

# Distortion of the ICT visa system

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Employment & Welfare: MW 451

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## Summary

1. Foreign companies who are established in the UK may move their existing employees to the UK without having to obtain a visa under the Tier 2 provisions for skilled workers from abroad (who are capped at 20,700 a year). Instead, they may be admitted in unlimited numbers under special Intra-Company Transfer (ICT) visas. Use of the ICT route has grown considerably since its inception, and this growth appears to be primarily the result of an increasingly liberal approach by the Home Office to the issuance of ICTs which has led to them being used predominantly for the purpose of third-party contracting. This practice is almost entirely confined to the IT industry. In fact, even within that sector, it is only a handful of large, mainly Indian, companies that are responsible for sponsoring the vast majority of ICTs in this way. Expanding the ICT route in this manner not only distorts the visa system, but it has a negative impact on the work opportunities of British IT workers and computer science graduates and undermines the integrity of the immigration system as a whole.

## Current ICT requirements

2. There are currently two types of ICT visa that can be issued:<sup>1</sup>
  - a. Long-term staff visa - For individuals brought into a role that requires previous experience working for the company. The minimum salary is £41,500 for applicants who have worked for the company for more than 12 months, and £73,900 for those who have worked for the company only for a shorter period.
  - b. Graduate trainee - For those brought into graduate trainee programmes for specialist roles. Applicants have to be recent graduates and need no more than three months' experience with the employer overseas. They can stay for up to 12 months and need be paid a minimum salary of only £23,000.
3. There used to be a short-term visa route which allowed a stay of up to three years, but it was disbanded in 2017.
4. ICT visas can be extended provided that the applicant is already in the UK. The maximum stay on an ICT

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1 Home Office <https://www.gov.uk/tier-2-intracompany-transfer-worker-visa>

visa for long-term staff earning more than £120,000 a year is nine years. For those earning less it is five years and one month.

The Home Office licenses organisations to sponsor ICT visa applications.<sup>2</sup>

## Recent changes to ICT criteria

5. The Migration Advisory Committee (MAC) first raised concerns about ICTs in 2009 and, among much else, strongly recommended that the Government consider improving enforcement and transparency around the ICT route to prevent it being used outside of its intended purpose. The government responded by blocking the use of the ICT route as a path to permanent residency and extending the necessary qualifying period for working with the company overseas to 12 months, but these modifications to the route did nothing to slow down the number being issued nor their use for third-party contracting.

6. In its second review of the Tier 2 visa system (December 2015)<sup>3</sup>, the MAC said that the conventional ICT route was economically beneficial for the UK, but highlighted serious concerns about third-party contracting and its undercutting of UK resident workers of equivalent quality. They said “if the government wishes to significantly restrict the numbers of visas issued to skilled migrants, there is a strong rationale for focusing on the numbers of migrant workers making third-party contracting use of the intra-company transfer route.” The committee made a number of recommendations including:

- a. Carrying out an in-depth review of the skills shortages within the IT sector and the impact of immigration on this
- b. Extending the qualifying period of having to work for the company overseas before being able to obtain an ICT from 12 months to two years.
- c. Creating a separate route for third-party contracting within the ICT framework.
- d. Requiring the sponsor to explain exactly why they want to bring the individual into the UK and the exact role they will be performing

They also considered a Resident Labour Market Test to the third-party contracting route and applying a limit on the proportion of Tier 2 migrants in each organisation, although it did not include these as recommendations in the report.

7. In response to the MAC report, new ICT rules came into effect in April 2017. The short-term ICT visa route was disbanded altogether and a health surcharge was made payable for ICTs for the first time. However, most MAC recommendation were not implemented, and certain restrictions were actually loosened including reducing to zero the time necessary to have worked overseas if earning above £73,900 and expanding the maximum number of graduate trainee ICTs within a company from five to 20. Consequently, the major deficiencies of the ICT visa route remain in place and there is seemingly little political will, if any, to rectify them.

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2 Home Office [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/715173/2018-06-11\\_Tier\\_2\\_5\\_Register\\_of\\_Sponsors.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/715173/2018-06-11_Tier_2_5_Register_of_Sponsors.pdf)

