

## ILPA Response to Home Secretary's Statement on 'Legal Migration'

### About us

The Immigration Law Practitioners' Association ('ILPA') is a professional association and registered charity, the majority of whose members are barristers, solicitors and advocates practising in all aspects of immigration, asylum and nationality law. Academics, non-governmental organisations, and individuals with a substantial interest in the law are also members. ILPA exists to promote and improve advice and representation in immigration, asylum, and nationality law; to act as an information and knowledge resource for members of the immigration law profession; and to help ensure a fair and human rights-based immigration and asylum system. ILPA is represented on numerous government, official, and non-governmental advisory groups and regularly provides evidence to parliamentary and official inquiries.

### Introduction

1. On [4 December 2023](#), the Home Secretary of the United Kingdom, James Cleverly, addressed Parliament with the Government's five-point plan aimed at significantly reducing the UK's "net migration".<sup>1</sup> The plan includes:
  - a. Increasing the minimum salary for Skilled Workers from £26,200 to £38,700 and raising the occupation-specific thresholds from the 25th percentile to the 50th percentile full-time salary for occupations (only Health and Care Workers will be exempt from these measures) (in Rules to be laid on 14 March and coming into force on 4 April 2024).
  - b. A ban on overseas care workers being able to bring their dependants (i.e. partners and children under the age of 18) to the UK (in Rules laid on 19 February, [HC 556](#), coming into force on 11 March 2024).
  - c. An end to the rule which permits workers on the shortage occupation list to be hired at 20% below the going rate for their occupation code. The Migration Advisory Committee (MAC) has also been asked by the Home Secretary to review which occupations should remain on the list, and has published its Rapid Review.<sup>2</sup>
  - d. MAC has been asked to review the Graduate route, which provides international students who have graduated from UK universities/colleges two years to work after graduation and find sponsored skilled employment in the UK.

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<sup>1</sup> HC Deb 4 December 2023, Vol 742, Col 41.

<sup>2</sup> MAC, 'Rapid review of the Immigration Salary List' (February 2024)

<[https://assets.publishing.service.gov.uk/media/65d5c4252197b2001d7fa725/Rapid\\_review\\_of\\_the\\_Immigration\\_Salary\\_List\\_2024.pdf](https://assets.publishing.service.gov.uk/media/65d5c4252197b2001d7fa725/Rapid_review_of_the_Immigration_Salary_List_2024.pdf)> accessed 4 March 2024 ('Rapid Review').

- e. Incrementally increasing the Minimum Income Requirement (MIR) for spouse visas from £18,600 to £38,700. The first increase will be in Spring 2024, to £29,000 (the 25th percentile of earnings for Regulated Qualifications Framework Level 3 jobs which are eligible for Skilled Worker visas). The second increase will be to the 40th percentile (currently £34,500) and finally the 50th percentile (currently £38,700 and the level at which the general Skilled Worker threshold is to be set) in the final stage of implementation.

### The Strawman

2. The Home Secretary stated that he has *“been determined to crack down on those who try to jump the queue and exploit our immigration system”*. It is unclear to which “queue” the Home Secretary is referring, as all the above immigration applications are subject to the published visa processing times both [inside](#) and [outside](#) the UK. It is further unclear how any of the above proposals would “crack down” on the exploitation of the immigration system. Those applying to work, study, or live in the UK must submit completed applications to the Home Office. They are placed in the “queue”, not seeking to jump it.

### Net Migration

3. The Government has yet to explain what specific net migration figure it aims for and why that specific number. All the Home Secretary has said is that it is “far too high”.<sup>3</sup> However, it is our opinion that the Government is using an inappropriate net migration figure.
4. At present, the Home Secretary uses the Office of National Statistics (ONS) net migration figure. The recent figure from the ONS shows an estimate of net migration for the year ending June 2023 as 672,000, which the Government deems as “far too high” despite the figure being lower than the ONS estimate for net migration in the year ending December 2022 (745,000).<sup>4</sup> Looking more closely at the figure of 672,000, it can be seen that the ONS includes students in their net migration figure.<sup>5</sup> This inflates the net migration figure in the short and medium term. In the long term, most student migrants do not remain in the UK permanently, following the completion of their studies.<sup>6</sup> Since it typically takes around two to three years for student emigration to materialise, recent increases in student migration lead to temporarily higher estimates of net migration during the course of their study, before the net emigration figure catches up. It would, therefore, be more accurate to include students in the net migration figure only when they elect to stay in the UK after their studies on a

<sup>3</sup> *ibid.*

<sup>4</sup> Office for National Statistics, ‘Long-term international migration, provisional: year ending June 2023’ (23 November 2023)

<https://www.ons.gov.uk/peoplepopulationandcommunity/populationandmigration/internationalmigration/bulletins/longterminternationalmigrationprovisional/yearendingjune2023> accessed 27 February 2024.

<sup>5</sup> *ibid.*

<sup>6</sup> Madeleine Sumption, Peter William Walsh, Ben Brindle, ‘Net migration to the UK’ *The Migration Observatory* (22 January 2024)

<https://migrationobservatory.ox.ac.uk/resources/briefings/long-term-international-migration-flows-to-and-from-the-uk/> accessed 27 February 2024.

route to settlement, in which case, they will go on to switch into another migration category (i.e. work or family). The ONS figure is, therefore, not the most appropriate barometer to use when considering net migration to the UK.

5. It is worth mentioning that the UK is unusual in choosing to use net migration in policy debates as the primary measure for discussing migration levels. The ‘Impact of International Students in the UK’ published in September 2018 by MAC, notes:

*‘There has been much discussion as to whether the UK’s decision to include students in the net migration statistics is in line with practices in other countries. Much of this debate is quite misleading, primarily because the UK is unusual in being able to construct net migration statistics from a survey of people entering and leaving the country – the International Passenger Survey (IPS). Most countries do not have an equivalent of the IPS, nor do they have a net migration target and so the question whether students are included in it is not relevant in those countries’ policy debates.’<sup>7</sup>*

*‘If there is a desire to bring the UK approach to migration targets in line with other countries, it would not involve dropping students from the IPS figures but rather using a different data source such as grants of settlement, to develop political or operational targets.’<sup>8</sup>*

6. The economic benefit that student migrants bring to the UK, during their period of study, rose from £31.3 billion to £41.9 billion between 2018/19 and 2021/22, with every nine EU students and every 11 non-EU students generating £1 million worth of net economic impact for the UK economy over the duration of their studies.<sup>9</sup> Considering these figures on a community level, it can be seen that, on average, each of the 650 parliamentary constituencies in the UK is £58 million better off, per constituency, because of international students, meaning that international students, on average, have a positive net economic impact to the UK during their course of study,<sup>10</sup> despite not always remaining in the UK permanently to benefit from their contributions.

<sup>7</sup> Migration Advisory Committee, ‘Impact of international students in the UK’ (September 2018) <[https://assets.publishing.service.gov.uk/media/5b928cc1e5274a4242d1adf3/Impact\\_intl\\_students\\_report\\_publiched\\_v1.1.pdf](https://assets.publishing.service.gov.uk/media/5b928cc1e5274a4242d1adf3/Impact_intl_students_report_publiched_v1.1.pdf)> §3.24.

<sup>8</sup> *ibid*, §3.31.

<sup>9</sup> London Economics, ‘The benefits and costs of international higher education students to the UK economy’ (May 2023)

<<https://www.hepi.ac.uk/wp-content/uploads/2023/05/Full-Report-Benefits-and-costs-of-international-students.pdf>> accessed 27 February 2024; StudyGroup, ‘Study Group welcomes report on the economic impact of international students to the UK’ (16 May 2023)

<<https://www.studygroup.com/blog/economic-impact-of-international-students-to-the-uk-2023>> accessed 27 February 2024.

<sup>10</sup> Universities UK, ‘International students boost UK economy by £41.9 billion’ (16 May 2023)

<<https://www.universitiesuk.ac.uk/latest/news/international-students-boost-uk-economy>> accessed 27 February 2023.

7. Additionally, following the end of the transition period on 31 December 2020, there has been a gap in the UK's industry needs, particularly in certain specialties in the health and care sector,<sup>11</sup> and in a number of other sectors that were previously dominated by EU workers.<sup>12</sup> There has, therefore, been a significant increase in net migration since 2021 because of the rise in non-EU workers. The ONS, in their November 2023 data release, reported that: 'In the latest year the increase is mainly attributed to more people arriving long-term for work than the previous year (at 322,000 in the YE June 2023), mainly those on health and care work visas.'<sup>13</sup> The ONS went on to clarify: 'The increase in non-EU immigration in YE June 2023 was mainly driven by migrants coming for work (up to 33% from 23% in YE June 2022), largely attributed to those coming on health and care visas'.<sup>14</sup>
  
8. The Home Office's own statistics also show growth in long-term sponsored work routes following the introduction of the Skilled Worker and Health and Care Worker routes in December 2020.<sup>15</sup> Despite this, the number of nurses arriving from the EEA fell dramatically after the referendum and has not recovered since, including for specialties which were especially dependent on EEA staff.<sup>16</sup> It is, therefore, important to note that the temporary suppression of UK net migration figures, influenced by COVID-19 and the halt in free movement from the EU, changed when COVID-19 restrictions were lifted, which enabled international students to study in the UK again. The decline in EEA workers in the UK labour market necessitated migration to address the staffing crisis, primarily filled by non-EEA migrants.
  
