



TONY BLAIR
INSTITUTE
FOR GLOBAL
CHANGE

EU Migration

Examining the
evidence and
policy choices

HARVEY REDGRAVE



RENEWING
THE CENTRE

Contents

Executive Summary **5**

Introduction **7**

The Story of EU Migration **9**

The Policy Choices Facing the UK in Negotiating
Free Movement Reform **19**

Conclusion **35**

Executive Summary

It is widely accepted that last year's referendum vote was at least partly driven by public anxiety about immigration. That anxiety is real and must be dealt with. But delivering a 'hard Brexit' is not the sole, or even the best way to do so. This paper examines the evidence around EU migration and takes an objective look at the policy options facing the UK in seeking to negotiate reform of free movement with the EU27.

Our analysis reveals that the majority of EU nationals who come to the UK to work arrive with a job offer; that most work in jobs that our economy needs - indeed certain sectors, such as hotels, restaurants and manufacturing, are heavily dependent on such migration; that EU migration has resulted in some downward pressure on wages, but that the proportion of EU migrants in genuinely low skilled jobs is lower than often assumed; and that whilst the public are anxious about the pace of change, they are more positive about the impact of migration, and more pragmatic about the trade-offs involved in negotiating free movement reform, than often assumed.

Our report assesses the most plausible policy options facing the UK in seeking to negotiate free movement reform. We recommend that the government seek to negotiate a strengthened 'emergency brake' to implement temporary controls on free movement in particular sectors during periods of high EU inflows. This would enable the UK to exercise greater control over immigration, whilst leaving open the option of the UK remaining within the EU, or failing that, as members of the Single Market. Precedents for provisions of this nature can be found in at least four previous EU agreements. We also argue that reforming free movement is not enough: dealing with anxiety about immigration must involve a wider set of changes, covering labour market reform, social integration, enforcement against illegal migration and the strengthening of democratic accountability. Finally, should Brexit happen, the least

damaging outcome for Britain would be to establish a preferential work permit system, whereby free movement continues for certain categories of people, for instance, highly skilled professionals and students, but is restricted for others, for example, low skilled workers.

Introduction

Increased migration¹ has been a defining trend of the past 15 years, changing both the economic structure and social fabric of liberal democracies across the developed world. It has also been one which liberals in general, and those on the progressive left in particular, have struggled to articulate a political response to.

A common mistake made by those from the progressive tradition has been to assume that it is impossible for progressives to ‘win’ an argument about immigration and that it is therefore better stay quiet on the issue. In fact, the opposite is true. By vacating the territory and by not establishing a clear, mainstream position with broad-based public support, progressives have left a vacuum, which has undermined faith in mainstream democratic politics, increased the salience of immigration as an issue and helped to fuel the rise of populism across the West. In 2016 alone, the US elected a President whose campaign rhetoric deployed some of the most anti-immigrant in recent memory; the UK voted to leave the European Union, following a campaign in which immigration played a central part, and Marine Le Pen achieved a record share of the vote in the French Presidential elections, on a platform of reduced immigration. That is why immigration will be a major focus of work at the Institute for Global Change over the coming year.

This paper focuses on one of the most pressing policy questions currently facing UK politicians: how to reform the current system of free movement of people in a way that responds to public anxiety, whilst leaving open the option of remaining within the EU, or, should that not be possible, ensuring Britain retains its membership of the Single Market. However, the challenges thrown up by immigration go much wider than the question of how future flows of EU migrants should be regulated, important though that is. Changes to free movement should not be viewed in isolation, but as just one part of a wider set of reforms to the way

¹ Certainly this was true until 2016. Of course over the last year, net migration has begun to fall

immigration as a whole is managed.

In our next paper, we will examine the foundations of a progressive and effective immigration system – laying out the principles, on which such a system could be based, including:

- 1** Keep the pace and pattern of inflows manageable
- 2** Increase net economic wellbeing, whilst being alive to distributional concerns
- 3** Promote social integration
- 4** Respect the rule of law and human rights
- 5** Be deliverable
- 6** Deal with demand at source
- 7** Clear democratic accountability

Of course such principles will only be meaningful if they can offer a realistic guide to policy-making, helping to resolve genuine trade-offs. Over the coming months, the Institute for Global Change will illustrate how such principles might be turned into concrete policy, and what the consequences would be for our political discourse. We hope our research will provide a starting point for a more positive, open and ultimately balanced public debate about immigration. At the end of the paper, we have set out five questions asking you for your views on the content of this report, and whether the recommendations we make would make a difference to your life and/or community.

The Story of EU Migration

On the face of it, the story of EU migration to Britain is uncontested. We know that over the last fifteen years, there has been a huge rise in the volume of EU immigration to Britain; that the majority of those migrants arrived to work; that the economic impact overall has been beneficial, though this has masked more localised pressures and costs; that public anxiety about immigration remains high, with a majority of Brits in favour of reducing it from current levels. Yet underneath these headline assumptions, another story is emerging, which will have profound implications for the Brexit negotiations. This chapter explores a number of areas where the reality of EU migration has been more nuanced than the conventional wisdom would suggest. For example:

- The majority of EU nationals who come to the UK to work arrive with a job offer;
- Most work in jobs that our economy needs – indeed certain sectors, such as hotels, restaurants and manufacturing, are heavily dependent on such migration;
- The proportion of EU migration that is ‘temporary’ (i.e. with people returning home within a year) is higher than previously acknowledged;
- The proportion of EU migrants in low skilled jobs is lower than often assumed;
- Whilst the public are anxious about the pace of change, they are more positive about the impact of migration, and more pragmatic about the trade-offs involved in negotiating free movement reform, than often assumed.

Given the crucial role immigration played in last year’s Brexit vote, the lack of clarity surrounding these issues is a major cause for concern. With the Brexit process now triggered, it is even more vital we establish the facts and present them in a clear way.

PATTERNS AND FLOWS OF EU MIGRATION

The volume of EU migration to the UK has increased since 2004, but its composition has changed over time

The volume of EU migration to the UK increased sharply after 2004 (following EU enlargement), as reflected in both flows of EU nationals coming to the UK and stocks of EU nationals living here. The number of EU citizens in the UK doubled from around 1.1 million to approximately 2.3 million by 2012. EU migration also grew as a share of total immigration, from 22% in 2004 to just under half (44%) in 2016.

However, the composition of EU migration to the UK has changed in recent years. In particular, since 2012 at least half of the rise in EU migration can be attributed to immigration from the 'old' EU15 Member States (i.e. Italy, Spain, Portugal, France), likely to have been driven by sluggish growth within the Eurozone, with the other half being explained by an increase in migration from the newer EU2 countries (Bulgaria and Romania). In the year ending December 2016, just over half (53%) of EU migration was made up of

citizens from the 'old' EU15 Member States, while EU2 and EU8 nationals (i.e. Poland, Hungary, Czech Republic) made up around a quarter (27%) and a fifth (19%) each.