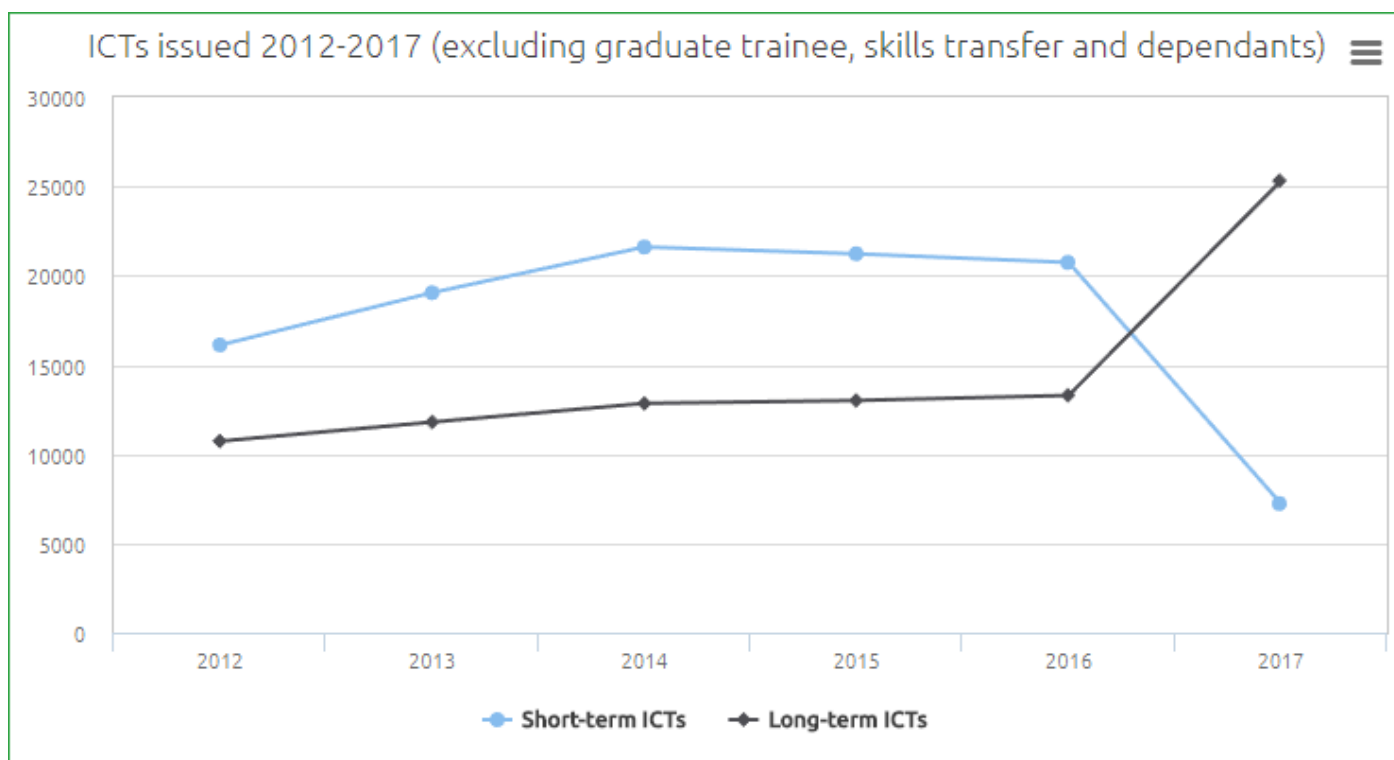
3 MAC Tier 2 report, 2016 [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/493039/Tier\\_2\\_Report\\_Review\\_Version\\_for\\_Publishing\\_FINAL.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/493039/Tier_2_Report_Review_Version_for_Publishing_FINAL.pdf)

## What is the problem?

8. In line with World Trade Organisation GATS protocols, ICTs must be permitted for up to three years and graduate trainee schemes for up to a year. The fact that the UK allows for certain ICT transferees to come for up to nine years therefore exceeds international obligations. Furthermore, the MAC does not consider third-party contracting as one of the original reasons for which the ICT visa route was established.<sup>4</sup> The Government's loosening of the criteria on which ICT visas can be issued has encouraged the use of this route by third-party contractors. It would be perfectly feasible under international law to prevent ICTs being used in such a way.

9. The short-term visa route was the means by which most client contract ICTs were issued until it was closed last year. However, closing the route did not significantly impact the number of ICTs issued overall. Instead, there was an upswing in the long-term ICTs issued which suggests that those who would otherwise have been sponsored as short-term ICTs were simply issued long-term ICTs instead (see fig.1)

Fig.1<sup>5</sup>



## Taxes and allowances

10. ICT transferees receive very favourable tax breaks and allowances that the MAC has identified as being beneficial to both the employer and worker, but which also make it cheaper to employ an immigrant worker than a resident one.<sup>6</sup> Under UK tax law, National Insurance contributions are not payable for the first 52 weeks of residence in the UK.<sup>7</sup> This applies to both employee and employer. There

4 MAC Tier 2 report, 2009 [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/257266/mac-august-09.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/257266/mac-august-09.pdf)

5 Home Office immigration statistics <https://www.gov.uk/government/publications/immigration-statistics-october-to-december-2017/why-do-people-come-to-the-uk-2-to-work>

6 MAC Tier 2 report, 2016 [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/493039/Tier\\_2\\_Report\\_Review\\_Version\\_for\\_Publishing\\_FINAL.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/493039/Tier_2_Report_Review_Version_for_Publishing_FINAL.pdf)

7 Home Office <https://www.gov.uk/tax-come-to-uk>

is anecdotal evidence that some ICTs are being brought into the UK for just short of this period and then being transferred elsewhere within the EU. This practice of moving ICTs around within the EU also means that some do not remain long enough in the UK to qualify for 'domiciled' status and are thus not responsible for income tax either.

11. Although tightened up in April 2017, ICTs can still receive an accommodation allowance as part of their salary. This is a maximum of 30% of salary for long-term ICTs and 40% for graduate trainees. In addition, business expenses for travel, accommodation and subsistence are exempt from income tax for the first 24 months of a posting. Giving evidence to the MAC, some partners suggested that the stated value of these allowances might exceed their actual value. The MAC concluded that "there is a high risk that these provisions are enabling employers to benefit from significant cost savings when employing intra-company transfers compared to UK workers."

### **Salary threshold**

12. The minimum salary for ICTs is currently £41,500. The MAC report (2015) decided that this was a suitable proxy for the earnings of senior managers and specialists. However, there are a number of problems with it:

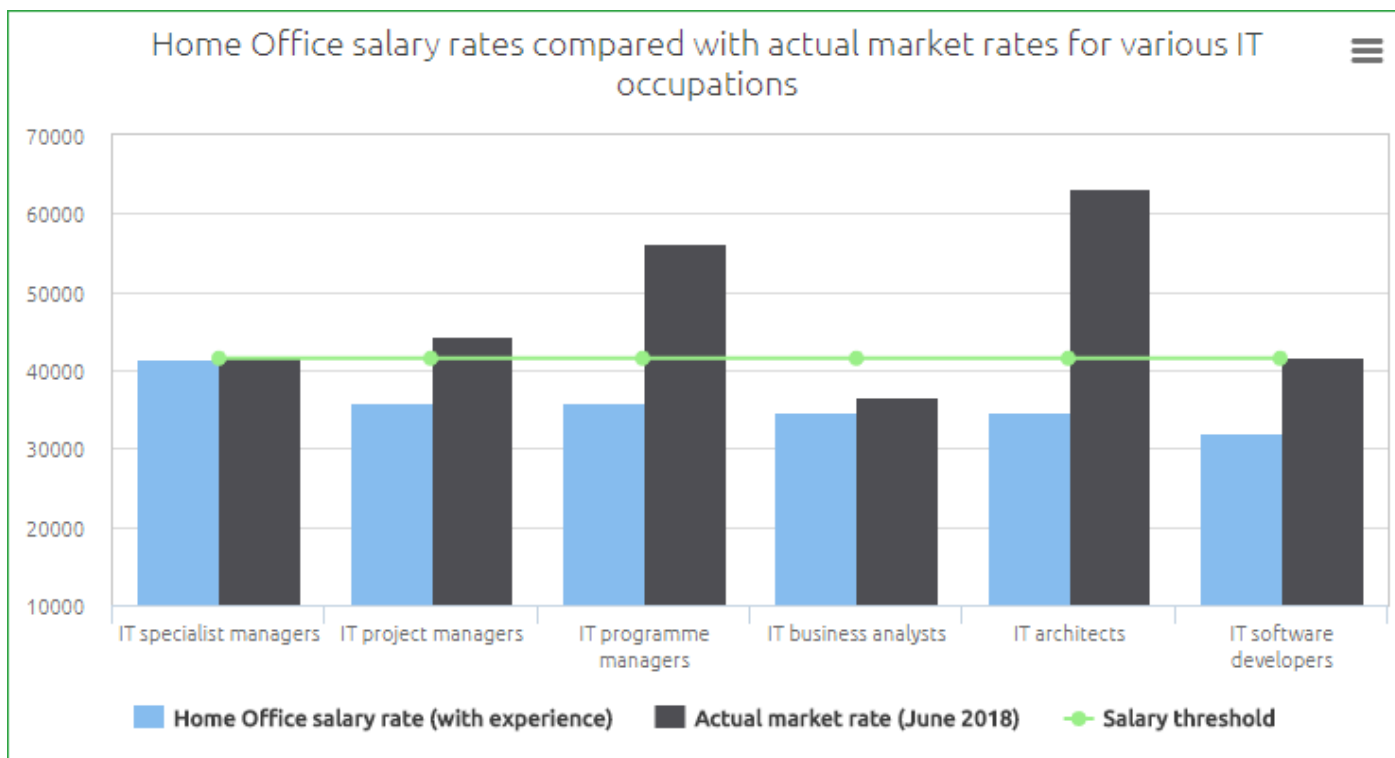
- a. The MAC determined this figure on the basis that it should apply to both short-term and long-term ICTs. It predicted that 72% of all third-party contracting ICTs would fall beneath £41,500 and thus be affected by the change. However, it has been shown above that the short-term route was closed entirely in 2017 and yet the number of ICTs issued overall was barely diminished, suggesting the threshold is too low to deter companies using ICTs in this way.
- b. Considering the ICT tax breaks mentioned above, a UK resident would have to be earning considerably more than £41,500 in order to obtain the same net pay as an ICT transferee (at least in their first year of residence).
- c. While matching quite closely the occupational salary rates established by the Home Office,<sup>8</sup> the threshold is not necessarily aligned with the actual UK labour market rate for a number of IT roles (see fig.2 below). This is in part due to the fact that consultancy type work (which is common among IT specialists) is generally paid higher than the going rate for a given occupation and this is not accounted for in Home Office calculations.<sup>9</sup>

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8 Immigration Rules Appendix J: codes of practice for skilled work <https://www.gov.uk/guidance/immigration-rules/immigration-rules-appendix-j-codes-of-practice-for-skilled-work>

9 MAC Tier 2 report, 2016 [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/493039/Tier\\_2\\_Report\\_Review\\_Version\\_for\\_Publishing\\_FINAL.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/493039/Tier_2_Report_Review_Version_for_Publishing_FINAL.pdf)