9. The Home Secretary further claims that "this" Conservative Government's introduction of a points-based immigration system allows control over who comes to the UK. The UK's current points-based immigration system, introduced in January 2021, is predominantly based on the Australian immigration system, which was designed to *increase* migration. As is well known to all immigration lawyers, and as MAC's lengthy January 2020 report makes clear, the UK already had a points-based system before Brexit, and MAC recommended a more mixed system than was

<sup>11</sup> Martha McCarey and Mark Dayan, 'Has Brexit affected the UK's medical workforce?' *Nuffield Trust* (27 November 2022) <<https://www.nuffieldtrust.org.uk/news-item/has-brexite-affected-the-uk-s-medical-workforce>> accessed 27 February 2024.

<sup>12</sup> Carmen Aguilar Garcia, 'Non-EU workers outnumber EU ones in various UK sectors in post-Brexit shift' *The Guardian* (1 June 2023) <<https://www.theguardian.com/world/2023/jun/01/non-eu-workers-outnumber-eu-staff-in-various-uk-industry-sectors>> accessed 27 February 2024.

<sup>13</sup> Office for National Statistics, 'Long-term international migration, provisional' (23 November 2023) <[https://www.ons.gov.uk/peoplepopulationandcommunity/populationandmigration/internationalmigration/bulletins/longterminternationalmigrationprovisional/yearendingjune2023?trk=public\\_post\\_comment-text#non-eu-reason-for-migration](https://www.ons.gov.uk/peoplepopulationandcommunity/populationandmigration/internationalmigration/bulletins/longterminternationalmigrationprovisional/yearendingjune2023?trk=public_post_comment-text#non-eu-reason-for-migration)> accessed 27 February 2024, at 5. Non-EU reason for migration.

<sup>14</sup> *ibid*, at 1. Main points.

<sup>15</sup> Home Office, 'National statistics: Why do people come to the UK? To work' (29 February 2024) <<https://www.gov.uk/government/statistics/immigration-system-statistics-year-ending-december-2023/why-do-people-come-to-the-uk-to-work>> accessed 4 March 2024.

<sup>16</sup> Martha McCarey, Mark Dayan, Holly Jarman, Tamara Hervey, Nick Fahy, Dan Bristow, Scott L Greer, 'Health and Brexit: six years on' *Nuffield Trust* (December 2022) <<https://www.nuffieldtrust.org.uk/news-item/has-brexite-affected-the-uk-s-medical-workforce>> accessed 4 March 2024.

introduced,<sup>17</sup> which would rely on a minimum salary threshold for those individuals coming to the UK with a job offer and a points-based system for skilled workers coming to the UK *without* an arranged job.

10. The criteria for the current points-based system relate primarily to the job and not the applicant (save as to some points being available for those who hold a PhD). Much of the points test, therefore, varies by only one factor: salary. Those in shortage occupations are able to qualify for employer-sponsored visas despite having a lower salary. Therefore, although the UK system appears to be points-based, it does not operate as such in reality. The UK's points-based system ties applicants to a specific job prior to their entry to the UK, and offers very little flexibility in how points can be gained, making it very much employer-led. For example, in the Skilled Worker route, an applicant must score 70 points to qualify for the visa, but 50 of those points are mandatory and awarded for requirements such as speaking the English language at the required level (10 points), having a job offer (20 points), and the job being at the appropriate skill level (20 points). The only "tradeable" points relate to salary. As such, to qualify, all applicants have to meet the sponsorship requirements and go into a job paid at a certain level. Therefore, eligibility for the Skilled Worker visa is more easily understood by looking at the conditions under which an applicant qualifies, rather than counting the points needed.
11. Additionally, the revised system simply changed how applications would be treated, depending on new trade deals agreed with various countries post-Brexit, as opposed to a single standard for applicants to meet. Therefore, looking at the points-based system in practice, its beneficial impact has been modest.
12. The Home Secretary claims to 'prioritise the skills and talent we need to grow our economy'. The Home Secretary said that his restrictive plan, and the reduction in student dependants, would cut net migration to the UK by around 300,000. However, the impact of such a cut should be closely scrutinised.
13. In October 2022, the Confederation of British Industry (CBI) reported that three-quarters of UK companies were hit by labour shortages in the previous 12 months, with nearly half (46%) of those affected being unable to meet output demands, holding back growth.<sup>18</sup> We have below outlined the damaging impact of deterring Health and Care Workers, through banning their dependants.
14. The Home Secretary went on to claim that we have welcomed more than half a million people through humanitarian routes (from Ukraine, Hong Kong and Afghanistan). The Afghan Relocations and Assistance Policy (ARAP) was launched in April 2021, and the Afghan Citizens Resettlement

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<sup>17</sup> Migration Advisory Committee, 'A Points-Based System and Salary Thresholds for Immigration' (January 2020) <[PBS\\_and\\_Salary\\_Thresholds\\_Report\\_MAC\\_word\\_FINAL.pdf \(publishing.service.gov.uk\)](#)> accessed 3 March 2024.

<sup>18</sup> CBI, 'Three Quarters of UK Companies Hit by Labour Shortages in Last 12 Months' (11 October 2022) <<https://www.cbi.org.uk/media-centre/articles/three-quarters-of-uk-companies-hit-by-labour-shortages-in-last-12-months-cbipertemps/>> accessed 27 February 2024.

Scheme (ACRS) opened on 6 January 2022. However, despite the intended goals of both schemes, they have fallen short, as Afghan nationals represented the highest proportion of small boat arrivals to the UK in 2023.<sup>19</sup>

15. The Home Secretary claims that ‘the British people... absolutely rightly, want to reduce overall immigration numbers.’ However, in 2022, the National Centre for Social Research, in their research collected in the European Social Survey,<sup>20</sup> suggested that post-Brexit, a majority of respondents thought immigration was very positive for the UK economy (59%), enriched the UK’s cultural life (58%), and made the UK a better place to live (56%).<sup>21</sup> More recently, the data published by the Migration Observatory noted: ‘Both Ipsos and Kantar asked the public whether they thought that the number of immigrants coming to Britain should be increased or reduced. Data shows that there was a softening of attitudes from 2015 to 2022, with the percentage saying that immigration should be reduced dropping from 65% to 42% over these seven years. However, there has been a recent increase in the share of people saying that immigration should be reduced (from 42% in 2022 to 52% in 2023), which may be the result of the increase in political salience of immigration-related issues.’<sup>22</sup>
16. However, it cannot be argued that the British people want to reduce “overall” migration, as the most recent data suggests that there are finer nuances and the public sees both the pressures and benefits of migration. The balance of attitudes tilts towards seeing a positive, pragmatic case for many flows of migration in specific sectors – for example those working in health, social care and other roles with labour shortages.<sup>23</sup>

### **Removal of Health and Care Worker’s ability to bring dependants to the UK**

17. The Home Secretary announced in his speech that the Government ‘will stop overseas care workers bringing family dependants.’<sup>24</sup> The Home Office has [since confirmed](#) that care workers and senior care workers who were granted on the Health and Care Worker route under the rules in force

<sup>19</sup> Home Office, ‘Irregular Migration Statistics, year ending December 2023’ <<https://www.gov.uk/government/statistics/irregular-migration-to-the-uk-year-ending-december-2023/irregular-migration-to-the-uk-year-ending-december-2023>> accessed 3 March 2024.

<sup>20</sup> The National Centre for Social Research, ‘Post-Brexit British attitudes towards immigration are much more positive’ (2 November 2023) <<https://natcen.ac.uk/news/post-brexit-british-attitudes-towards-immigration-are-much-more-positive>> accessed 1 March 2024.

<sup>21</sup> *ibid.*

<sup>22</sup> Lindsay Richards, Mariña Fernández-Reino and Scott Blinder, ‘UK Public Opinion toward Immigration: Overall Attitudes and Level of Concern’ (*Migration Observatory*, 28 September 2023) <<https://migrationobservatory.ox.ac.uk/resources/briefings/uk-public-opinion-toward-immigration-overall-attitudes-and-level-of-concern/>> accessed 27 February 2024, at ‘Preferences for reduced migration are not new but appear to have softened in recent years’.