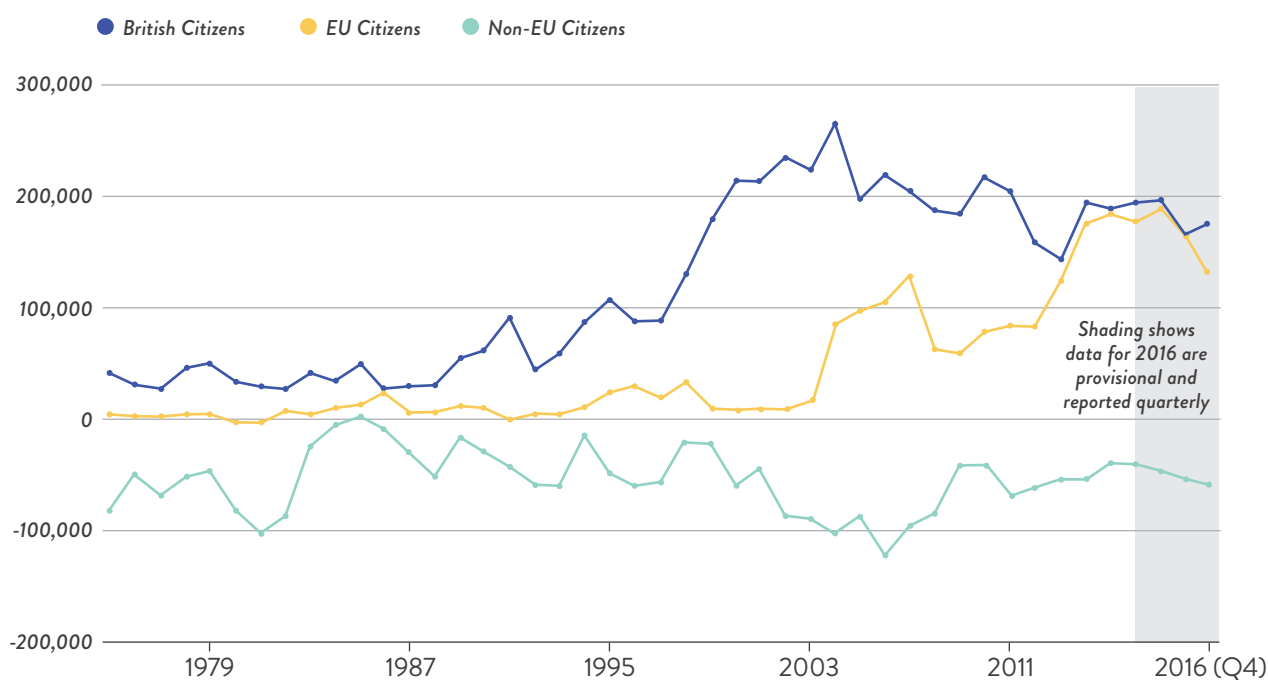
Since 2015, there has been a statistically significant fall in EU8 net migration, at least part of which is thought to have been driven by the heightened level of uncertainty for EU citizens during and after the referendum – both for those already here and new arrivals.² Put simply, if people cannot plan with any confidence, they are less likely to come and less likely to stay.

As the chart above illustrates, despite growing substantially since 2004, net long-term migration of EU citizens has nonetheless remained lower than net long-term migration to the UK by non-EU nationals. In 2016, immigration of non-EU citizens was estimated to be 264,000, compared to 250,000 EU citizens.³

² Other causal factors include the declining value of Sterling

³ ONS, Migration Statistics Quarterly Report: May 2017. [These figures exclude students].

FIG. 3.1 Net long-term international net migration by citizenship, UK, 1975 to 2016 (ONS)⁴

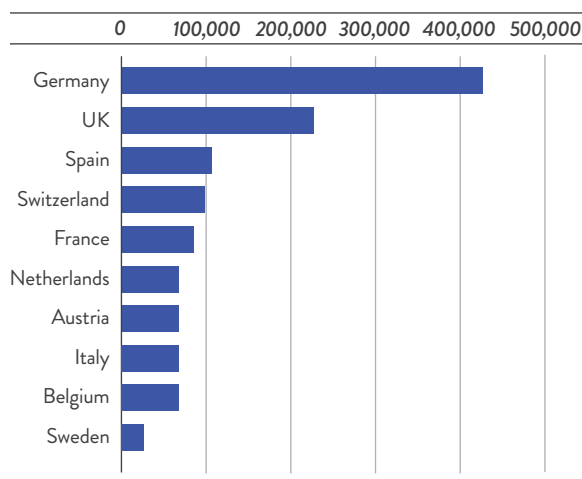


⁴ This chart requires a caveat: after the 2011 Census the ONS discovered that they undercounted A8 nationals by a substantial margin. Subsequently, they adjusted (i.e. increased) total net migration levels to reflect the undercount. However, there was no adjustment of the series by nationality. That means that for the 2004-2011 period EU net migration was actually higher than indicated by this figure.

The UK has experienced relatively high inflows of EU migration, compared to other EU countries, but is not unique

In terms of absolute numbers, the UK has relatively high EU inflows. In 2015 (the last year for which comparative data is available), around 229,000 EU migrants (by citizenship) came to the UK. However, the UK's experience is dwarfed by Germany, where absolute EU immigration was 427,058 in 2015. After the UK and Germany, the next highest inflows were seen in Spain and Switzerland, with 108,126 and 98,584 respectively.

FIG. 3.2 EU inflows to top ten OECD countries, 2015⁵



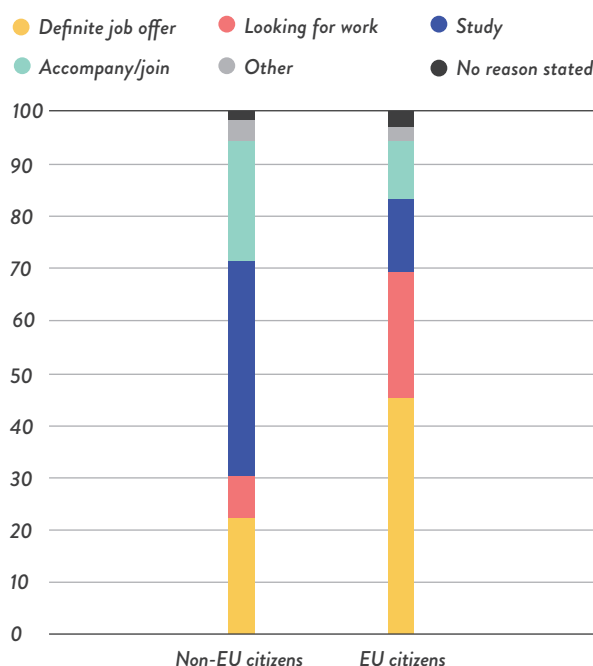
These figures are an artefact of cyclical and structural labour market effects and culture/language factors. In particular, countries with less flexible labour markets (where sectoral wage bargaining tends to be more widespread), such as France, Belgium and Sweden, have seen far lower inflows of EU migrants, than countries with more liberalised labour markets, such as the UK.⁶

Historically, a sizeable majority of EU migrants have come to the UK to work – at least two thirds of whom have come with a job offer

In the year ending December 2016, 69% of EU migrants arrived to work, 14% to study, 11% to accompany/join others. By contrast, the most common reason given by non-EU nationals for moving

to the UK was study (41%).

FIG. 3.3 Reason for migration (International Passenger Survey), YE Dec 2016 (ONS)



Of those coming to work in 2016, the majority (66%) arrived with a job offer. The number of EU nationals arriving without a job offer (55,000) has fallen over the last year, reinforcing the notion (see page 10) that the uncertainty surrounding Brexit is already having an impact. The number of EU jobseekers arriving in the UK now represents 9% of total inward immigration.

The statistics suggest that a higher proportion of these people go home after a short period (i.e. within a year) than previously assumed⁷

The conventional way of measuring inflows of migrants – the International Passenger Survey – actually only gives us a partial picture of what is going on in our economy and in our communities. For example, looking at the raw immigration statistics would suggest that EU migration and non-EU migration are roughly equal in magnitude (annual gross inflows of around 248,000 and 266,000 respectively).⁸ But this is misleading since these