Fig.2<sup>10</sup>

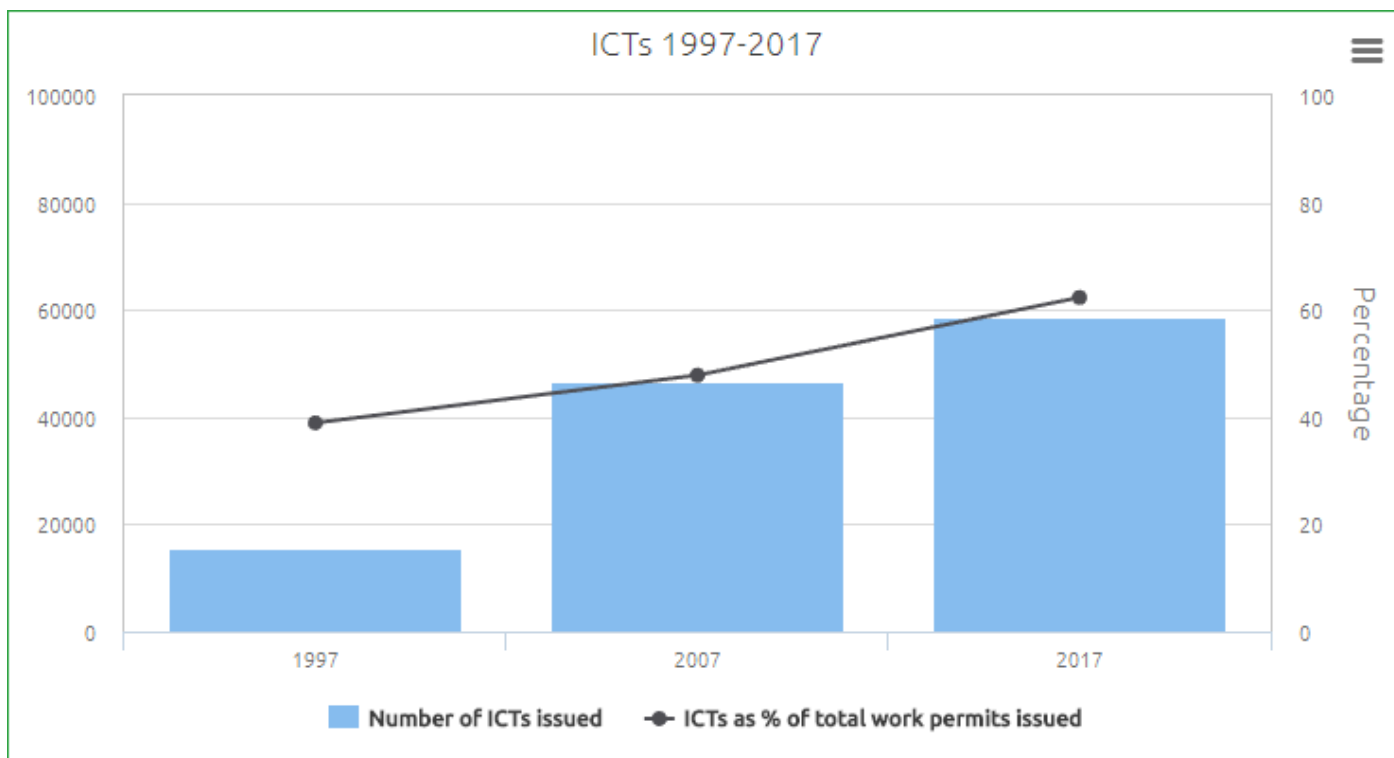


### Replacement for Tier 2 General

13. In 1992, 7,185 ICT visas were issued. This was 26.7% of all work permits issued in that year. In the twenty-five years since then, the number of work permits issued has gone up approximately threefold, while ICTs have increased by a multiple of about eight (see fig.3 below). As ICTs are unlimited and not conditional on a Resident Labour Market Test, it would seem that their increasing proportion of work permits is due to their being used by some companies as an alternative to applying for Tier 2 (General) visas which are restricted to 20,700 a year.

10 Market rates calculated from the average salary rates given for each occupation on the job websites indeed.com and payscale.com (12-13<sup>th</sup> June, 2018). Accessed from <https://www.indeed.co.uk/> and [https://www.payscale.com/research/UK/Country=United\\_Kingdom/Salary](https://www.payscale.com/research/UK/Country=United_Kingdom/Salary)

Fig. 3<sup>11</sup>



### Third-party contracting

14. The MAC identified this area of ICTs as being problematic and most in need of redress as client contract ICTs constitute the majority of all ICTs issued. The third-party contracting route involves multinational companies obtaining contracts (usually in the IT sector) from UK-based private companies or public sector organisations and delivering those contracts by bringing a workforce from another country (usually India – see fig.4 below) to the UK.

15. The MAC identified this use of the ICT route as providing much less positive economic impact than the conventional route. The salient points raised by the MAC are given below: <sup>12</sup>

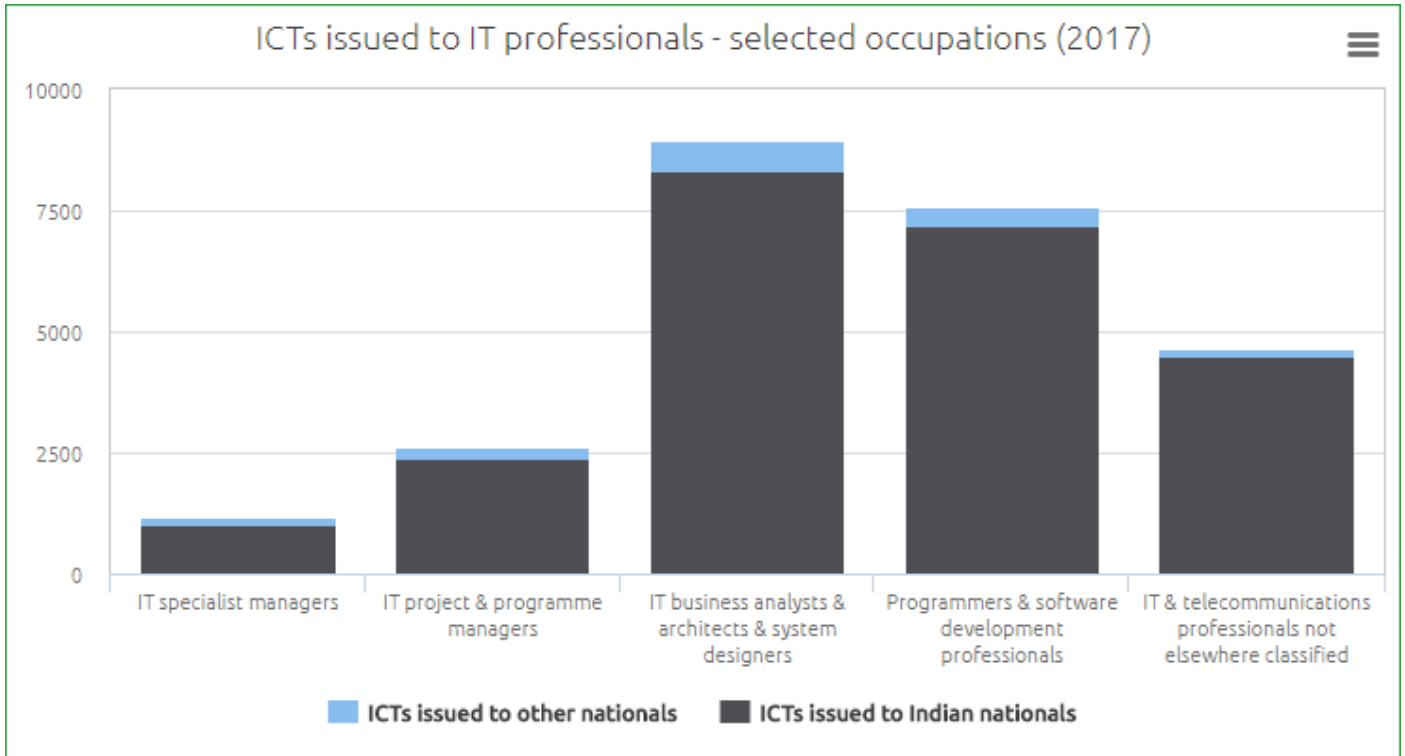
- a. “intra-company transferees coming in under a third-party contract are paid significantly less than within the conventional use of the route, suggesting they do not possess such highly specialised skills.” The median salary for the conventional long-term use of the ICT route was £70,000, whereas the median salary for third party long-term use of the route was only £47,652 (nearly a third lower).
- b. “there is undercutting of the domestic labour market in the sense that salaries being paid to intra-company transferees are below what would have to be paid to UK resident workers of equivalent quality.
- c. The MAC has “not seen evidence that the third-party contracting use of the intra-company transfer route is contributing to the stock of IT skills within the resident UK workforce.”