<sup>23</sup> Migration Observatory, ‘New polling by Kantar Public and Migration Observatory highlights British public’s contradictory attitudes to migration’ (15 June 2023) <<https://migrationobservatory.ox.ac.uk/press/new-polling-by-kantar-public-and-migration-observatory-highlights-british-publics-contradictory-attitudes-to-migration/>> accessed 27 February 2024.

<sup>24</sup> HC Deb 4 December 2023, vol 742, col 42.

before 11 March 2024 can have their dependants come to and remain in the UK for the remainder of their leave and during extensions of leave, including when changing employer, through to settlement.<sup>25</sup> This is reflected in the recent Statement of Changes, HC 556, laid on 19 February 2024, so long as the care worker or senior care worker has continuously had permission, sponsored in either of those occupation codes.<sup>26</sup>

18. Individuals in the UK on a different route who switch onto the Health and Care Worker route as a care worker or senior care worker after the rule change will not be permitted to bring dependants or sponsor any dependants who are already in the UK.<sup>27</sup>
19. The rationale provided for this change is to ‘end the abuse of the health and care visa’.<sup>28</sup>
20. The Home Secretary asserted in his speech that ‘[a]pproximately 120,000 dependants accompanied 100,000 care workers and senior care workers in the year ending September 2023’.<sup>29</sup> The Home Office calculates that this amounts to an estimated 1.21 dependants per main applicant.<sup>30</sup> It is likely the British public would find it entirely reasonable for a worker to bring one or two family members when moving to a new country. This might be a mother bringing a young child to whom she is the primary caregiver. It is difficult to square the truth of the statistics with the term ‘abuse’.
21. The Home Secretary went on to say that ‘[o]nly 25% of dependants are estimated to be in work, which means that a significant number are drawing on public services rather than helping to grow the economy’.<sup>31</sup> When asked in the House, he failed to clarify how many of the dependants he referred to are children.<sup>32</sup> In fact, the data does not distinguish between partners and children when counting dependants. Either the Home Secretary’s comments imply an outrageous suggestion that migrant children are a strain on the economy if not in employment or his point was misleading. It is inappropriate to suggest that bringing dependent family members, including children, at a time when the Rules permit it, when the Health and Care Worker is moving here for work purposes, amounts to abuse.

<sup>25</sup> Home Office, ‘Net migration measures – further detail’ (last updated 5 January 2024) <<https://www.gov.uk/government/news/fact-sheet-on-net-migration-measures-further-detail>> accessed 10 January 2024.

<sup>26</sup> Statement of Changes to the Immigration Rules, HC 556, laid on 19 February 2024, APP SW3 inserting SW 29.1A and APP SW5 inserting SW 32A.2.

<sup>27</sup> *ibid.*

<sup>28</sup> HC Deb 4 December 2023, vol 742, col 42.

<sup>29</sup> *ibid.*

<sup>30</sup> Home Office, Legal Migration Statement 4<sup>th</sup> December 2023 - Estimated Immigration Impacts (December 2023) <<https://assets.publishing.service.gov.uk/media/6581835023b70a0013234bcd/Legal+Migration+Statement+4th+December+2023+-+Estimated+Volume+Impacts.pdf>> accessed 10 January 2024 (‘Home Office Estimated Impacts’), §9.

<sup>31</sup> HC Deb 4 December 2023, vol 742, col 42.

<sup>32</sup> HC Deb 4 December 2023, vol 742, col 46.

22. The notion that dependants are a strain on public services is a fallacy. A condition of no recourse to public funds is attached to grants of leave to enter or remain as a partner or child of a care worker,<sup>33</sup> which will only be lifted on a discretionary basis if there are particularly compelling circumstances.<sup>34</sup> It is senseless to suggest that migrants do not contribute to the growth of our economy. Migrants pay taxes, rent property, and support UK businesses. The Government has provided no assessment of the economic impact of a non-working dependant in the UK. The Home Secretary's statement is not supported by any evidence.
23. The reality is that these measures will have two potential consequences for prospective applicants: they will have to choose to be separated from their families or they will be deterred from applying to work in the UK as a care worker or senior care worker. Both of these outcomes would be detrimental to these migrants, their families, and to the UK's already crippling social care sector, and those for whom they care, as opposed to preventing imagined 'abuse'.

### *Separation of families*

24. A measure which would prevent 100% of care workers and senior care workers from bringing dependants to the UK would undoubtedly mean some migrant workers leave their families behind in their country of origin. Deliberately separating children from their parents is unjustifiable. The House of Lords Justice and Home Affairs Committee reported as recently as 2023 that a period of just six to nine months of separation from a parent can be detrimental to a child, harming their long and short term educational attainment but also harnessing 'profound feelings of anxiety and circular worries about their family members as well as feelings of loneliness, displacement, guilty and self-doubt'.<sup>35</sup> Technological means of communication can worsen the harm. The Committee received evidence that 'many children become overwhelmed by the conflicting emotions of wanting to be with their loved one, even if it is through a computer or mobile phone screen, and the devastation of knowing they are so far away while doing so'.<sup>36</sup> It is unconscionable that our Government would implement a measure that could cause such serious harm to children and is fundamentally contrary to their best interests.

### *Deterrent impact*

25. Alternatively, it is foreseeable that prospective applicants might be deterred from coming to the UK as a care worker or senior care worker by these measures due to the difficulty of leaving

<sup>33</sup> Immigration Rules, Appendix Skilled Worker, SW 36.3.

<sup>34</sup> UKVI, 'Guidance on applying to change your permission' (updated 10 January 2024) <<https://www.gov.uk/government/publications/application-for-change-of-conditions-of-leave-to-allow-access-to-public-funds-if-your-circumstances-change/guidance-on-applying-to-change-your-permission>> accessed 5 March 2024.

<sup>35</sup> Justice and Home Affairs Committee, 'All families matter: An inquiry into family migration' (HL Paper 144, 1st Report of Session 2022–23) <<https://committees.parliament.uk/publications/34107/documents/188323/default/>> accessed 28 February 2024, §15.

<sup>36</sup> *ibid*, §18.



dependants behind. This is concerning, since the adult social care sector is already suffering an extreme shortage of workers – in 2022/23, 9.9% of social care jobs were vacant.<sup>37</sup> It should be noted that this is an improvement on the 10.6% vacancy rate recorded in 2021/22, which may be attributable to care work becoming eligible for work visas, as providers describe that recruiting staff from overseas has helped resolve shortage issues.<sup>38</sup>

26. These workforce pressures cause various difficulties. Staff shortages inevitably impact the availability of care.<sup>39</sup> This is likely to be exacerbated in the near future by the predicted increase in demand for social care.<sup>40</sup> A lack of capacity in social care services can impact the healthcare sector generally. For example, the Care Quality Commission ('CQC') found that care providers were struggling to accept hospital referrals which can result in patients needing to stay in hospital for longer than necessary, taking up valuable hospital beds.<sup>41</sup> Surely, this is not beneficial for the United Kingdom.
27. Relatedly, resource pressures are already making it difficult to achieve and maintain sufficient standards of care.<sup>42</sup> Deterring overseas workers could therefore mean that the quality of adult social care in the UK further decreases. Moreover, the Adult and Social Care Committee observed that 'as service and workforce pressures increase, it seems certain that pressures on unpaid carers to provide care, whether they want to or not, will also increase.'<sup>43</sup> This could have a gendered impact as unpaid care is more likely to be shouldered by women than men.<sup>44</sup>

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<sup>37</sup> Simon Bottery, 'Vacancies are falling but social care still needs a long-term workforce plan' *The Kings Fund* (24 July 2023) <<https://www.kingsfund.org.uk/blog/2023/07/vacancies-falling-but-social-care-still-needs-long-term-workforce-plan>> accessed 10 January 2024.

<sup>38</sup> *ibid*; Mithran Samuel, 'Adult social care vacancy numbers fall slightly from all-time high but still top 150,000' *CommunityCare* (12 July 2023) <<https://www.communitycare.co.uk/2023/07/12/adult-social-care-vacancy-numbers-fall-slightly-from-all-time-high-but-still-top-150000/>> accessed 10 January 2024; Care Quality Commission, 'The state of health care and adult social care in England 2022/23' (2023)

<[https://www.cqc.org.uk/sites/default/files/2023-10/20231030\\_stateofcare2223\\_print.pdf](https://www.cqc.org.uk/sites/default/files/2023-10/20231030_stateofcare2223_print.pdf)> accessed 28 February 2024 ('CQC Report 2023') page 110.