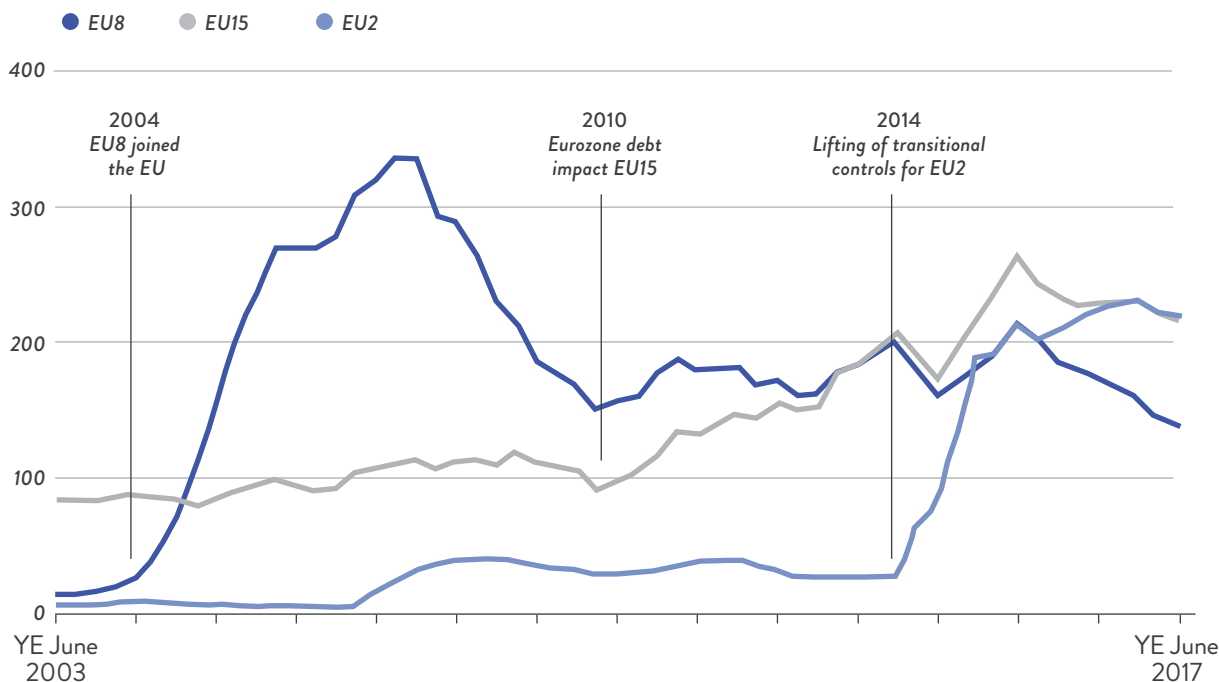
⁵ OECD, International Migration Outlook, 2017

⁶ <http://www.ier.org.uk/news/unison-collective-bargaining-prevents-employer-undercutting-wages-migrant-labour>

⁷ More recently, new exit check data has suggested that a much higher proportion of foreign students (97%) leave the UK after finishing their studies, implying total net migration may be lower than previously thought

⁸ Migration Statistics Quarterly Report, ONS (Aug 2017)

FIG. 3.4 Overview of NINo registrations for EU citizens – 2003-2017 (DWP)



statistics only cover long-term immigrants and omit short-term flows i.e. migrants who stay for less than a year. If we look instead at National Insurance Number registrations – a better measure of people moving here to work – then the number of EU nationals registering is 576,000, more than three times the number of non-EU migrants and twice the number recorded by the International Passenger Survey. The ONS argue this discrepancy is explained almost entirely by short-term migration.⁹

The top five EU countries for NINo registrations currently are:

- Romania (175,000)
- Poland (78,000)
- Italy (60,000)
- Spain (43,000)
- Bulgaria (43,000)

These figures are significant for two reasons. First, they suggest a problem with the way we define and measure net migration. Our current definition – as defined by the International Passenger Survey – is somebody who comes here *intending* to stay for more

than a year. This system was designed for a different age, in which most of our migration originated from Commonwealth countries, whereby migrants were required to obtain a work visa and planned to come for several years. But for EU nationals, there is no legal or practical obligation to stay for any length of time. Some will have a vague intention to stay. Others will (and do) change their minds once they arrive. The labour market figures cited above suggest current migration statistics mask a very large increase in short-term and circular migration.

Second, they suggest that the government's current policy focus – on reducing the level of net (and therefore long-term) migration – may not sufficiently reflect the drivers of public concern. According to conventional wisdom, temporary migration is less problematic than permanent migration, since it enables the government to meet employer demand without adding to the long-term resident population. However, temporary migration can also bring costs, generating higher levels of population turnover, with communities receiving new migrants who have not had the time to build language skills, local knowledge and/or social connections. It is, for example, striking that the group where the discrepancy between estimates of long-

⁹ 'Note on the difference between National Insurance number registrations and the estimate of long-term international migration: 2016, ONS (May 2016).

term migration and National Insurance Registrations is greatest are Romanian migrants.

EU MIGRANTS IN THE UK

EU nationals have predominantly been employed in manufacturing, hospitality, food, social care and construction

In the first quarter of 2017, there were an estimated 2.3 million EU nationals working in the UK. Of these, around 335,000 were working in manufacturing, 305,000 were working in wholesale, retail or repair of vehicles, 248,000 were working

in accommodation and food services, 211,000 were working in health and social care, and 202,000 were working in construction.

Within the broad industry sections shown in the table above, the industry divisions with the largest numbers of EU national workers were retail, food and beverage service activities, education, manufacture of food products, human health activities and construction of buildings. Whilst the largest number of these jobs are found in London, there are also significant numbers of EU migrants working in the South East, East of England and the North West.

TABLE EU national workers by industry, Q1, 2017¹⁰

Industry section in main job	Number of EU national workers in section (000s)	EU national workers as % of all workers in section
Manufacturing	335	11.5%
Wholesale, retail, repair of vehicles	305	7.4%
Accommodation and food services	248	14.2%
Health and social work	211	5.0%
Construction	202	8.7%
Professional, scientific and technical activities	191	8.1%
Transport and storage	163	10.5%
Education	149	4.5%
Administrative and support services	144	9.3%
Information and communication	77	5.8%
Financial and insurance activities	70	5.8%
Other service activities	44	4.9%
Arts, entertainment and recreation	43	5.3%
Public administration and defence	40	2.1%
Agriculture, forestry and fishing	28	7.4%
Water supply, sewerage, waste	19	8.2%
Households as employers	15	25.7%
Real estate activities	10	2.7%
Electricity, gas, air conditioning supply	<10	3.1%
Mining and quarrying	<10	3.8%
Extraterritorial organisations	<10	6.9%
All in employment	2,308	7.3%

¹⁰ House of Commons Library Briefing, Migration Statistics, June 29 2017 (based on Labour Force Survey statistics)

These sectors are critically dependent on EU migrant workers

The combination of high inflows of EU nationals, the UK's flexible labour market and high employer demand for low skilled workers, has embedded EU migration into the UK labour force, particularly in the sectors outline above. Indeed it is now widely recognised, including by Cabinet Ministers,¹¹ that a significant curtailment of EU workers following Brexit would risk causing major labour shortages in these sectors.

Why employers chose to recruit and employ EU migrants is itself not a straightforward question. In some cases, employers may simply prefer to employ migrants rather than natives (for example, for reasons of perceived cost and/or efficiency). In many cases, however, employers' business models are critically influenced and constrained by the wider institutional and wider regulatory framework created by public policy. Public policies have often incentivised – and in some cases left little choice for – employers to respond to shortages through the employment of migrant workers. A good example is social care. Shortages of UK care workers are largely a function of low wages and poor working conditions, which itself is a consequence of steadily increasing pressure on local authority budgets. This has resulted in a growing demand for low-waged flexible workers, increasingly from within the EU (as policies towards care workers from non-EU countries have become more restrictive). Post-Brexit, the government could decide to enable care providers to carry on hiring migrant workers as a way to keep prices low, increasing the availability of care at reduced cost. Alternatively, the government could choose to allocate more public spending to social care, with the explicit objective of turning it into a higher wage, higher productivity occupation. Simply curtailing the supply of EU nationals into the care sector will do nothing to address the factors that give rise to the demand for those workers in the first place.

¹¹ It was reported in Dec 2016 that government ministers were privately lobbying the PM to allow low skilled migration from the EU to continue post- Brexit <http://news.sky.com/story/ministers-pressing-for-low-skilled-migration-to-continue-after-brexit-10682703> This position was made public by Brexit Secretary David Davis in Feb 2017 - "In the hospitality sector, hotels and restaurants, in the social-care sector, working in agriculture, it will take time -- it will be years and years before we get British citizens to do those jobs". <https://www.bloomberg.com/news/articles/2017-02-20/u-k-will-need-low-skilled-eu-migrants-after-brexit-davis-says>

The vast majority of EU migrants are in medium skilled work¹²

In recent years, it has been asserted that the majority of EU migrants arriving in the UK have been employed in low skilled jobs. For example, in May of this year Iain Duncan Smith claimed the UK had "a huge number of very low value, low skill migrants" from the EU.¹³ This has led some to claim¹⁴ that ending free movement for low skilled workers would enable the UK government to significantly reduce the level of net migration. The truth is more nuanced than that.

