sociology at Trinity College Dublin, expects Scotland to have "an 'over-the-shoulder' policy" and suggests that "Scotland may well have to go for a stricter immigration policy in consultation with England [sic]...[as] a more lenient policy would be seen as a back door to England" (quoted in Scotland on Sunday, 18 March 2012). And Scottish commentators would seem to agree with this perspective. As columnist for The Scotsman newspaper, Peter Jones, put it recently, "[t]he claim...that border controls and passport checks would be needed at Berwick and Gretna Green looks to be pretty implausible. I would caution, however, that keeping the Anglo-Scottish frontier unimpeded does imply that Scotland could not have an immigration policy wildly different from that of England [sic]" (The Scotsman, 15 May 2012).

It may therefore be relatively safe to assume that if Scotland were to become an independent country, it would adopt similar arrangements to those already in place between the UK and Ireland. The SNP spokesperson on the constitution and home affairs, Pete Wishart, recently confirmed this to be their thinking when he stated that "[t]he reality is that an independent Scotland will be part of the common travel area" (The Scotsman, 26 March 2012). However, unionist politicians have argued that the SNP's associated ambition for an independent Scotland to join the EU could complicate this situation. Given that new EU members are required to implement the terms of the Schengen Agreement, placing this requirement upon Scotland could, in the words of UK Home Secretary Theresa May, "open Scotland's border up to mass immigration" (The Guardian, 24 March 2012). It is also argued that freedom of movement between Scotland and the other Schengen countries would de facto lead to freedom of movement to and from the remaining CTA countries, unless border controls were introduced. The SNP have suggested that such claims are "scaremongering nonsense" (BBC News online, 25 March 2012). For a start, they suggest that Scotland would not have to join the EU as a new member, but would, like the rest of the UK, retain its status post-

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<sup>10</sup> The 1997 Treaty of Amsterdam confirmed the UK and Irish opt-outs from Schengen, while the CTA was endorsed by a Protocol to the European Treaties agreed at Amsterdam (Ryan, 2001, p. 855).

independence. Furthermore, they believe that Scotland would be able to retain current opt-outs, such as that in relation to Schengen, as would the rest of the UK. Whether this will indeed be the case remains to be seen and will no doubt be subject to much debate from legal experts and politicians alike in the lead up to the referendum. Indeed, there are those who argue that both Scotland and the rest of the UK may be required to (re)negotiate their status within the EU should Scotland become independent, and that even the UK's current opt-out from Schengen may be under threat as a result (The Telegraph, 17 May 2012). Such a scenario would require a radical rethink of immigration policy from both the Scottish and UK governments if Scottish independence was to become a reality.

Notwithstanding these technical arguments regarding EU membership and the CTA, there still seems to be a compelling case for suggesting that Scottish and UK immigration policies would be relatively closely aligned under independence. Indeed, it is likely that non-EU immigration to an independent Scotland would be controlled under some form of points-based system akin to that of Australia, Canada or, indeed, the UK. However, there are also reasons to suggest that there may be some differences between Scottish and UK schemes, albeit that these may be more subtle and presentational than substantive. For instance, as has already been outlined, successive Scottish Governments have adopted positive language in relation to immigration that has often been in sharp contrast to the rhetoric emanating from Westminster. It is also true that Scotland has benefitted from broad political consensus on the issue, while it has a media – and indeed a public – that tends to take a more liberal approach to immigration than its southern neighbours. And, perhaps most importantly, it is widely accepted that Scotland requires continued immigration as a means of both stimulating the economy and addressing long standing demographic challenges. Bearing such factors in mind, an independent Scottish government could well have the opportunity to adopt less aggressive approaches than those taken at Westminster and perhaps develop a more tolerant, inclusive approach towards immigration. On the other hand, it must be highlighted that immigration to Scotland has been on a far smaller scale to that of many other parts of the UK and its impacts, perceived and actual, have therefore been much less significant. What is more, while the Scottish electorate tends to be better disposed towards immigration, they still tend to view it negatively, albeit less negatively than the UK electorate in general (Migration Observatory, 2011). It would therefore be unwise to assume that the Scottish approach would end up as a 'light' or 'soft touch' in comparison with that of its southern neighbours. Rather the approach would likely be one of pragmatism, recognising the synergies that would have to exist with UK policy and acknowledging that the views of the Scottish electorate may not be as liberal as some might like to think, particularly if they are ever faced with substantial increases in immigration.

### **Devolution of immigration policy**

Of course it is more than possible that the Scottish electorate will not vote in favour of independence. Indeed, successive opinion polls have shown support for independence running at between 30 and 40%, albeit that a significant proportion of voters remain undecided on the issue (The Scotsman, 25 May 2012). However, there is a debate at present as to whether the proposed referendum should include an option for further devolution of powers from Westminster to Holyrood. Broadly speaking, two main options are currently being espoused in this regard – 'devo plus' which would give Holyrood control of most taxation, benefits and borrowing, and 'devo max' which would see full fiscal autonomy for Scotland, but the country remaining within the UK. Even if options such as these do not end up on the ballot paper, there is a developing consensus that further devolution will follow, whatever the vote on independence is; even David Cameron has indicated as much in his contributions to the debate in recent months (The Guardian, 16 February 2012). If this is indeed the case, will immigration policy be 'up for grabs' under the new arrangements? After all, there is precedent in other 'stateless nations' such as Catalonia, the Basque Country and Quebec which hints that at least some control could be ceded to the Scottish Parliament. On the other hand, it is

unlikely that the UK Government will surrender control of immigration policy lightly, particularly if, as discussed earlier, there is any sense that it could lead to immigration to the rest of the UK 'by the back door'.