<sup>39</sup> Migration Advisory Committee, 'Adult Social Care and Immigration: A Report from the Migration Advisory Committee' (April 2022)

<[https://assets.publishing.service.gov.uk/media/626930c5d3bf7f0e7e4fe2dc/E02726219\\_CP\\_665\\_Adult\\_Social\\_Care\\_Report\\_Web\\_Accessible.pdf](https://assets.publishing.service.gov.uk/media/626930c5d3bf7f0e7e4fe2dc/E02726219_CP_665_Adult_Social_Care_Report_Web_Accessible.pdf)> accessed 28 February 2024, page 20.

<sup>40</sup> *ibid*, page 28.

<sup>41</sup> CQC Report 2023, page 105.

<sup>42</sup> House of Commons Library, 'Adult social care workforce in England' (Commons Library Research Briefing, 14 November 2023) <<https://researchbriefings.files.parliament.uk/documents/CBP-9615/CBP-9615.pdf>> accessed 28 February 2024, page 13.

<sup>43</sup> Adult Social Care Committee, 'A "gloriously ordinary life": spotlight on adult social care' (HL 2022-23, HL Paper 99) <<https://committees.parliament.uk/publications/31917/documents/193737/default/>> accessed 28 February 2024, §30.

<sup>44</sup> Office for National Statistics, 'Unpaid care by age, sex and deprivation, England and Wales: Census 2021' (13 February 2023)

28. Care staff are dangerously overworked as a result of workforce strains.<sup>45</sup> The Levelling Up, Housing and Communities Committee found poor wellbeing and morale to be a ‘very important factor driving the low retention of staff’.<sup>46</sup> By deterring overseas workers from the UK’s care sector, the Government will create a circular problem. The social care workforce will be further understaffed, leading to increased stress for existing workers, which increases the likelihood they will leave the profession, thereby exacerbating the shortage problem.
29. Plugging the gap with overseas recruitment is not the only answer to the social care sector’s issues. As MAC has noted, ‘properly funding social care to allow improvements in pay and conditions is ultimately the key to addressing these workforce difficulties’.<sup>47</sup> Nonetheless, the availability of the international workforce has assisted, as acknowledged by Skills for Care. Introducing the ban on dependants would row back on that assistance due to the likely deterrent impact it would have, which would be detrimental to our vital social care sector. Arguably, these problems are of greater detriment to the “British public” than allowing workers to be accompanied by their partner and children.
30. There is further no guarantee that the current number of people working in the care sector can be maintained if those workers are not permitted to sponsor their dependants to join them in the UK to continue their family life. Head of Social Care at UNISON said:

*Care companies couldn’t function without migrant care workers. Firms have to recruit from overseas because the government’s done nothing to solve the care staffing crisis... The ban on families means overseas care staff will be much less likely to come to work in the UK. The few that do will be more isolated and at even greater risk of exploitation.*<sup>48</sup>

31. Skills for Care noted that 82% of adult social care staff were female, and almost half of employees under the age of 25 left their job in the first year of employment.<sup>49</sup> This would suggest that a significant number of those working in the adult care sector are likely to be women with a

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<https://www.ons.gov.uk/peoplepopulationandcommunity/healthandsocialcare/socialcare/articles/unpaidcarebygesexanddeprivationenglandandwales/census2021>> accessed 10 January 2024.

<sup>45</sup> CQC Report 2023, page 97.

<sup>46</sup> Levelling Up, Housing and Communities Committee, ‘Long-term funding of adult social care’ (HC 19, 2022-23) <<https://committees.parliament.uk/publications/23319/documents/170008/default/>> accessed 5 March 2024, §106.

<sup>47</sup> Migration Advisory Committee, ‘Adult Social Care and Immigration: A Report from the Migration Advisory Committee’ (April 2022) <[https://assets.publishing.service.gov.uk/media/626930c5d3bf7f0e7e4fe2dc/E02726219\\_CP\\_665\\_Adult\\_Social\\_Care\\_Report\\_Web\\_Accessible.pdf](https://assets.publishing.service.gov.uk/media/626930c5d3bf7f0e7e4fe2dc/E02726219_CP_665_Adult_Social_Care_Report_Web_Accessible.pdf)> accessed 28 February 2024, page 6.

<sup>48</sup> Unison, ‘Migrant family ban makes no sense without proper reform of social care, says UNISON’ (30 January 2024) <<https://yorks.unison.org.uk/2024/01/30/migrant-family-ban-makes-no-sense-without-proper-reform-of-social-care-says-unison/>> accessed 28 February 2024.

<sup>49</sup> Skills for Care, ‘Our position on workforce capacity’ <<https://www.skillsforcare.org.uk/About-us/Our-policy-positions/Capacity/Our-position-on-workforce-capacity.aspx>> accessed 28 February 2024.

dependent child or children. Skills for Care further noted that in 2022 to 2023, there were, on average, 152,000 vacancies in the adult care sector on any given day, with a turnover rate of 30%.<sup>50</sup> This would suggest that the UK needs to retain the current number of care workers, in the absence of a readily available, domestic workforce, as vacancies remain high compared to the wider UK economy.<sup>51</sup> Although the Government recently announced new qualifications and investment in apprenticeships to help encourage employment in the sector, nothing was said about the sector continuing to operate on minimum wage and the impact this has on a long-standing, domestic skill gap in this sector.<sup>52</sup> With the UK ageing population on the rise, the demand for social care is only rising and is expected to continue to rise.<sup>53</sup> Therefore, preventing social care workers from bringing their dependants to the UK is likely to result in a further decline of crucial staff in the health and care sector.

### **Requirement for sponsors who are care providers to be regulated by the Care Quality Commission**

32. Additionally as part of the measures to ‘end the abuse of the health and care visa’, the Home Secretary announced that the Home Office ‘will require care firms in England to be regulated by the Care Quality Commission in order to sponsor visas’.<sup>54</sup>
  
33. This requirement would not remarkably alter the current rules on regulation. The Health and Social Care Act 2008 makes it an offence for persons who carry out a ‘regulated activity’ in England to do so without being registered with the CQC.<sup>55</sup> Moreover, the sponsor licence application process entails a check that organisations are registered with a regulatory body if they are so required, and a review of the organisation’s previous inspection report.<sup>56</sup> Regulated activities are contained in Schedule 1 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014, and include an extensive list of activities including personal care, accommodation for persons who

<sup>50</sup> *ibid.*

<sup>51</sup> Adult Social Care Committee, ‘A “gloriously ordinary life”: spotlight on adult social care’ (HL 2022-23, HL Paper 99) <<https://committees.parliament.uk/publications/31917/documents/193737/default/>> accessed 28 February 2024.

<sup>52</sup> Department of Health and Social Care, ‘Government sets out plans to develop the domestic care workforce’ (10 January 2024)

<<https://www.gov.uk/government/news/government-sets-out-plans-to-develop-the-domestic-care-workforce>>

accessed 28 February 2024; Unison, ‘Government must ditch ‘catastrophic’ plans for migrant care workers, say UNISON and the National Care Forum’ (22 December 2023)

<<https://southwest.unison.org.uk/news/2023/12/government-must-ditch-plans/>> accessed 28 February 2024.

<sup>53</sup> Centre for Ageing Better, ‘Our Ageing Population - The State of Ageing 2023-24’

<<https://ageing-better.org.uk/our-ageing-population-state-ageing-2023-4#:~:text=A%20growing%20older%20population%201%20The%20older%20population,making%20up%2018%25%20of%20the%20population.%20More%20items>> accessed 28 February 2024.

<sup>54</sup> HC Deb 4 December 2023, vol 742, col 42.

<sup>55</sup> Health and Social Care Act 2008, s 10(1).

<sup>56</sup> Home Office, ‘Workers, Temporary Workers and Students: guidance for sponsors. Appendix A: supporting documents for sponsor licence applications (Version 10/23)

<[https://assets.publishing.service.gov.uk/media/651e859f5f7e680014fabd78/Sponsor-guidance\\_Appendix-A\\_10-23.pdf](https://assets.publishing.service.gov.uk/media/651e859f5f7e680014fabd78/Sponsor-guidance_Appendix-A_10-23.pdf)> accessed 10 January 2024.

require care and nursing care.<sup>57</sup> It is difficult to conceive that a care home would be carrying out exclusively non-regulated activities since its purpose is to provide personal and nursing care to those who require it, which are clearly regulated activities.

34. Despite this, the Home Office has found that 22% of main applicants in England between January and June 2023 were for sponsors unable to be matched to the CQC register of regulated businesses. However, by the Home Office’s own admission, ‘data imperfections and potential differences in the organisational level data captured by each dataset could bias this match rate downwards’; ‘[t]he six-month period used may also not reflect the non-match rate over a longer time-period’; and, importantly, the data analysis included both in and out of country applicants.<sup>58</sup> So, the 22% figure cannot legitimately be related to net migration, despite the Home Office’s conclusions. Therefore, it is unclear whether this measure will have any of the impacts the Home Secretary claims it will.