Part of the confusion arises from the way in which the government have chosen to classify what counts as a low skilled job. The Office for National Statistics (ONS) aggregates occupations into four groups based on their 'Standard Occupational Classification' (SOC) code. These groupings are as follows:

- High (e.g. chief executives, teachers, engineers)
- Upper middle (e.g. accommodation managers, electricians)
- Lower middle (e.g. administrators, childminders, care workers)
- Low (e.g. farm workers, cleaners, waiters)

In 2012 the Migration Advisory Committee amended the ONS' scheme, using the same SOC codes but combining the 'low' and 'lower middle' classifications into a single 'low skill' category, which had the effect of increasing the overall number of jobs considered 'low skill'.

The table below shows that, if we use the more granular ONS classification, the proportion of EU nationals in purely low skilled work has actually been around 23% - a significant number for sure, but by no means an overwhelming majority.

¹² For a good summary of these issues, see Jonathan Portes, 'Who are you calling low skilled?' (April 2017)

¹³ BBC Newsnight (9 May 2017)

¹⁴ See evidence given to the Lords EU Committee by Andrew Green, Chair of Migration Watch (Feb 2017)

TABLE Distribution of workers in each nationality group by skill level of occupation (2016)¹⁵

	High	Upper Middle	Lower Middle	Low
UK	28.23	28.08	33.73	9.64
EU14	37.49	24.19	25.46	12.68
EU8	8.37	22.12	38.44	30.7
EU2	11.22	27.28	30.49	30.83
Non-EU	32.15	22.95	31.32	13.15
All EU (weighted)	20.38	23.62	32.22	23.5

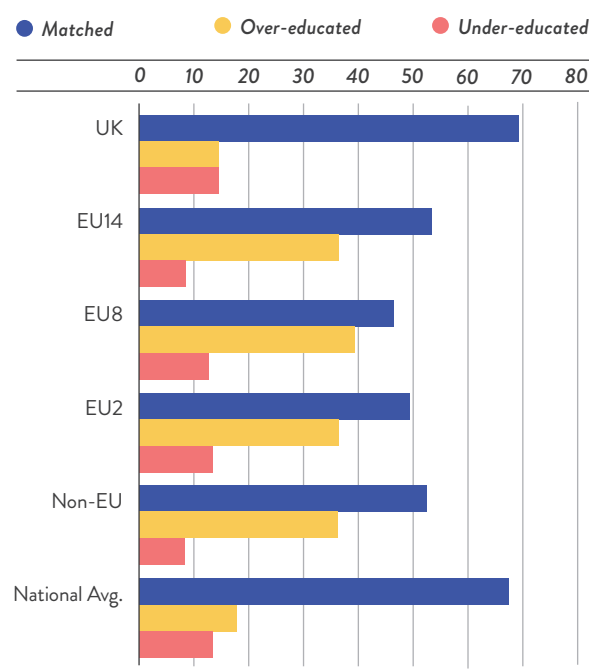
Clearly if one includes ‘lower middle’ jobs within the definition of a low skilled job, it is true to say that a majority (55%) of EU migrants work in low skilled jobs, though it is worth noting that over two fifths of UK citizens (43%) also work in such jobs i.e. a pretty significant proportion of the working age population.

There is wide variation between the labour market outcomes of different types of EU migrants. For example, whilst there are only around 1 in 10 EU8 and EU2 nationals (8% and 11% respectively) working in high skilled jobs, almost 2 in 5 EU14 nationals (estimated 37%) are employed in high skilled jobs – higher than the UK population. These figures do not necessarily imply that EU8 and EU2 nationals have a lower professional skill level than UK workers. On the contrary, as the graph below demonstrates, EU migrants are around twice as likely as UK workers to be over-educated for the job they are in.¹⁶ One explanation for this offered by the ONS is that EU nationals may have sought employment in the UK to do lower skilled jobs in order to experience life in the UK and/ or gain other experiences (such as learning English) before moving on to higher skilled jobs. However, we lack the data to test this.

¹⁵ This table is based on Figure 13 of an April 2017 ONS release titled ‘International immigration and the labour market’ (link). The statistics for EU migrants as a whole were calculated by weighting the skill levels for each nationality group in the table by the number of people in that nationality group employed in the UK (which can be obtained from Table 2 of the same release).

¹⁶ EU immigrants are on average almost twice as likely to have some form of higher education than UK-born citizens (43% compared to 23%); CEP Brexit analysis No. 5

FIG. 3.5 Distribution of workers in each nationality group by whether they are matched, over-educated or under-educated for their job (ONS, 2016)



In summary, if we use the ONS’ more granular definition of a low-skilled job, then we can estimate that restricting free movement for low skilled migrants would have prevented the migration of roughly a quarter of EU nationals currently in the UK to work. That is around 17%¹⁷ of EU migrants and 9%¹⁸ of total migrants currently in the UK.¹⁹ The notion that restricting low skilled migration from within the EU would enable the government to deliver its net migration target is thus fanciful.

THE IMPACT

EU migration has benefitted the economy overall, though this masks distributional effects at the top and bottom of the income spectrum

There is now a clear consensus amongst economists that EU migration has not displaced UK jobs and/ or contributed to unemployment. However, it is widely

¹⁷ 523,000 divided by the 5.567 million non-British nationals living in the UK. See ‘Population of the UK by Country of Birth and Nationality: 2015’ (ONS)

¹⁸ 523,000 divided by the 3.159 million EU nationals living in the UK. Ibid.

¹⁹ Even this figure may be an overestimate as it is likely the government will seek to negotiate bespoke carve-outs for particular sectors, where there is a clearly defined need for low skilled labour

accepted that there has been some downward pressure on the wages of low skilled/low paid workers.²⁰

The impact of EU migration on productivity and hence per capita growth is more contested. It has been argued that EU migration is likely to have depressed per capita growth because the availability of relatively low paid, but flexible workers reduces the incentive to invest in productivity-enhancing business models, including up-skilling of UK workers. In contrast, other economists have argued that migration actually boosts productivity and per capita GDP.²¹

EU nationals are less likely to claim out-of-work benefits than UK citizens

EU nationals are around a third less likely to claim out-of-work benefits than UK citizens, though they are more likely to claim in-work benefits, like tax credits.²² There is no direct evidence that welfare has acted as a ‘magnet’ encouraging migrants to come to the UK. Most economists think the availability of jobs and relatively high wages in the UK are the prime factors in migrants’ decision to move.²³ However, it is important to note that public concern does not appear to be driven by the volume of claims, but the result of a broader sense that the rules themselves are procedurally unfair, undermining the social contract between citizens and state.²⁴

Similarly, the evidence shows the net fiscal impact of EU migration is positive overall. However, this may have masked more localised impacts on public services, for example, where migration has created sudden increases in demand, such as school places and/or housing budgets.²⁵

20 Migration Advisory Committee, ‘Migrants in low skilled work’ (2014)

21 National Institute of Economic and Social Research (2016)

22 Election 2015 briefing – migration and welfare benefits, Migration Observatory (May 2015)

23 T J Hatton, ‘Explaining trends in migration’ (2005)

24 See *Strangers in their Own Land*, a 2016 book by American sociologist Arlie Russell Hochschild, for a rigorous academic treatment of how a sense of procedural unfairness can trump more objective metrics in causing public concern.