11 Combined data from MAC Tier 2 report, 2009 [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/257266/mac-august-09.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/257266/mac-august-09.pdf) and Home Office immigration statistics <https://www.gov.uk/government/publications/immigration-statistics-october-to-december-2017/why-do-people-come-to-the-uk-2-to-work>

12 MAC Tier 2 report, 2016 [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/493039/Tier\\_2\\_Report\\_Review\\_Version\\_for\\_Publishing\\_FINAL.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/493039/Tier_2_Report_Review_Version_for_Publishing_FINAL.pdf)

d. “inflows of IT workers of this magnitude... have been going on for years, suggesting a more structural skills issue in the UK.”

Fig.4<sup>13</sup>

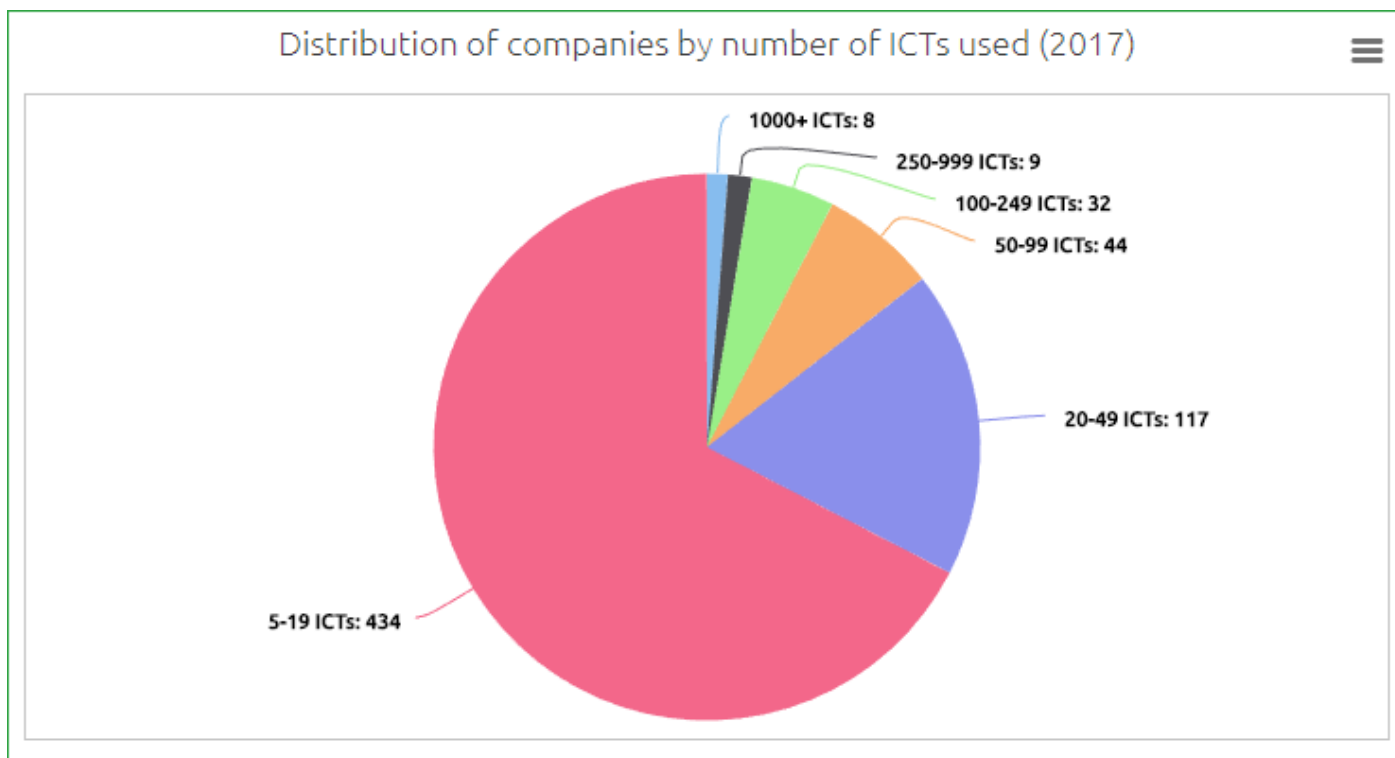


16. Data available for the period 2013-2017 show that only a handful of companies are responsible for a significant proportion of all ICTs issued. In 2017, Home Office Data shows that 39,303 ICTs were used in the period January 1st – December 31st (excluding dependents).<sup>14</sup> Of those, 35,385 (90%) were used by the 644 companies that sponsored five or more ICT visas. Only 8 of those companies used over 1,000 ICTs compared to 434 companies which used 5-19 ICTs (see fig.5).