### **Increased salary threshold for Skilled Workers**

35. The Home Office intends to increase the income salary threshold for eligibility to be sponsored as a Skilled Worker by almost 50%, from £26,200 to £38,700 per year. This is ‘in line with the median full-time wage’ for jobs at RQF Level 3 and above. Health and Care Workers will be exempt from the new salary level, and migrants who are already in the UK as a Skilled Worker before the rules change will be exempt from the new salary level, including when they change sponsor, extend, or settle.
36. Realistically, this measure is unlikely to have a drastic impact on ‘net migration’ figures. Home Office statistics show that only around 30% of Skilled Worker visa grants in the year ending June 2023 were for non-healthcare occupations.<sup>59</sup> Analysis by the Migration Observatory found that the majority of migrants in the remaining occupations already earn above the new salary threshold.<sup>60</sup> Indeed, the Home Office has forecast that only 13% of workers will be impacted by the change.<sup>61</sup>
37. The impact for employers in the minority, who currently offer salaries that are substantially less than the new threshold, will be detrimental. Occupations in this cohort include Butchers, Chefs, and Restaurant and Catering Managers, for which earnings at the 75<sup>th</sup> percentile were £28,000 per annum.<sup>62</sup> Increasing the salary threshold as sharply as proposed will have a disproportionate impact on the hospitality sector – businesses are unlikely to have the ability to increase salaries by 35%, considering the issues already being faced by the hospitality industry during and following COVID-19

<sup>57</sup> The Health and Social Care Act 2008 (Regulated Activities) Regulations 2014, Sch 1.

<sup>58</sup> Home Office Estimated Impacts, §34.

<sup>59</sup> *ibid*, §9.

<sup>60</sup> The Migration Observatory, ‘How will the new salary thresholds affect UK migration?’ (6 December 2023) <<https://migrationobservatory.ox.ac.uk/resources/commentaries/how-will-new-salary-thresholds-affect-uk-migration/>> accessed 23 January 2024.

<sup>61</sup> Home Office Estimated Impacts, §48.

<sup>62</sup> The Migration Observatory, ‘How will the new salary thresholds affect UK migration?’ (6 December 2023) <<https://migrationobservatory.ox.ac.uk/resources/commentaries/how-will-new-salary-thresholds-affect-uk-migration/>> accessed 23 January 2024.

and the end of the transition period. The hospitality sector currently has severe staff shortages – there were 109,000 vacancies in accommodation and food services for the period from November 2023 to January 2024.<sup>63</sup> The Government will severely restrict access to the international workforce for hospitality businesses by introducing this new threshold. These consequences are not proportionate to the aim of reducing net migration figures by such a minute amount.

38. The MAC also notes given, for example, that Health and Care Workers must generally work for the NHS, an NHS supplier, or in adult social care, by exempting Health and Care Workers, the ‘government appears to be exempting itself from any salary thresholds which would require an increase in pay for publicly funded workers and therefore an increase in funding for these public services. This widening divide poses an increased risk of exploitation for lower-paid occupations, such as care workers, as the gap between salary thresholds for private and publicly funded occupations becomes larger.’<sup>64</sup>

### **Replacing the Shortage Occupation List**

39. The Home Office is set to replace the Shortage Occupation List (‘SOL’) with a new ‘Immigration Salary List’ (‘ISL’) and end the 20% going rate salary discount for shortage occupations.<sup>65</sup>
40. This latter announcement appears to follow recommendations made by MAC in October 2023. It recommended that the SOL be abolished if the Government opposes allowing low-wage employers to pay below the general threshold for the Skilled Worker route, and, if it is not abolished, the list should be renamed the ‘Immigration Salary Discount List’, to ‘correctly reflect its function’.<sup>66</sup>
41. Additionally, the Home Secretary announced that he would ask MAC to ‘review the composition of the list in line with the increased salary thresholds’. Indeed, he has now done so, in a letter dated 17 January 2024, in which he asks for a ‘rapid review’ - ‘to consider which occupations from the current SOL and/or MAC’s October 2023 recommended SOL (converted to their SOC 2020 equivalents) should be temporarily included on an initial ISL from April 2024 ahead of a wider review, which the Government will commission in the near future’.<sup>67</sup> MAC undertook to complete the review, with the caveat that due to time constraints it would be unable to undertake the usual stakeholder

<sup>63</sup> Office for National Statistics, ‘Dataset VACS02: Vacancies by industry’ (16 January 2024) <<https://www.ons.gov.uk/employmentandlabourmarket/peoplenotinwork/unemployment/datasets/vacanciesbyindustryvacs02>> accessed 4 March 2024.

<sup>64</sup> Rapid Review, page 8.

<sup>65</sup> Home Office, ‘Net migration measures – further detail’ (last updated 5 January 2024) <<https://www.gov.uk/government/news/fact-sheet-on-net-migration-measures-further-detail>> accessed 10 January 2024.

<sup>66</sup> Migration Advisory Committee, ‘Review of the Shortage Occupation List’ (October 2023) <[https://assets.publishing.service.gov.uk/media/651557b86dfda600148e37ba/Review\\_of\\_the\\_Shortage\\_Occupation\\_List\\_2023.pdf](https://assets.publishing.service.gov.uk/media/651557b86dfda600148e37ba/Review_of_the_Shortage_Occupation_List_2023.pdf)> accessed 29 February 2024 (‘MAC Review of SOL 2023’), page 129.

<sup>67</sup> Migration Advisory Committee, ‘MAC commissioned to rapid review new immigration salary list’ <<https://www.gov.uk/government/publications/mac-commissioned-to-rapid-review-new-immigration-salary-list>> accessed 29 January 2024.

consultation.<sup>68</sup> The lack of opportunity for consultation is alarming. In making their previous recommendations, MAC made a public call for evidence and analysed responses from various stakeholders, from the manufacturing industry to the arts.<sup>69</sup> They have been denied this opportunity in this review.

42. Nevertheless, in its Rapid Review, MAC has said the redefining of the general threshold for occupations from the 25th to the 50th percentile ‘will mean that for many occupations, particularly at the RQF3-5 level, even the ISL-reduced threshold will be above the salaries paid for the vast majority of workers in that occupation. For example, veterinary nurses (SOC 2020 code 3240), which are not on a national pay scale, have a median salary of £24,400 and therefore, even if placed on the ISL, would struggle to use the SW route given the ISL threshold would be £30,960. The new general threshold in effect will mean that the SW route becomes unavailable for many occupations.’<sup>70</sup> Furthermore abolition of the going rate discount, to pay below the 25th percentile, which MAC recommended be removed to avoid the exploitation of migrants, makes far less sense with the increase of occupation-specific thresholds to the 50th percentile, ‘as half of all workers in an occupation earn less than the median and this does not obviously lead to undercutting and exploitation.’<sup>71</sup> While it has recommended the inclusion of 21 non-Health and Care Worker occupations on the ISL, MAC has recommended the government ask MAC to provide advice on the benefits of ISL; only then can MAC carry out a major review of the ISL: ‘It is not feasible to carry out a major review of which occupations to include on the list in advance of agreement of the benefits of the ISL.’<sup>72</sup>
43. The SOL is significant for reasons outside of net migration. People seeking asylum in the UK can apply for permission to work here if they have been waiting for more than 12 months for a decision on their application.<sup>73</sup> If granted, permission is only to work in occupations that are on the SOL.<sup>74</sup> Any rash changes the Home Office makes to the SOL will have significant impacts on anyone with this considerably restrictive permission to work, unless those conditions are altered. Removing an individual’s right to work has obvious financial, health and welfare impacts. For a person seeking asylum, the ability to work can improve their inclusion as well as prevent potential exploitation.<sup>75</sup> Therefore, this needs urgent consideration by the Home Office, and the Home Office should publish further detail on what these changes mean for individuals seeking asylum. MAC recommended in its

<sup>68</sup> *ibid.*

<sup>69</sup> Migration Advisory Committee, ‘Review of the Shortage Occupation List: Annexes’ (October 2023) <[https://assets.publishing.service.gov.uk/media/651558a36a423b0014f4c52a/Review\\_of\\_the\\_Shortage\\_Occupation\\_List\\_2023\\_Annexes.pdf](https://assets.publishing.service.gov.uk/media/651558a36a423b0014f4c52a/Review_of_the_Shortage_Occupation_List_2023_Annexes.pdf)> accessed 29 February 2024.

<sup>70</sup> Rapid Review, page 8.

<sup>71</sup> *ibid.*, pages 8 to 9.

<sup>72</sup> *ibid.*, page 9.

<sup>73</sup> Immigration Rules, part 11B, paragraph 360.

<sup>74</sup> Immigration Rules, part 11B, paragraph 360D.