25 The impact of migration on public services is not always straightforward. For example, research on the interaction between migration and NHS waiting times shows that in some cases, migration has actually lowered demand <http://www.bsg.ox.ac.uk/research/working-paper-series/working-paper-005>

PUBLIC OPINION

The British public’s views on immigration are more nuanced than often given credit

Various polling conducted in the run-up to and aftermath of the referendum make clear that immigration was a significant factor in the decision to leave the EU.²⁶ More than three quarters of the public wants to see immigration levels fall,²⁷ and opposition to high levels of immigration was disproportionately high among supporters of Brexit. 85% of Leave voters “are in favor of the UK being able to limit EU immigration,” compared to 55% of Remain supporters.²⁸ Yet despite the clear depth of concern, the public’s attitudes to EU migration are more nuanced than the conventional wisdom would suggest.

First, the public do not view EU migration in blanket terms and/or as something which has been uniformly negative for Britain. On the contrary, a new British Social Attitudes report makes clear that the public has, on balance, actually become *more* positive about the benefits of immigration, but also more selective on who they wish to see migrate.²⁹ In 2002 the proportion believing immigration was bad for the economy outweighed those who thought it good by 16 percentage points. By 2014 this had changed, to the extent that the proportion with a positive view of its impact were 4 points ahead. During this period, the public have not noticeably become more or less keen on restrictions to migrant numbers. However, they are more selective. Significant majorities feel the ability to speak English (87%, up from 77%), a commitment to the British ‘way of life’ (84%, up from 78%) and possessing needed skills (81%, up from 71%) are important criteria for selecting migrants.

These findings are reinforced by an ICM poll³⁰ commissioned last August by the think tank British Future, which found that attitudes toward immigration differ markedly according to the category of migrant in question. For example, only 12% of people would like

26 Asa Bennett, ‘Did Britain really vote Brexit to cut immigration?’ (29 June 2016)

27 Migration Observatory, ‘UK Public Opinion toward Immigration: Overall Attitudes and Level of Concern’ (November 2016)

28 NatCen, ‘Voters want UK to stay in the EU single market but be able to control immigration’ (16 No 2016)

29 British Social Attitudes: Immigration (June 2017)

30 ‘What next after Brexit?’, British Future (2016).

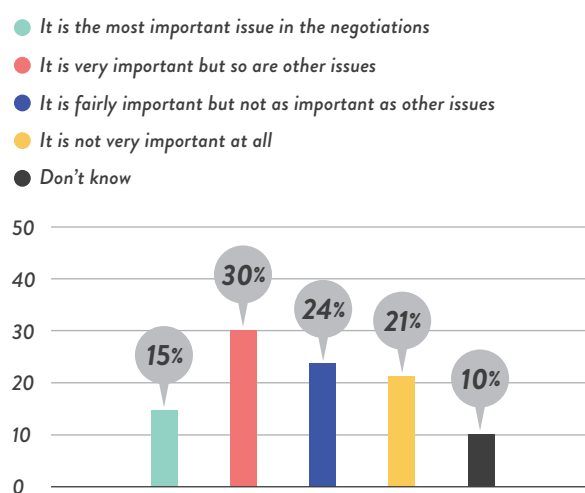
to see a reduction in the numbers of skilled workers coming to Britain; nearly four times as many people (46%) would like to see more of it, with 42% saying that it should stay the same. And only a fifth of people (22%) would like the number of foreign students to be reduced, less than the 24% who would be happy for them to go up.³¹

Second, the public are more attuned to the trade-offs involved in Brexit than is often acknowledged. A poll conducted by YouGov three weeks after the general election found that when people are asked to consider free movement as a trade-off for single market access, British voters are broadly pragmatic. For example, if the government tried to keep full access to the Single Market in exchange for allowing a version of free movement that limited welfare benefits, more than half of voters (54%) would be ‘satisfied’, compared to 26% who would be ‘dissatisfied’, even though this would go no further than the deal struck by David Cameron before the referendum. Similar levels of support exist for a trade-off when voters are offered the option of other limitations on free movement in exchange for Single Market access. Asked to consider a system where EU migrants would be subject to an ‘emergency brake’, 44% of voters said they would be satisfied, versus only 30% who would be unhappy. Even when framed as an isolated issue, the study confirmed that the public’s expectations for a deal are pragmatic. Only 15% of voters said reducing EU immigration was the most important issue in the negotiations. A majority – 30% – agreed reducing EU immigration is ‘very important, but so are other issues’; with 24% saying they thought EU immigration is ‘fairly important, but not as important as other issues’.

Third, there is growing evidence that concern about immigration may be more place-specific than previously understood. For example, the fact that hostility to immigration does not track the number of migrants in an area is often used to imply that anxiety about immigration reflects a generalised, popular hostility, rather than people’s everyday experiences. However, analysis³² of voting patterns during last

year’s Referendum on EU membership suggests that it was the pace of change in the decade after 2004, rather than the number of migrants in an area, which was a better predictor of how people voted in the EU referendum. Whilst areas with a large proportion of settled migrants (e.g. London) were more likely to vote to remain, the areas that saw the most rapid population changes (i.e. that started the period with relatively few migrants, but saw sizeable increases), were more likely to vote to leave – places across the East Midlands and South East, like Redditch, Maidstone, Lincoln, Boston and Gravesham. All areas that experienced at least a 7% increase in the proportion of migrants over the last decade voted to leave.

FIG. 3.6 How much importance do you think the government should attach to reducing immigration from the European Union in the Brexit negotiations?³³



This analysis suggests that the migration that followed the 2004 EU enlargement affected parts of the UK that had previously been untouched by migration, particularly migration from the EU. The majority of Eastern Europeans did not move to London, which prior to 2004, had absorbed more than half of Eastern European migrants. The areas affected were parts of the country that were already relatively deprived and/or hit hard by the financial crash of

31 These figures apply almost as equally to Leave voters as they do to Remain voters. For example, just 15% of Leave voters want a reduction in highly skilled migration, compared to 85% who would prefer it to be increased (45%) or stay the same (40%).

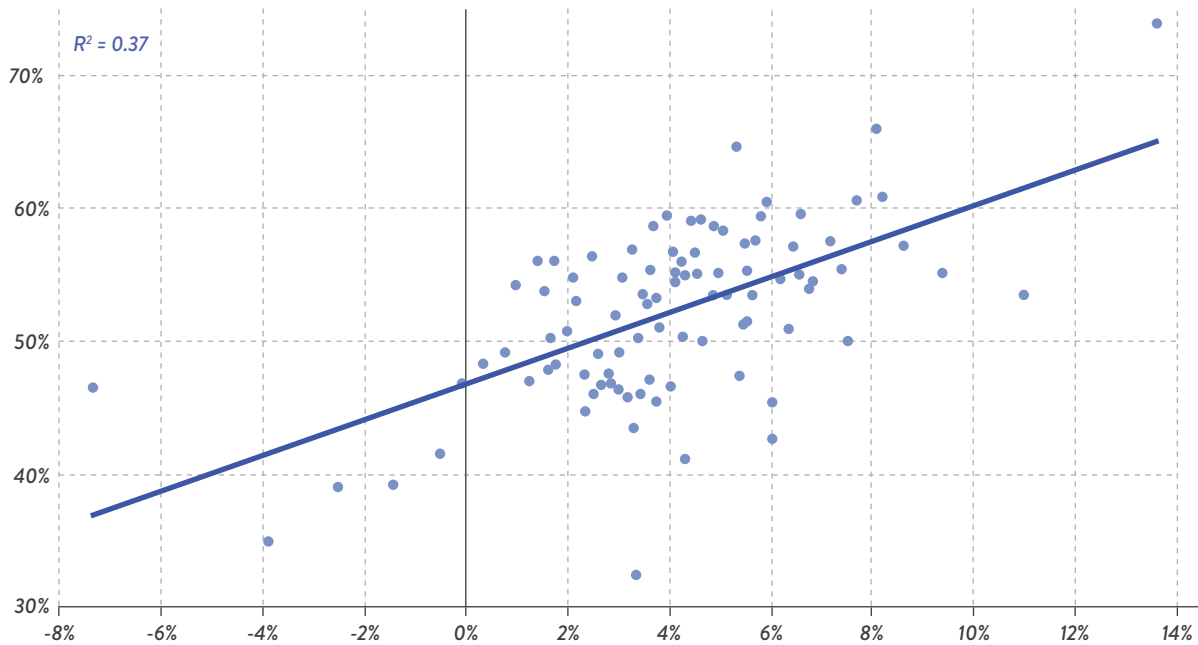
32 For example, see Stephen Clarke and Matthew Whittaker, ‘The importance of Place’ (Resolution Foundation, July 2016). Also research by Eric Kaufmann, ‘Trump and Brexit: why it’s again NOT the economy, stupid’ (9 November 2016). American researchers have also found pace

of change was also a strong predictor of Trump support—see ‘Places Most Unsettled by Rapid Demographic Change Are Drawn to Donald Trump’ (Wall Street Journal, 1 November 2016).