13 Home Office immigration statistics <https://www.gov.uk/government/publications/immigration-statistics-october-to-december-2017/why-do-people-come-to-the-uk-2-to-work>

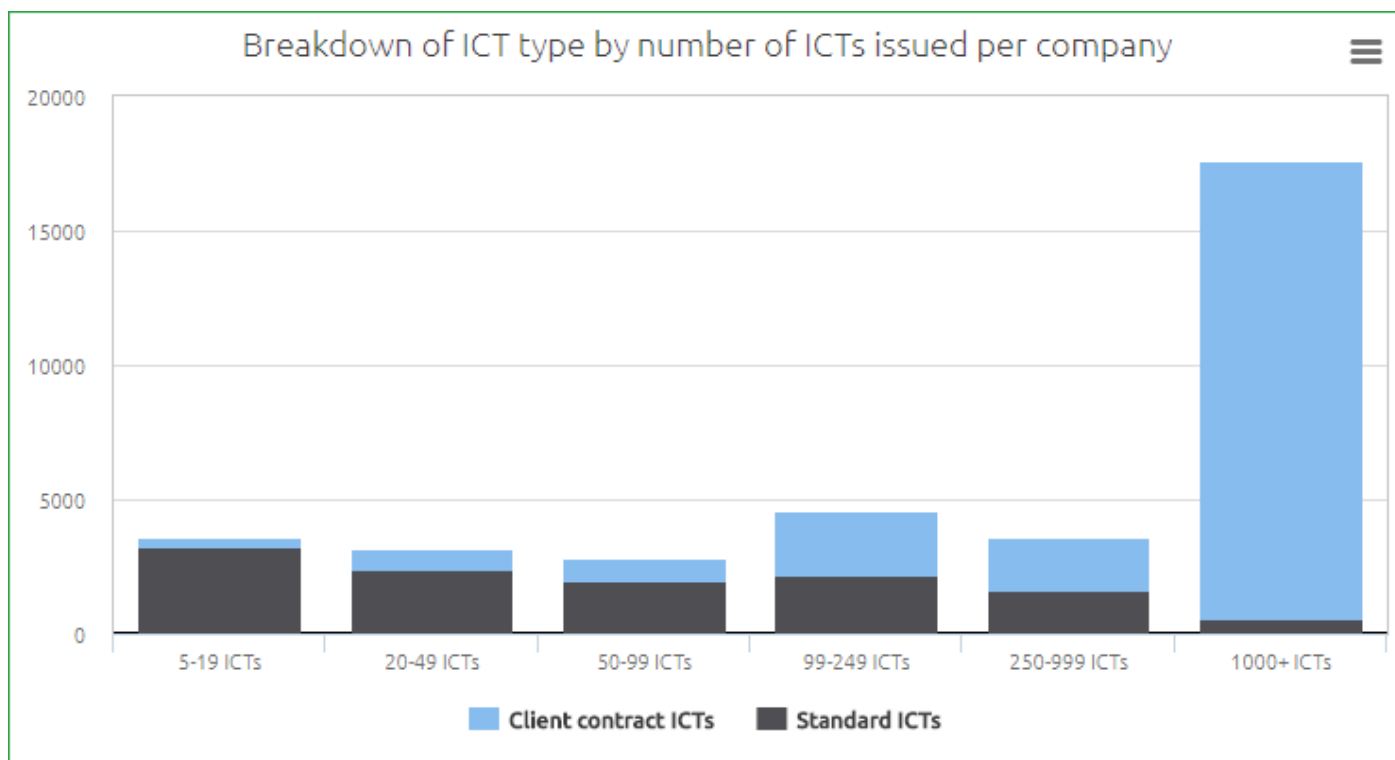
14 It is important to note that 32,848 of these were entry clearance visas, the remainder would have consisted of extensions to current ICT visas or transfers from other visa categories

Fig.5<sup>15</sup>



17. Of all ICTs issued by these 644 companies, 23,440 (66.2%) were for client contracts, of which 17,035 (72.7%) were used by the 8 companies using 1,000 ICTs or more. Fig.6 shows that there is a direct relationship between the scale of a company's issue of ICTs and the likelihood of their being used for the purpose of third-party contracting.