<sup>75</sup> Lift the Ban Coalition, ‘Lift the Ban: Why Giving People Seeking Asylum the Right to Work is Common Sense’ <<https://www.refugee-action.org.uk/wp-content/uploads/2020/07/Lift-The-Ban-Common-Sense.pdf>> accessed 29 February 2024.

2023 SOL Review, which it reiterated in its Rapid Review, that individuals seeking asylum be able to work in any job eligible for the Skilled Worker route.

44. Additionally, for Creative Workers, MAC recommended removal of reference to the occupation needing to be on the SOL and to remove the labour market test.<sup>76</sup>

### **Increasing the Minimum Income Requirement for family visas**

45. It is unclear how the new Minimum Income Requirement (MIR) for family applications (i.e. spouse visas) will impact the net migration figure in 2024. According to the ONS, the net migration figure in the YE June 2023 was 672,000.<sup>77</sup> However, based on the Home Office's most recent immigration system statistics, only a total of 81,203 of those who entered the UK were due to family-related visa grants, and three-quarters of these grants were issued to partners of British citizens and settled non-British nationals.<sup>78</sup> It is also fair to assume that at least some of those settled persons and British citizens would have earned above the proposed MIR. Therefore, these measures are punitive for a small but important group of individuals within the "net migration" figure, whose applications are made on the basis of a fundamental aspect of their human rights—their family life ties.
46. This change would mean that it will be easier for sponsored individuals to bring their dependants to the UK, than it will be for British citizens to sponsor their partners. For example, a commonwealth citizen with a grandparent who was born in the UK or Islands, applying on the basis of UK ancestry, would only need to show 'that there will be adequate maintenance and accommodation for the applicant, the person with UK Ancestry, and any other dependants in the UK, without recourse to public funds.'<sup>79</sup>
47. For example, a High Potential Individual (i.e. an individual who has been awarded a qualification by an eligible foreign university) if they have been living in the UK with permission for 12 months or longer on the date of application will not need to show any funds for their partner or child.<sup>80</sup> If they have been living in the UK for less than 12 months, the maintenance requirement to be met by dependants on the High Potential Individual route is £285 for a partner, £315 for a child, and £200 for each additional child (providing the Skilled Worker is not applying at the same time), and these savings would only need to be available for 28 consecutive days.<sup>81</sup>

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<sup>76</sup> Rapid Review, page 9.

<sup>77</sup> Office for National Statistics, 'Long-term international migration, provisional: year ending June 2023' (23 November 2023)

<<https://www.ons.gov.uk/peoplepopulationandcommunity/populationandmigration/internationalmigration/bulletins/longterminternationalmigrationprovisional/yearendingjune2023#net-migration>> accessed 29 February 2024.

<sup>78</sup> Home Office, 'Why do people come to the UK? For family reasons' (29 February 2024)

<<https://www.gov.uk/government/statistics/immigration-system-statistics-year-ending-december-2023/why-do-people-come-to-the-uk-for-family-reasons>> accessed 1 March 2024.

<sup>79</sup> Immigration Rules, Appendix UK Ancestry, UKA 33.1.

<sup>80</sup> Immigration Rules, Appendix High Potential Individual, HPI 17.1.

<sup>81</sup> Immigration Rules, Appendix High Potential Individual, HPI 17.3 and 17.5.

48. These figures are, comparatively, far more affordable than the proposed (and already existing) financial requirement which would need to be met by British citizens or settled persons in the UK, with more lenient provisions in respect of the duration of its availability and to whom the money belongs. By contrast, a British citizen who studied at the same foreign university overseas as the High Potential Individual, and wished to return to the UK with their non-British partner, must show that they have salaried employment in the UK starting within three months of their partner's return to the UK if they wish to rely on salaried employment. A British citizen or settled person would need to meet the MIR of the proposed £29,000 in the first increase to the MIR, six months prior to the submission of the spouse visa application. Alternatively, they would need to show cash savings of at least £88,500, for six months, as only cash savings above £16,000 can be counted towards the MIR threshold,<sup>82</sup> since that is the level of savings at which a person generally ceases to be eligible for income related public funds. This is calculated by taking the MIR (in this case, £29,000) multiplying it by 2.5 (i.e. the number of years of granted leave), and then adding the minimum of £16,000.<sup>83</sup> If the MIR rises to £38,700 in its final increase, the cash savings required will be £112,750. Though there are ways to combine cash savings with other sources of income, the stark contrast in the financial requirements is unjustified.
49. Earlier this year, the Home Office announced that the increase to the MIR will be implemented in three stages. In spring 2024, the MIR threshold will be raised to £29,000 (which is the 25<sup>th</sup> percentile of earnings for jobs at the skill level RQF3), followed by an increase to £34,500 (the 40<sup>th</sup> percentile), and a final increase to £38,700 (the 50<sup>th</sup> percentile and also the level at which the General Skilled Worker threshold is set) in 2025. The Home Secretary states that this figure has been chosen as the new Skilled Worker salary threshold because it represents the median full-time salary for this category of jobs. He has provided no rational basis to apply the same threshold to family visas. Despite the staggered implementation of the MIR increase, many British and settled sponsors will greatly struggle to meet the MIR of £29,000, and most will struggle to meet the final figure of £38,700, which more than doubles the current threshold, and is significantly above the inflation rate of £25,500, according to the Bank of England's [inflation calculator](#). The *Legal migration statement: estimated immigration impacts* published in December 2023 notes that:
- At the current MIR level of £18,600, 75 to 80% of the UK working population (based on ASHE earnings data) meet the MIR level. At the higher MIR of £29,000, all else being constant, around 50 to 60% of the UK working population could meet the threshold based on earnings alone.*<sup>84</sup>
50. Unfortunately, to date, there is no published Home Office Equality Impact Assessment (EIA) to consider the possible equality implications of the proposed income threshold increase on different affected groups. The public sector equality duty places a legal requirement on the Home Office to have due regard to certain equality considerations when exercising its functions and ensure that policies are not discriminatory and that they advance equal opportunities for people.<sup>85</sup> In the

<sup>82</sup> Appendix FM, paragraph E-ECP.3.1.(b).

<sup>83</sup> *ibid.*

<sup>84</sup> Home Office Estimated Impacts, §53.

<sup>85</sup> Equality Act 2010, s 149.



absence of a published EIA, it is difficult to properly assess the detrimental effect these changes are likely to have on people with different protected characteristics, and to what extent, if at all, the compliance with the duty is met. However, recently, the Migration Observatory published their commentary on the proposed MIR increase, noting that around 50% of UK employees earn less than the £29,000 threshold, and 70% earn less than £38,700.<sup>86</sup> The data also suggests that there is disparity along ethnic lines, with Pakistani, Bangladeshi, and Black/African/Caribbean British citizens being disproportionately affected by the proposed MIR threshold.<sup>87</sup> This will, inevitably, result in the separation of families and a longer (and consequently more expensive) route to settlement, as those unable to meet the MIR will need to apply for leave under ‘exceptional circumstances’ under the ten-year route to settlement.

51. Although recent figures suggest that employees in the UK are earning a gross median pay of £2,253 per month,<sup>88</sup> this does not account for disadvantaged cohorts, such as women, lone parents, young people, ethnic minorities, and those living outside of London or the South East, as the monthly figure is only a reflection of the central tendency. For example, the provisional data shows that in 2023, female part-time workers earned a gross median income of £12,876 and their male counterparts earned £12,262.<sup>89</sup> Lone-parents with young children are far more likely to fall beneath the MIR threshold of £29,000 and receipt of relevant public funds (i.e. Child Tax Credit and Child Benefit) does not exempt a lone-parent from meeting the financial requirement under Appendix FM.
52. There are also both age and regional discrepancies in earnings. The provisional data suggests that there is a £182 difference in the weekly median income between a full-time employee in London and a full-time employee in North East England, with the latter’s gross median weekly pay being £614.<sup>90</sup> This is only for adults whose pay is unaffected by absences (i.e. sickness).<sup>91</sup> Similarly, the gross median weekly pay for full-time employees in the UK, aged 18 to 21, is £441, bringing young adults and recent graduates well beneath the MIR threshold, even in its first stage of implementation.<sup>92</sup> It is, therefore, not difficult to see that many individuals engaged in full-time

<sup>86</sup> Migration Observatory, ‘Family fortunes: The UK’s new income requirement for partner visas’ (1 February 2024) <<https://migrationobservatory.ox.ac.uk/resources/commentaries/family-fortunes-the-uks-new-income-requirement-for-partner-visas/>> accessed 29 February 2024.

<sup>87</sup> *ibid.*

<sup>88</sup> Statista, Median monthly pay of employees in the United Kingdom from July 2014 to August 2023 (16 January 2024) <<https://www.statista.com/statistics/1224824/median-monthly-pay-of-employees-uk/>> accessed 29 February 2024.