Whatever the UK Government perspective, it is relatively safe to assume that the current SNP Government will continue to push for flexibilities in the immigration system in the event of a referendum vote that is not in favour of independence. While their lobbying for flexibilities to date has been relatively low key – it seems that they have not wished to escalate the issue, perhaps wishing to save their ammunition for issues where progress is more likely and public support more concrete – a more concerted effort is likely to be made in the context of any negotiations on further devolution. One possibility is that they could lobby for a system such as that outlined by the economist Professor Robert Wright. He suggests that the points-based system “could easily and quickly be modified...to meet Scotland’s needs by allotting more points to applicants who agree to work and live in Scotland” (2008, p. 35). Indeed, he argues that such a system would operate better than a country-wide system because it would avoid over-emphasis on immigration to particular areas where immigration is already high. If such a system were instituted in Scotland, immigrants to Scotland would be issued with work permits that would stipulate that they would have to work and reside in Scotland. Strict terms of enforcement would also have to be set and individuals who failed to adhere would have their work permits revoked and be deported. Wright cites the examples of both Canada and Australia where their points-based systems – on which, incidentally, the UK system is based – have both successfully operated regional flexibilities for over two decades. Indeed, he comments that it is “somewhat surprising that the UK Government praises the Canadian and Australian immigration systems yet at the same time ignores the fact that regionality is a cornerstone of both” (p. 37).<sup>11</sup> Thus, Wright concludes that the modification of the UK system to include strictly enforced regional flexibilities should not be viewed as “a massive leap forward” for a UK Government that already prides itself on its “tough” approach to those who abuse the immigration system (p. 35).

Whichever course the Scottish Government might choose to take, there is historical precedent for suggesting that some form of cross party consensus could be developed in this area. In 2008, a Commission on Scottish Devolution, supported by Labour, the Liberal Democrats and Conservatives, was set up to review Scotland’s constitutional arrangements ten years after the passing of the Scotland Act that saw the establishment of the Scottish Parliament.<sup>12</sup> When it reported in 2009, it made the following recommendation in relation to immigration:

*Whilst retaining the current reservation of immigration, active consideration...should be given to agreeing sustainable local variations to reflect the particular skills and demographic needs of Scotland* (Commission on Scottish Devolution, 2009, p. 176).

However, while the current coalition government at Westminster indicated that they would implement in full the various recommendations of the Commission, subsequent correspondence between Scottish and UK ministers suggests that, whatever consideration has been given, the variations that the current Scottish Government is seeking will not be implemented any time soon. Whether that position will be sustainable in the long term remains to be seen. If there is continued cross party support in Scotland for the introduction of local variations it may be harder for the UK Government to continue resisting, particularly if the referendum, or the subsequent discussions, point towards further devolution of powers to the Scottish Parliament.

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<sup>11</sup> In the case of the Canadian system, the level of devolution to the province of Quebec is such that Quebec essentially ‘picks’ the immigrants, while the federal government merely issues the visas and work permits.

<sup>12</sup> Interestingly, while what came to be known as the Calman Commission was established by both the Scottish and UK Parliaments, the SNP did not initially engage with the process, preferring instead to focus on their own ‘National Conversation’ on Scotland’s constitutional future.

## CONCLUSION

This paper has considered Scottish approaches to immigration within a UK context that sees most powers in relation to this policy area controlled by Westminster rather than Holyrood. As the paper has sought to articulate, successive Scottish Governments have still been able to develop approaches that have supported their aims of growing the economy and addressing Scotland's demographic challenges. These approaches have tended to transcend party political differences within the Scottish Parliament and have continued despite the trend towards more stringent immigration policies at Westminster, although this may be partially explained by the fact that initiatives such as FTI have actually had a very limited impact on the number of immigrants coming in to the UK. However, there has been a noticeable divergence between the current governments' approaches, with the UK Government rejecting the flexibilities sought by the Scottish Government and, indeed, the Commission on Scottish Devolution. It may be that the Westminster coalition is wishing to maintain its image of being 'tough on immigration', while there may also be a flexing of muscles in the run up to the referendum on Scottish independence.

With the referendum in mind, the paper has also sought to explore how future Scottish administrations might approach immigration policy if there is a vote in favour of independence, or if additional powers are devolved from Westminster. Either way, the Scottish Government would do well to note the difficulties that successive UK administrations have faced with regard to immigration. While in opposition, the Conservative Party was said to 'own' immigration policy, but it now faces some of the same credibility issues that the Labour government faced before it. As such, what Bale *et al* (2011) have said of the UK situation – "[i]n opposition...parties can talk a good game...[i]n power they have to play one, too" (p. 406) – is also likely to apply in Scotland. It may be relatively easy to criticise UK immigration policy when the levers are not in your hands, but the situation is likely to be quite different when they are. The Scottish Government must therefore seek to avoid over-promising and under-delivering on immigration policy if or when any control over immigration levers is actually passed from Westminster to Holyrood.

An obvious way of avoiding these pitfalls would be to seek to depoliticise immigration policy, although that is easier said than done, particularly when governments across Europe are facing what seems to be growing resistance to 'uncontrolled immigration' in the light of the global economic crisis. However, a public debate that "examines, honestly and openly, the social and cultural implications of current policy" (Hampshire, 2005, p. 187) should surely be sought. And it may be that the Scottish Government can take advantage of more positive (or perhaps more accurately, less negative) views towards immigrants from the public and popular press in Scotland in order to facilitate genuine debate regarding the impacts of immigration, both positive and negative. Failure to do this will simply play into the hands of those who present more extreme views regarding such impacts. There is an opportunity, therefore, for future Scottish administrations, whether governing an independent country or afforded additional powers devolved from Westminster, to develop evidence-based rather than rhetoric-based immigration policies that effectively address the country's particular economic and demographic challenges.

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