Fig.6<sup>16</sup>



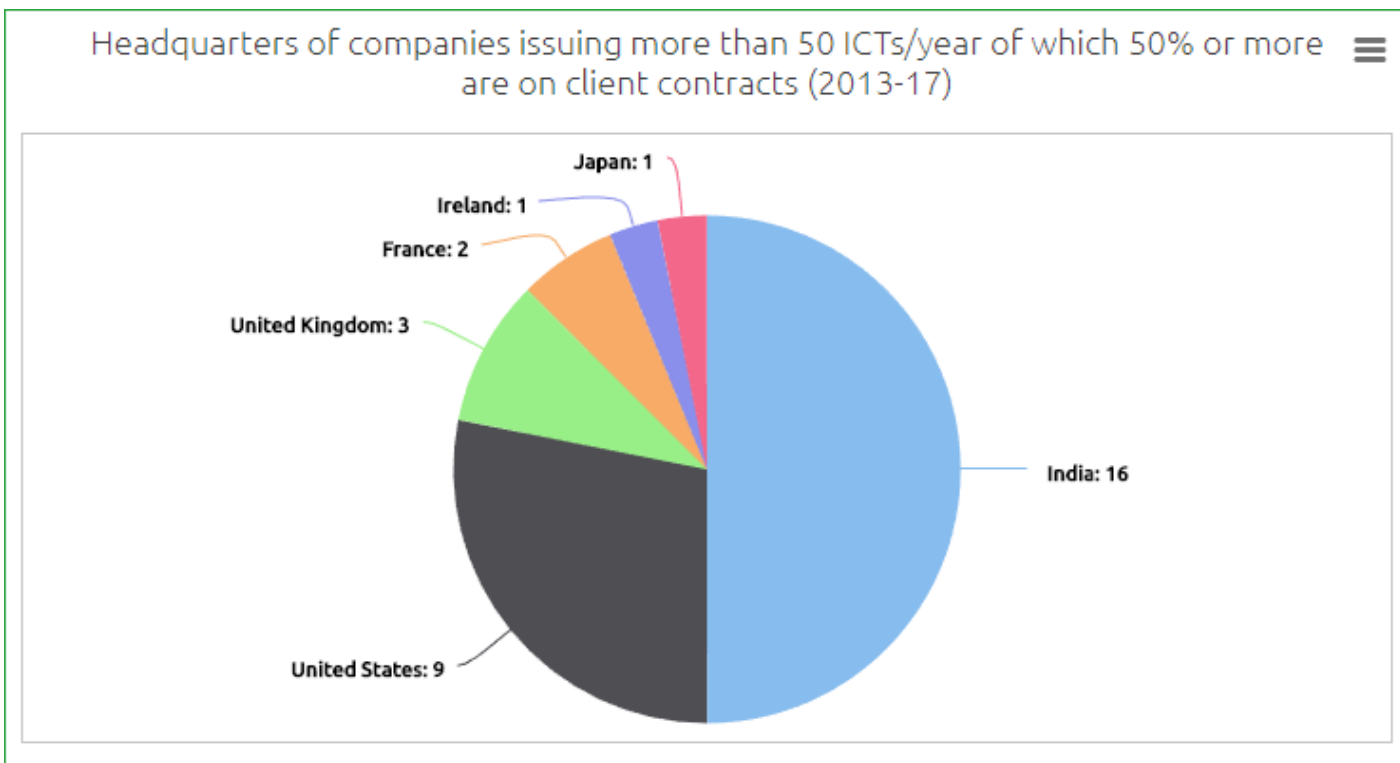
15 Data obtained from Home Office in response to FOI requests

16 Ibid.



18. Thus, not only are a handful of companies therefore responsible for a significant proportion of all third-party ICTs being issued, but of the 32 companies that consistently used at least 50 ICTs of which at least 50% were for third-party contracting in each year over the period 2013-17, half are headquartered in India (see Fig.7 below)

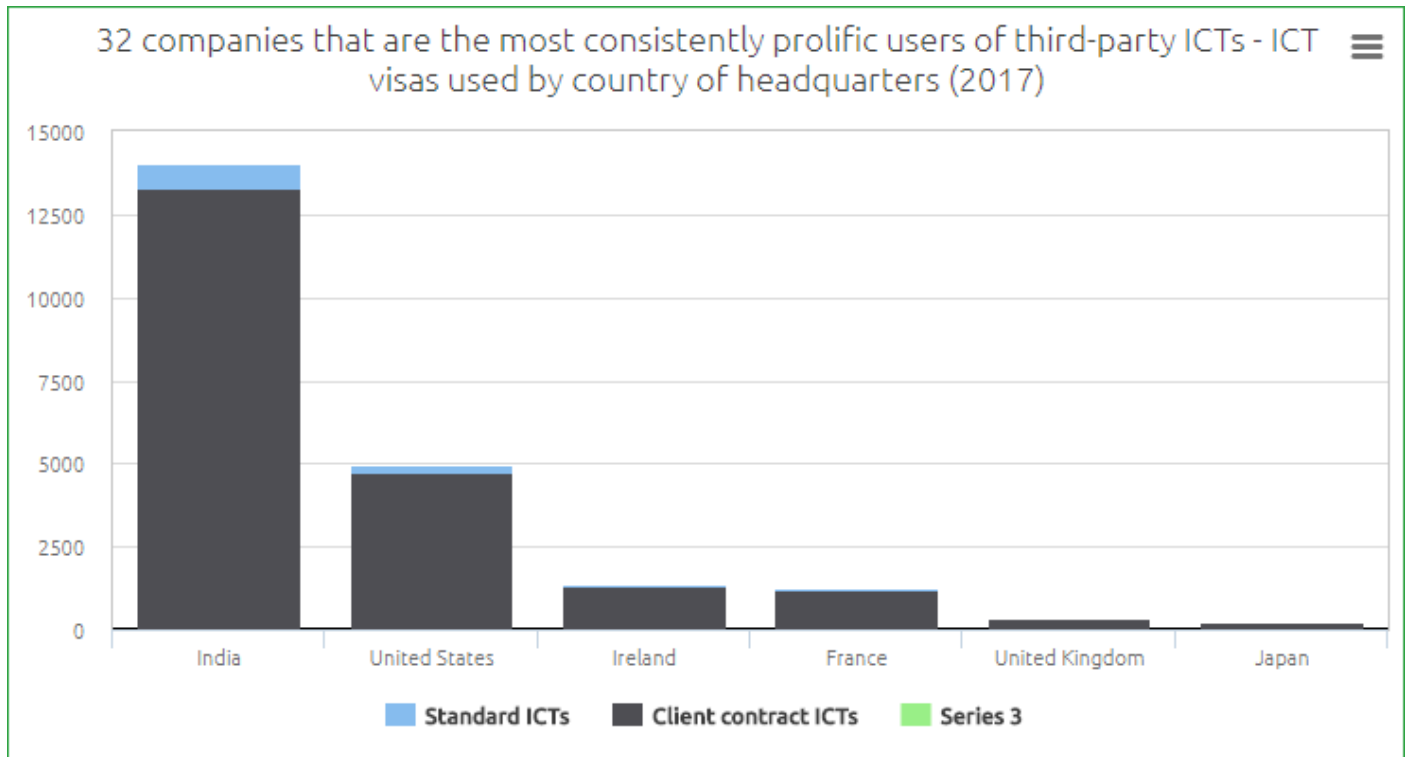
Fig.7<sup>17</sup>



19. Those 16 Indian companies issued 13,300 client contract ICT visas in 2017, That is just under a third of all ICT visas for all purposes issued that year (excluding dependents). The single-most prolific company was Tata Consultancy Services which used 6,285 ICTs overall, of which 6,205 (98.7%) were for third-party contracting (see Fig.8).