33 Yougov poll commissioned by ‘Best for Britain’ (July 2017) https://blog.bestforbritain.org/wp-content/uploads/2017/07/Best-for-Britain-Survey-Results_170627_Immigration.pdf

FIG. 3.7 Overview of NINo registrations for EU citizens – 2003-2017 (DWP)

Source: ONS, NOMIS, @resfoundation



2008, such as Peterborough and Boston. In such areas, EU migration became subsequently associated with growing economic and cultural insecurity.

SUMMARY

The story of EU migration to the UK since 2004 is not as straightforward as the conventional wisdom is often portrayed. Overall volumes have increased, but the impacts of those changes have been highly concentrated (regionally and sectorally); whilst a significant number of EU migrants have gone into low skilled jobs, the majority appear to have ended up in mid-skilled work; the proportion of EU migration that is explained by people coming to work for relatively short periods of time appears to be much larger than previously acknowledged; the British public's views

about EU migration are more nuanced than many think (with most in favour of greater selectivity, rather than a blanket decline). The UK economy's reliance on EU migration suggests that even after Brexit, the UK will continue to need most categories of EU migrants to continue coming. These nuances will have far-reaching implications for the policy choices facing the UK government over the next 12 months, with regards free movement reform. Yet despite a referendum campaign in which immigration was a central focus, and a subsequent general election, these issues remain remarkably under-discussed. With the government about to embark on the most complex set of negotiations since the end of the Second World War, they urgently need to be the subject of scrutiny and debate.

The Policy Choices

THE POLITICAL CONTEXT

Free movement and the Single Market

To understand the role of free movement of persons in the current Brexit negotiations, one needs to understand how it relates to the the creation of a Common Market (later the ‘Single Market’). Contrary to popular perception, free movement did not begin as an absolute right, but has evolved over time, following various Treaties and Directives.



Case Study

THE EVOLUTION OF FREE MOVEMENT

The concept of free movement of persons has changed in meaning since its inception. The 1957 Treaty of Rome contained provisions on the free movement of ‘workers’ and was restricted to people with a job offer. Over time, the principle of free movement of persons has been extended to other groups, such as jobseekers, students and individuals who are self-sufficient (for example, retirees). This has happened as a result of treaty change, secondary legislation and evolving case law. In particular, the Maastricht Treaty, which entered into force in 1993, introduced the notion of EU citizenship. The 2004 Citizens Directive sought to consolidate and codify in one instrument provisions on the right of citizens and their family members to move and reside freely within EU Member States.

During the 2000s, the European Court of Justice arguably stretched its mandate to the limit by extending the right of free movement beyond what Member States had originally intended. The most notable example is the 2007 joint ruling on the Leval and Viking cases, which allowed firms posting workers in other EU countries to avoid local collective bargaining rules, as well as pay those

workers substantially less than the prevailing wage in local labor markets (the so-called ‘Posted Workers Directive’). In recent years, there have been calls, most notably in Germany and France, to amend the Posted Workers Directive to ensure that posted workers receive the same pay and conditions as local staff.

■

Although in practice, free movement of persons amounts to an immigration policy, Member States signed up to it in pursuit of a different aim, namely the development of the Common Market. Accordingly, the legal basis in EU law for free movement of persons is found in provisions relating to the Single Market, not in provisions relating to immigration policy. This has profound implications for the approach taken by the UK in negotiating Brexit i.e. decisions about the precise manner in which free movement of persons is reformed cannot be made in isolation from the UK’s objectives in relation to the Single Market.

The UK perspective: key objectives and constraints

The Prime Minister has been clear that free movement will end, but she has been less clear about the objectives and constraints that will shape her choices. Previously, ministers have conflated three overlapping, but nonetheless distinct objectives in approaching the negotiations:

- **Control.** In her speech to the Conservative Party conference in 2016 the Prime Minister said the UK ‘will do what independent, sovereign countries do: we will decide for ourselves how we control immigration’. The most natural reading of that statement is that the UK will seek to restore full sovereignty over the UK’s immigration policy in respect of EU nationals i.e. with legislation determined by parliament, rather than in Brussels. This would appear to be incompatible with the notion of a deal, whereby some elements of free movement were retained.
- **Bringing net migration down to below 100,000.** Whilst a reduction in EU migration has never been explicitly stated as an objective of the Brexit negotiations, we can infer it from the government’s decision to recommit to its target to bring net

migration down to the tens of thousands.³⁴ It is often assumed that questions of control and numbers are effectively the same – that one automatically follows the other. In fact, it should be noted that the rules for non-EU immigration, which are devised by the UK government, have until recently been associated with more immigration arriving in the UK from outside the EU than from within the EU.³⁵ It is therefore not inevitable that new controls devised by the UK government would reduce the inflow of EU migrants.

- **Greater selectivity:** At various times, government ministers have suggested that a core aim of reforms should be to reduce the numbers of low-skilled EU migrants, reducing the UK’s ‘current dependency on low-cost migrant labour’³⁶

In practice of course, the UK is not pursuing these objectives in a vacuum. There are three important factors, which will constrain the UK’s choices.

First, the need to secure a deal with, in the words of government ministers, the ‘exact same benefits on trade’ that the UK currently has as an EU member.³⁷ Previous agreements between the EU and major third countries have tended to fall into one of two categories: either they have involved a comprehensive component on immigration – in which case they have constituted an ambitious and close trading relationship on both goods and services – or they have involved a much smaller immigration component, in which case the agreement has been comparatively limited in scope (see table below). It is thus likely that concessions on free movement would be traded against concessions in other parts of the negotiation, such as on access to the Single Market.

³⁴ Conservative 2017 manifesto

³⁵ In the year ending Dec 2016, inflows from the EU were 250,000, compared to inflows from outside the EU, which were 264,000 (ONS, Migration Statistics Quarterly Report, May 2017)

³⁶ In oral evidence to the House of Commons Treasury Committee (19 Oct 2016), the Chancellor Phillip Hammond suggested that public concern about levels of migration related to ‘people competing for entry-level jobs with people in the UK’ and indicated that the government wish to reduce ‘the current dependency on low-cost migrant labour’

³⁷ David Davis, (Hansard, Jan 24, 2017) <https://hansard.parliament.uk/Commons/2017-01-24/debates/D423AEE6-BE36-4935-AD6A-5CA316582A9C/Article50>