<sup>89</sup> Office for National Statistics, ‘Earnings and hours worked, all employees: ASHE Table 1’ (1 November 2023) <<https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/datasets/allemployeesashtable1>> accessed 29 February 2024, Table 1.7a ‘Annual Pay - Gross 2023’.

<sup>90</sup> House of Commons Library, ‘Average earnings by age and region’ (18 December 2023) <<https://commonslibrary.parliament.uk/research-briefings/cbp-8456/>> accessed 29 February 2024.

<sup>91</sup> Office of National Statistics, ‘Employee earnings in the UK’ (1 November 2023) <<https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/bulletins/annualsurveyofhoursandearnings/2023>> accessed 29 February 2024.

<sup>92</sup> House of Commons Library, ‘Average earnings by age and region’ (18 December 2023) <<https://commonslibrary.parliament.uk/research-briefings/cbp-8456/>> accessed 29 February 2024.

employment, outside of London and the South East, will be unable to meet the MIR threshold in spring 2024, and will be far less likely to meet the MIR increases set for the future.

53. As most of the data on salaries considers the median gross income, it is worth looking more closely at a few of the professional sectors in the UK. For example, even when considering the, generally, better paid legal sector, we can see that a significant portion of corporate trainee solicitors, in their first and second years of training will earn less than £29,000, and certainly less than £38,700.<sup>93</sup> Both trainee and qualified legal aid lawyers earn less than the going corporate rate, with over 8% of qualified solicitors and heads of department earning less than £19,999, and over 16% earning between £20,000 - £29,999.<sup>94</sup> The Law Society recommends that trainees in the legal field are paid £26,068 in London, and £23,122 outside of London,<sup>95</sup> which would greatly disadvantage recent graduates in the sector and those making a career change, regardless of their age. Therefore, many trainee and qualified solicitors, particularly those remunerated at legal aid rates, will fall below the £29,000 threshold, and far more will fall below the £38,700 threshold.
54. The scenario is no less concerning for those employed by the NHS and junior staff employed by the Home Office. An NHS employee working below Band 5, or in Band 5 with less than two years' tenure, would be unable to meet the MIR of £29,000.<sup>96</sup> The same data shows that an NHS employee working below Band 6, or in Band 6 with less than five years' tenure, would be unable to meet the proposed MIR of £38,700. It is worth noting that this Band includes highly-educated and qualified individuals who are not necessarily at the "start" of their career (i.e. charge nurses, midwives, and paramedics). Similarly, many junior Home Office staff earn less than £29,000, with a larger cohort earning less than £38,700.<sup>97</sup>
55. The UK already had more restrictive family migration policies than their other high-income counterparts, such as Germany and Australia, where there is no earning requirement for a family visa.<sup>98</sup> One rationale for income requirements for family visas is to prevent families from becoming a "burden" on public funds. Income thresholds in other high-income countries, such as the Netherlands, therefore, require sponsors to meet an annual income equal to the minimum salary

<sup>93</sup> The Lawyer, 'Trainee and newly qualified solicitor salaries' (3 November 2023)

<<https://www.thelawyer.com/trainee-newly-qualified-salaries-uk-law-firms/>> accessed 29 February 2024.

<sup>94</sup> Legal Aid Practitioners Group, 'We are Legal Aid - Findings from the 2021 Legal Aid Census' (March 2022)

<<https://lapg.co.uk/wp-content/uploads/We-Are-Legal-Aid-Findings-from-the-2021-Legal-Aid-Census-Final.pdf>> accessed 29 February 2024.

<sup>95</sup> The Law Society, 'Recommended minimum salary for trainee solicitors and SQE candidates' (31 July 2023)

<<https://www.lawsociety.org.uk/topics/hr-and-people-management/recommended-minimum-salary-for-trainee-solicitors-and-sqe-candidates>> accessed 29 February 2024.

<sup>96</sup> 'Find NHS Pay Bands 2023/24' <<https://www.nhsbands.co.uk/>> accessed 29 February 2024.

<sup>97</sup> Home Office, 'Home Office: structure and salaries, 2023' (last updated 7 November 2023)

<<https://www.gov.uk/government/publications/home-office-structure-and-salaries-2023>> accessed 29 February 2024.

<sup>98</sup> German Missions in the UK, 'D-Visa: Joining my German spouse or registered partner'

<<https://immi.homeaffairs.gov.au/visas/getting-a-visa/visa-listing/partner-offshore/provisional-309#Eligibility>> accessed 29 February 2024.

subject to taxes.<sup>99</sup> Alternatively, other high-income countries, such as Denmark, require sponsors to not have claimed public funds in the three years prior to their family visa application.<sup>100</sup> Both of these approaches are far less restrictive and punishing than that which is proposed by the Home Secretary, who has not defined what constitutes a “burden” to the state despite stating in the fact sheet released in December 2023, that the policy’s aim was to ensure people can financially support their families.<sup>101</sup> British citizens and settled individuals residing outside of London, recent graduates, women, and those working part-time or on a lower income, will be disproportionately impacted by this change.

*Increased Article 8/exceptional circumstances claims:*

56. Individuals who do not meet the MIR can still sponsor family visas if the applicant can prove that there are ‘exceptional circumstances which could render refusal of entry clearance or leave to remain a breach of Article 8 of the European Convention on Human Rights, because such refusal could result in unjustifiably harsh consequences for the applicant, their partner or a relevant child, or another family member whose Article 8 rights it is evident from that information would be affected by a decision to refuse the application.’<sup>102</sup> Considering the average UK salary is less than the proposed MIR, it is likely that the number of family applications on the basis of exceptional circumstances will increase with the introduction of this measure. This may also result in many Home Office caseworkers examining whether the ‘financial requirement is met through taking into account the sources of income, financial support or funds set out in paragraph 21A(2) of Appendix FM-SE’.<sup>103</sup>
57. Home Office guidance instructs caseworkers that the threshold of ‘exceptional circumstances’ is a high one,<sup>104</sup> which requires applicants to submit robust applications and compelling evidence. Such applications are more complex and time consuming for decision-makers than standard family visas (where the MIR can be met so no consideration of exceptional circumstances is required), which will only worsen the present backlog and capacity issues within Home Office operations.

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<sup>99</sup> IND, ‘Independent, sustainable and sufficient income’

<<https://ind.nl/en/independent-sustainable-and-sufficient-income#the-income-requirements>> accessed 29 February 2024.

<sup>100</sup> NYI, ‘New to Denmark’

<<https://www.nyidanmark.dk/en-GB/Applying/Familie/Familiesammenforing/Aegtefaelle%20eller%20fast%20samlever>> accessed 29 February 2024.

<sup>101</sup> Home Office, ‘Net migration measures – further detail’ (last updated 5 January 2024)

<<https://www.gov.uk/government/news/fact-sheet-on-net-migration-measures-further-detail>> accessed 5 March 2024.

<sup>102</sup> Immigration Rules, Appendix FM, GEN 3.2.(1).

<sup>103</sup> *ibid*, GEN.3.1(1).

<sup>104</sup> Home Office ‘Family life (as a partner or parent) and exceptional circumstances’ page 63

<[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1157461/Family\\_life\\_as\\_a\\_partner\\_or\\_parent\\_and\\_exceptional\\_circumstances.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1157461/Family_life_as_a_partner_or_parent_and_exceptional_circumstances.pdf)> accessed 5 December 2023.

58. It is not clear what, if any, measures the Home Office has taken to manage this extra burden. The Family and Human Rights Unit, which is responsible for processing in-country applications for leave to remain in the UK on the parent, partner (ten-year), and private life routes, fee waivers, and in-country asylum intake is likely to face a significant increase in applications. The Unit is already facing severe pressure and delays, evidenced by the fact their service standard to process an application is currently 12 months.<sup>105</sup> The service standard for processing overseas applications for entry clearance on a family route is 24 weeks.<sup>106</sup> The likely increase in the complexity of applications would impact the speed at which decisions can be made, so it is foreseeable that this 24-week service standard may increase. This would have a harsh impact on the rights of individuals applying with sponsors who are already living in the UK to be united with their loved ones.
59. Individuals who are successful in applying on the basis of exceptional circumstances will be placed on a ten-year route to settlement.<sup>107</sup> So, they must make at least five applications over a ten-year period before potentially being granted indefinite leave to remain. This is in contrast to the five-year route to settlement, which individuals are granted leave under if they meet the MIR and requires three applications over a five-year period. The likely increase in individuals granted leave on the ten-year route would undoubtedly lead to an increase in the number of applications made to the Home Office over time, which compounds the issue of decision-making capacity.
60. Aside from the practical issues the Home Office must confront, the ten-year route has been proven to cause a multitude of harms to those on it, including children, as documented in research by IPPR, GMIAU, and Praxis. They found that individuals on the ten-year route face, as a direct result, financial troubles, employment issues, and mental and physical health problems.<sup>108</sup> Strikingly, it was found that children’s health suffered from the ten-year route, as well as their education and life prospects.<sup>109</sup> One example is that parents are unable to afford school trips or after-school activities, due to constantly needing to save for the next round of visa application fees, which can harm a child’s sense of belonging.<sup>110</sup> It is abundantly clear that the number of people on the ten-year route will rise with an increased MIR, including children. The Home Secretary has a statutory duty to safeguard and promote the welfare of children in the UK.<sup>111</sup> By introducing this measure, he will do the opposite. The Home Secretary will drive more families into states of severe uncertainty, permeating all aspects of their life: immigration status, finances, employment, health, and

<sup>105</sup> UK Visas and Immigration ‘Visa processing times: applications inside the UK’ (updated 19 February 2024) <<https://www.gov.uk/guidance/visa-processing-times-applications-inside-the-uk#family-visas>> accessed 4 March 2024.