17 Data derived from data tables provided by the Home Office in response to FOI requests. A list of the 31 companies is provided in Annex A.

Fig.8<sup>18</sup>



## ICT visa as a path to settlement

20. Since 2010, the ICT visa has not been able to contribute towards obtaining indefinite leave to remain. However, of the 2011 cohort of those who first arrived in the UK on an ICT visa (the only cohort for which data is so far available), 3,979 had obtained settlement or leave to remain five years after receiving their visa.<sup>19</sup> It is likely that others may have done so since 2016 or will yet do so. If we applied this rate to subsequent cohorts entering the UK up to 2017,<sup>20</sup> then we can expect that tens of thousands of people who arrived on ICTs in the period 2012-17 would likely obtain settlement or leave to remain upon being here for five years. To this must be added those who might obtain settlement or leave to remain after being here for more than five years, including those whose ICT visa is valid for up to nine years. The route may not in theory contribute towards settlement, but the sheer numbers of ICTs being issued means that the numbers likely to end up settling are not insignificant.

## Recommendations

21. In order to reform the ICT system so that it is no longer possible to use it in the manner explored by this paper, a number of changes should be made to the system.

- a. The ICT salary threshold should be increased to more accurately reflect the going rate for IT workers in the UK labour market.

<sup>18</sup> Data derived from data tables provided by the Home Office in response to FOI requests.

<sup>19</sup> Home Office Migrant Journey Statistics <https://www.gov.uk/government/publications/statistics-on-changes-in-migrants-visa-and-leave-status-2016/statistics-on-changes-in-migrants-visa-and-leave-status-2016>

<sup>20</sup> In 2011, 40,644 people were granted entry clearance to the UK on an ICT visa. However, 11% of these had already been in the UK on an alternative visa route or another ICT and therefore were excluded from the 2011 cohort as they were not new migrants. The following calculations for 2012-17 are based on an assumption that the proportion of ICTs obtaining entry clearance who were first-time migrants remained the same over the whole period.

- b. Allowances should not be allowed to contribute towards the salary threshold.
- c. Third-party contractors must conduct a Resident Labour Market Test and fill as many positions as possible from that prior to sponsoring ICTs to make up the shortfall
- d. In the event that a role requires specialised in-company knowledge, a company must prove that there is no capacity within its UK-based operation to perform the function before sponsoring an ICT
- e. ICTs should pay income tax and National Insurance contributions regardless of how short the period for which they are in the UK
- f. Companies employing over 50% of their ICTs on client contracts should expect to be investigated annually by the Home Office to ensure that transferees are fulfilling the role stated on their visa applications

## Conclusions

22. The use of the ICT route primarily for third-party contracting is clearly at odds with the original intention of the scheme which was to provide flexibility for senior staff of international companies with HQ or branches in the UK.

23. Allowing contractors to put in low bids for business on the basis that they can bring in people from abroad at a lower cost clearly undercuts competitors with a domestic workforce and affects the wages of professionals in that sector generally.

## Annex A

Companies that issued 50 or more ICTs of which at least 50% were for third-party contracting in each year of the period 2013-17. ICT data from 2017 (all figures rounded to the nearest 5 by Home Office).

Company name	Country of HQ	Total ICTs used (2017)	Of which Client Contract ICTs (% of total)
Tata Consultancy Services	India	6285	6205 (98.7)
Cognizant Worldwide Ltd	US	2780	2720 (97.8)
Infosys Ltd	India	2030	1985 (97.8)
Wipro Technologies	India	1795	1690 (94.2)
Accenture (UK) Ltd	Ireland	1355	1300 (95.9)
Capgemini UK PLC	France	1175	1095 (93.2)
IBM UK Ltd	US	1135	1035 (91.2)
Tech Mahindra Ltd	India	1020	1005 (98.5)
HCL Great Britain Ltd	India	800	750 (93.8)
Sapient Ltd	US	375	370 (98.7)
Tata Elxsi Ltd	India	365	365 (100)
Syntel Europe Ltd	US	265	260 (98.1)
UST (Global) Private Ltd	US	235	230 (97.9)
Tata Technologies Europe Ltd	India	215	205 (95.3)
Mastek (UK) Ltd	India	210	210 (100)
NIIT Technologies Ltd	India	175	170 (97.1)
NTT Data UK Ltd	Japan	175	170 (97.1)
Virtusa UK Ltd	US	175	170 (97.1)
Mindtree Ltd	UK	160	155 (96.9)
Zensar Technologies (UK) Ltd	India	140	130 (92.9)
Sonata Software Ltd	India	125	125 (100)
Mphasis UK Ltd	India	120	115 (95.8)
Genpact (UK) Ltd	US	115	105 (91.3)
Hexaware Technologies UK Ltd	India	110	105 (95.5)
Capgemini Financial Services UK Ltd	France	105	105 (100)
Larsen & Toubro Infotech Ltd	India	105	105 (100)
ITC Infotech Ltd	UK	100	100 (100)
Chevron Energy Ltd	US	90	70 (77.8)
CSC Computer Sciences Ltd	UK	85	75 (88.2)
KPIT Technologies (UK) Ltd	India	80	80 (100)
Quality Engineering & Software Technologies (Europe) Ltd	India	65	55 (84.6)
HP Enterprise Services UK Ltd	US	50	30 (60)