TABLE Comparison of major EU agreements with third countries³⁸

Third country	Agreement	Single Market access	Free movement
Norway	European Economic Area (EEA) agreement	Full membership of the Single Market	Free movement of people. The 2004 Citizenship Directive is incorporated into the EEA Agreement. Article 112 of the EEA Agreement allows for 'safeguard measures' on free movement in the case of serious and persistent economic, societal, or environmental difficulties, though Norway has never applied this.
Switzerland	EU-Switzerland Bilateral Agreement	Agreements on free movement in goods, but only partial access for services (e.g. no passporting rights for financial services)	Free movement of people. The EU/ Swiss agreement on free movement broadly reflects EU free movement laws, including residency rights for workers, jobseekers, students and self-sufficient. There are some limited restrictions (e.g. EU citizens working in Switzerland for more than 3 months have to register for a residence permit.) In a referendum in 2014, Switzerland voted to restrict EU migration. After 2 years negotiation, an agreement has been reached whereby free movement will continue but Swiss-based jobseekers are to be given priority for jobs, which are advertised locally first
Canada	EU-Canada Comprehensive Economic and Trade Agreement	Agreement to reduce tariffs on industrial and agricultural goods and technical barriers to trade, though restrictions remain (e.g. food safety regulations). Falls far short of full access to the Single Market in services	Provisions allowing the temporary entry and stay of persons for business purposes. Senior intra-company transfers granted the right to stay for up to three years. Nothing on permanent migration
South Korea	EU-South Korea Free Trade Agreement	Agreement to gradually eliminate tariffs on industrial and agricultural goods and address non-tariff barriers, though restrictions remain (e.g. food safety regulations). Falls far short of full access to Single Market in services	No commitments

38 The analysis in this table is taken from Marley Morris, 'Striking the right deal': UK-EU migration and the Brexit negotiations', IPPR (28 April 2017)

Second, the need to ensure that any reforms to free movement themselves do not disproportionately damage the British economy. Certain sectors, for example, agriculture, hospitality and finance, are highly dependent on access to migrant labour from within the EU and would be faced by severe labour shortages were the supply to suddenly be cut off.

Third, the need to protect the rights of UK nationals seeking to move to the EU. Any deal on migration will be reciprocal in scope, and so will affect the rights of UK nationals to reside and work in other EU countries. It is thus likely to be in the UK's interests to agree to a system which gives preference to EEA citizens, compared to those outside the EEA, even if this limits the UK's ability to bring down total net migration.

Post-election, with the government having lost its majority, it is no longer clear which of the objectives cited above still hold. In recent weeks, government ministers have suggested that there may be an emerging consensus around the need for a period of transition,³⁹ though this relates to the process rather than the outcome, and it is by no means clear that they agree or understand what such a transition would entail in practice. A leaked Home Office paper on free movement did little to clarify matters, suggesting the government is unrealistic about the terms of transition and undecided on the future shape of a post-Brexit immigration system.⁴⁰ We do not know whether the government remain collectively united around the notion that reforming free movement should continue to trump membership of/access to the Single Market. This lack of clarity is unsustainable. The choices and trade-offs facing the UK in negotiating free movement reform need to be clearly exposed and debated, rather than hidden from view.

39 Even the issue of transition appears not to be collectively agreed. 'Liam Fox denies Cabinet deal on transitional EU free movement', *Guardian* (July 30 2017) <https://www.theguardian.com/politics/2017/jul/30/liam-fox-denies-cabinet-deal-on-transitional-eu-free-movement>

40 The leaked memo states free movement will end in 2019, which in itself almost certainly rules out the scope for a period of negotiated transition with the EU27. Whilst the document leaves open the question of what a post-Brexit immigration system would look like, the overall tone suggests the HO is in favour of a more restrictive system overall <https://www.theguardian.com/uk-news/2017/sep/05/the-draft-home-office-post-brexit-immigration-policy-document-in-full>

The European context: perspectives on free movement and the scope for a deal

In recent years, European leaders have been keen to stress the indivisibility of the four freedoms (freedom of movement in goods, services, capital and persons). Former Belgian Prime Minister and current Chief Brexit Negotiator for the European Parliament Guy Verhofstadt has said that the four freedoms are "one package" and that splitting them would "destroy the union and its internal market." Similarly, the German Chancellor, Angela Merkel has been clear that "full access to the single market is inextricably linked with acceptance of the four freedoms." This is not a surprise. As outlined above, free movement is a founding principle of the EU and thus fundamentally tied to the creation of the Single Market. Historically, European leaders have feared that any compromising on free movement would lead to a 'slippery slope', potentially emboldening Member States to call for a dilution of other Single Market rules and thus endangering the entire project. Perhaps equally importantly, the EU has tended not to perceive free movement and migration in the same way as the UK. While EU free movement rules have been a toxic political issue in Britain for years, many on the Continent consider them a core achievement of the EU. Continental Europeans do worry about migration, but mostly about migration and refugees arriving from outside the EU, rather than the movement of EU nationals *within* Europe.⁴¹

Yet we should avoid falling into the trap of assuming that free movement/Single Market access is a straight binary choice – that it is necessarily all or nothing. Certainly Britain cannot expect to be rewarded for leaving the EU and it will not be allowed to cherry pick policies that it wants to participate in/abstain from. But European leaders generally do not want an unfavourable Brexit outcome. It is plausible that the EU27 might agree to *some* free movement reform as part of the negotiation of a new UK-EU relationship, albeit reform would be much easier to negotiate in a scenario whereby the UK opted to stay within the EU.

41 Camino Mortera-Martinez and Christian Odendahl, 'What free movement means to Europe and why it matters for Britain' (Centre for European Reform, Jan 2017). It should be noted that these fears have often been conflated, often deliberately. An example would be the poster depicting queues of Syrian refugees unfurled by Nigel Farage during the 2016 UK Referendum

In recent months a number of pro-European leaders have raised the possibility that free movement may need to be reformed. Dutch Deputy Prime Minister Lodewijk Asscher has said that “support for free movement is crumbling when people see that it turns out to be so unfair” and that Brexit “gives a unique opportunity to do this in a very different way.”⁴² Former Danish Prime Minister Helle Thorning-Schmidt and former Finnish Prime Minister Alexander Stubb have also called for discussion about reforming how the principle of free movement is applied.⁴³

In 2016 the influential Bruegel think tank published a paper recommending a new ‘Continental Partnership’ comprising a ‘core EU with freedom of movement’ surrounded by European partners whose relationship with the core nations is ‘considerably less deep than EU membership, but rather closer than a simple free trade agreement’. Zolt Darvas, a Senior Fellow at Bruegel, has also suggested that a deal could be envisaged that revolved around some labour market restrictions, in return for limitations in the UK’s access to the Single Market in services (though this is within the context of the UK choosing to leave).⁴⁴

■

Case Study

A POTENTIALLY NEW MODEL: ‘CONTINENTAL PARTNERSHIP’

In 2016 the Bruegel think tank published a paper, jointly authored by five influential European policymakers including a senior advisor to President Macron, which suggested a new model for a post-Brexit relationship between the UK and EU27 – ‘considerably less deep than EU membership but rather closer than a simple free-trade agreement’.

The relationship proposed would be based on an intergovernmental form of collaboration, with no legal right to free movement for workers but a regime of some

controlled labour mobility and a contribution to the EU budget.

The paper explores the question of whether it is possible to have close economic integration comparable to the Single Market while partly limiting labour mobility. It concludes that whilst free movement serves a political function, from a purely economic viewpoint, goods, services and capital can be freely exchanged in a deeply integrated market without free movement of workers, though not entirely without some labour mobility. ‘Free movement of workers is, not indispensable for the smooth functioning of economic integration in goods, services and capital’.

The aim of the Continental Partnership is to sustain deep economic integration, fully participating in goods, services, capital mobility and some temporary labour mobility, but excluding freedom of movement of workers and political integration. It would build a wider circle around the EU without sharing the EU’s supranational character, except where common enforcement mechanisms were needed to protect the homogeneity of the Single Market.

■

In summary, we believe a mutually beneficial compromise on free movement is possible. Whether or not this is achieved will depend on the ability of the UK and EU27 to conduct Brexit negotiations not only with a clear view of their short-term goals but also of their long term interests and continuing interdependencies. On the British side, that means greater clarity and consistency about the purpose of free movement reform and how it will fit within the UK’s broader strategic objectives. On the EU side, it means avoiding the temptation to apply punitive terms to the UK’s exit for short-term political reasons. An outcome that isolated the UK and blunted the incentives for wider EU reform is in nobody’s longer term interests.

Implications for Brexit negotiations

Since the triggering of Article 50 in March 2017, it has become clear that a number of pre-requisites exist to the successful negotiation of a successful compromise on free movement reform.