<sup>106</sup> UK Visas and Immigration, ‘Visa processing times: applications outside the UK’ (updated 19 February 2024) <<https://www.gov.uk/guidance/visa-processing-times-applications-outside-the-uk>> accessed 4 March 2024.

<sup>107</sup> GEN 3.2.(3), Appendix FM Immigration Rules.

<sup>108</sup> Lucy Mort, Josephine Whitaker-Yilmaz, Marley Morris and Amanda Shah, ‘“A Punishing Process”: Experiences of People on the 10-year Route to Settlement’ (2 March 2023) <<https://www.ippr.org/articles/a-punishing-process>> accessed 1 March 2024.

<sup>109</sup> *ibid*, page 35.

<sup>110</sup> *ibid*.

<sup>111</sup> Borders, Citizenship and Immigration Act 2009, section 55.

well-being. This will hold more people back from contributing positively to our communities and economy.

### **A review of the Graduate route to prevent ‘abuse’**

61. The Home Secretary intends to commission the MAC to review the Graduate route to ‘prevent abuse, protect the integrity and quality of the UK higher education and ensure it works in the best interests of the UK.’<sup>112</sup> However, it is unclear what the ‘abuse’ is, to which the Home Secretary refers, as no additional details were provided. It is, therefore, further unclear what exactly the MAC will be reviewing, since the review relates to ‘abuse’ and thus, its scope ought not be extended to the existence of the route itself. Since its introduction in July 2021, the Graduate route has filled the gap left by the end of the post-study work visas, and has increased the UK’s attractiveness to students because of the work rights it grants post-study. In the YE December 2023, a total of 114,409 Graduate route extensions were granted to former students in the UK.<sup>113</sup> These international students pay their tuition fees at the international rate, in addition to their accommodation fees, thereby subsidising the higher education system the Home Secretary is seeking to ‘protect’, and boosting the UK economy by £41.9 billion.<sup>114</sup>
  
62. The Graduate route allows young graduates from UK higher education institutions to continue investing their skills and knowledge in the UK, after successfully completing their degree. Should the Graduate Route be abolished, the High Potential Individual (HPI) visa will remain in place for overseas students, permitting them to enter and spend two years in the UK (or three years if they have a PhD level qualification), with flexible access to most jobs (including self-employment, job seeking, and changing jobs) and the ability to sponsor eligible dependants. This would seemingly suggest that the Government values education overseas over domestic education, as the same benefits and incentives would not be afforded to domestic international students who completed their higher education at a UK university.
  
63. Recent data suggests that two out of three prospective postgraduates would be less likely to consider a UK Masters or PhD if the Graduate Route was cut.<sup>115</sup> Though any changes to the Graduate

<sup>112</sup> Home Office, ‘Net migration measures – further detail’ (last updated 5 January 2024)

<<https://www.gov.uk/government/news/fact-sheet-on-net-migration-measures-further-detail>> accessed 10 January 2024.

<sup>113</sup> Home Office, ‘Why do people come to the UK? For work reasons’ (29 February 2024)

<<https://www.gov.uk/government/statistics/immigration-system-statistics-year-ending-december-2023/why-do-people-come-to-the-uk-to-work>> accessed 1 March 2024.

<sup>114</sup> HEPI, Kaplan International Pathways, Universities UK International, London Economics, ‘International students boost UK economy by £41.9 billion’ (16 May 2023)

<<https://www.hepi.ac.uk/2023/05/16/international-students-boost-uk-economy-by-41-9-billion/>> accessed 1 March 2024.

<sup>115</sup> Find University, ‘How Much Would a Cut to the Graduate Route Cut Postgraduate Recruitment?’ (7 December 2023)

<<https://www.findauniversity.com/comment/10805/how-much-would-a-cut-to-the-graduate-route-cut-postgraduate-recruitment>> accessed 1 March 2024.

route will not likely result in immediate changes, Universities UK has said that the Graduate Route is an essential part of the UK's offer to prospective students, and that a number of jurisdictions competing with the UK for international student applications have a more attractive offering for global talent.<sup>116</sup> For example, Canada's system of postgraduate work permits is tied to length of study (ranging from eight months to three years) and it can also lead to permanent residence.<sup>117</sup>

64. Another important point to note is that although the number of people on the Graduate Route moving to work visas has increased (since the Graduate Route is designed to allow exactly that), more than 60% of people from both EU and non-EU countries, who moved from the Graduate Route to the Skilled Worker route in the YE June 2023, went on to work in the care sector.<sup>118</sup> This surpasses the number of out-of-country applications made for the care sector.<sup>119</sup> As such, the data suggests that a majority of students benefiting from the switch are going on to work in a sector the UK has historically struggled to conduct recruitment from its settled population.

## Conclusion

65. By announcing these changes, the Government has manufactured a narrative to address issues that do not exist. The Home Secretary's problematic reliance on the ONS' net migration figure for implementing drastic policy changes stems from the data inflating net migration, neglecting the eventual emigration expected from the predominantly temporary student cohort in the UK. The Home Secretary further claims to be addressing abuse, which is non-existent, such as in the case of legitimate dependants accompanying their immediate family members who have travelled to the UK on the Health and Care Worker route. These dependants contribute positively to the economy, pay taxes, and do not have recourse to public funds except in compelling circumstances. Post-study work visas, such as the Graduate route, incentivise international students who pay substantial tuition fees to then pursue employment in the UK, both enhancing our workforce and, often, plugging a skill gap. Introducing a requirement for care homes to register with the CQC is insufficient to end exploitation, given the existing regulatory framework in England and Wales.
66. Preventing care workers from bringing their dependants to the UK will result in family separation, especially affecting children, and discourage overseas workers from joining an already struggling workforce. The availability and quality of social care in the coming years will be affected, to the detriment of the UK's ageing population.

<sup>116</sup> Universities UK, 'Universities UK response to Home Secretary statement' (5 December 2023)

<<https://www.universitiesuk.ac.uk/latest/news/universities-uk-response-home-secretary>> accessed 1 March 2024.

<sup>117</sup> Government of Canada, 'Work or live in Canada after you graduate'

<https://www.canada.ca/en/immigration-refugees-citizenship/services/study-canada/work/after-graduation/about.html>> accessed 1 March 2024.

<sup>118</sup> Migration Observatory, 'International students entering the UK labour market' (30 January 2024)

<<https://migrationobservatory.ox.ac.uk/resources/commentaries/international-students-entering-the-uk-labour-market/>> accessed 1 March 2024.

<sup>119</sup> *ibid.*

67. The increased salary threshold will disproportionately and detrimentally impact certain sectors which are already facing recruitment and retention challenges, such as hospitality, for little gain to net migration. Updating the Shortage Occupation List in line with the MAC's recommendations, to prevent exploitation in lower paid industries, makes little sense alongside the increase to the salary threshold.
  
68. The increase to the Minimum Income Requirement for family migration has no rational basis. There will clearly be a disproportionate impact on protected groups and those living outside of London and the South East. Countless British and settled workers, including many lawyers, Home Office staff, and NHS staff, will be unable to sponsor their partner to live in the UK together. Furthermore, more families will be driven to make complex human rights based immigration applications, increasing the Home Office's workload, and placing families on longer routes to settlement, creating further financial insecurity and anxiety for these families. The economic repercussions of having more migrants with uncertain status for a longer period of time should not be overlooked.
  
69. Given the points outlined above, it is our view that the Home Secretary should reconsider the measures announced on 4 December 2023 with proper assessment of their forecasted impact, for the economy, for individuals' human rights, children's best interests, and for advancement of equality and elimination of discrimination.

Immigration Law Practitioners' Association (ILPA)

6 March 2024