42 <http://www.thetimes.co.uk/article/chancellor-to-banishgloom-for-trade-tour-q3fkjn3h5>

43 ECFR’s World in 30 Minutes: Brexit - Views from Europe, 28 June 2016

44 See Zolt Darvas oral evidence to the House of Lords EU Committee (18 Jan, 2017) <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/eu-home-affairs-subcommittee/brexit-ukeu-movement-of-people/oral/45998.html>

1 The status of EU nationals already in the UK and UK citizens already in the EU

In May 2017 the EU Commission published a position paper,⁴⁵ setting out proposals for a reciprocal arrangement covering EU nationals already in the UK and UK nationals within the EU. Three weeks later, the UK responded with its own counter-offer regarding the rights of EU/UK citizens.⁴⁶ However, both sides remain some way apart on the substance of an agreement, particularly with regards the potential role of the European Court of Justice as an adjudicator of citizens' rights. In July, the EU Parliament's Brexit Coordinator, Guy Verhofstadt, indicated that the EU27 deem the UK's counter-offer as unacceptable, since it represented a weakening of EU citizens' rights and suggesting that unless there is movement on the UK side, progress on the rest of the talks would be impossible.⁴⁷ This clearly needs to be resolved as a matter of urgency.

2 Visa-free travel

There is a clear consensus that any reforms to free movement should relate to long-term migrants and that the UK/EU27 should not look to impose visa restrictions on EU nationals for short-term stays, both because of the disruption that could create (given the sheer volume of UK-EU border crossings) and because it would be inconsistent for the UK to impose short-term stay visas on EU nationals when it does not require visas for short-term stays by nationals of other countries to which it has strong economic ties, such as the US. Indeed the UK has agreements for visa-free travel with over 50 non-EU countries at present, including Australia and Canada.

3 A period of transition

In view of the link between free movement of persons and access to the Single Market, it is likely that new arrangements for future migration between

the UK and the EU will not be finalised until the contours of the new UK-EU trading relationship have taken shape, which looks increasingly likely to take longer than the two years provided for in Article 50. The UK will therefore need to seek an extended transitional arrangement with the EU27, in order to ensure sufficient time to avoid a 'cliff-edge' scenario, whereby the UK crashes out of the EU without a deal. As the Shadow Brexit Secretary, Keir Starmer MP has recently acknowledged, this is likely to involve continuing with the current system of free movement for several years in exchange for continued access to the Single Market.⁴⁸

CLARIFYING OUR STRATEGIC OBJECTIVES

Control immigration – but not by departing the EU and Single Market

During the first six months of Brexit negotiations, the government have appeared to accept the logic of the Vote Leave campaign: that control over immigration can only be made possible by leaving the European Union and Single Market. This is a falsehood. Addressing the public's very deep, underlying concerns about immigration will require a much broader package of reforms, encompassing changes to the labour market, enforcement against illegal migration, greater efforts to promote social integration and so on, which stretch well beyond the question of how EU migration is regulated. Moreover, as set out in the previous chapter, the likelihood is that, even if Brexit were to go ahead as planned, the UK would continue to need to encourage most categories of EU migrants to keep coming, at least in the short-to-medium term, meaning the actual real life impact on immigration from Brexit is likely to be negligible. Making Brexit the mechanism for achieving 'control', but then not choosing to exercise that control, will strike the public as perverse.

Our starting point is therefore that the UK should seek to leave open the option of remaining within the EU, should the terms of departure turn out to be substantively worse than current arrangements and the British public change their minds. However, if staying within the EU proves impossible (and the likelihood

45 'Essential principles on citizens' rights', EU Commission, 24 May 2017

46 'The United Kingdom's exit from the European Union: safeguarding the position of EU citizens living in the UK and UK nationals living in the EU' (June 26 2017), www.gov.uk

47 'Improve the Brexit offer to EU citizens or we'll veto the deal', Guy Verhofstadt (the Guardian, 9 July 2017) <https://www.theguardian.com/commentsfree/2017/jul/09/brexit-offer-eu-citizens-veto-british-proposal-european-parliament>

48 'Labour makes dramatic shift and backs Single Market membership', Guardian (Aug 26 2017) <https://www.theguardian.com/global/2017/aug/26/labour-calls-for-lengthy-transitional-period-post-brexit>

of doing so is clearly diminishing day by day) we believe the UK's broader objective should be to retain membership of the Single Market. Recently, it has been argued that attempting to secure the equivalent of 'EEA status' would be a bad outcome for Britain, leaving the UK as a 'client state', subject to rules but without representation. We believe these fears are unfounded for three reasons. Firstly, even if the UK were to become an EEA member, it is likely that its relationship with the EU would look substantively different to that which exists between existing EEA members and EU Member States. For example, the current imbalance in resources that exists between the EU and EEA states (currently made up of relatively small countries) would be markedly less acute – strengthening the hand of the EEA members.

Secondly, the UK's relative democratic ability to shape EU law should not only be a comparison with the status quo, but also with an alternative future outside the Single Market. As the smaller party in any future trade negotiations with the EU, the UK would inevitably cede sovereignty in a future trade agreement. UK businesses would have to agree to meet the standards and regulations agreed by the EU in order to sell into that market. By definition, Brexit will entail some ceding of the UK's ability to shape laws which affect us – it is not clear why the impact of that will be less damaging under a negotiated free trade agreement than as part of the Single Market.

Thirdly, wider political developments in the Eurozone may provide a strategic opportunity for Britain to forge a new kind of partnership with the 'core' EU countries. With or without Brexit, the UK would have had to define its relationship with a reformed Eurozone, particularly given the election of President Macron in France, which is likely to give an additional stimulus to Euro-area reform and further policy integration.⁴⁹ If, in the long-run, Europe develops around two circles, with a supranational EU and the Eurozone at its 'core', and an outer circle of countries involved in a more structured intergovernmental partnership, it makes sense for the UK to position itself as the leader of that 'outer circle' i.e. outside the Eurozone but remaining closely

49 'Macron and Merkel signal new move to strengthen Eurozone', Guardian (15 May 2017) <https://www.theguardian.com/world/2017/may/15/emmanuel-macron-angela-merkel-berlin-eurozone>

integrated within the Single Market.⁵⁰

Principles underpinning reform

Below we set out the most plausible policy options for reform of free movement, according to these two objectives. In so doing, we assess each of the alternatives across four key criteria:

- **The impact on the negotiations** – how likely is it that the policy reform in question will enable the UK to secure a favourable deal with the EU27 with respect to the Single Market?
- **The deliverability** – can the policy reform in question actually be made to work? Would it have any substantial impact on the things people care about?
- **The impact on public opinion** – will the policy reform in question deal with the public's core anxieties and priorities?
- **The impact on our economy** – will the policy reform in question leave core sectors of our economy struggling to recruit the skills they need?

THE MOST PLAUSIBLE OPTIONS FOR REFORMING FREE MOVEMENT

Assuming the UK wishes to leave open the option of remaining within the EU, or failing that, staying as a member of the Single Market, there are three main options for reforming the current system of free movement. These are set out below.⁵¹

1. Keeping the structure of free movement broadly intact but tightening up the rules surrounding access to benefits and posted workers

Practically speaking, free movement of persons as enshrined in EU law has two dimensions:

- The right to entry and residence in another Member State
- The right to equal treatment compared to nationals of the host State

50 Jean Pisani-Ferry, Norbert Rottgen, Andre Sapir, Paul Tucker, Guntram B. Wolff, 'Europe after Brexit: a proposal for a Continental Partnership' (Aug 2016)

51 Analysis in this section draws on work by Marley Morris - 'Striking the right deal: UK-EU migration after the Brexit negotiations', IPPR (April 2017) and Sunder Katwala - 'Britain's immigration offer to Europe' (Oct 2016)

The UK could choose to focus on the second of these dimensions i.e. rather than seeking to impose new restrictions on EU nationals' ability to enter and/or reside in the UK, it could seek to impose new, discriminatory (relative to UK nationals) terms and conditions for EU nationals taking up residence in the UK. That could include going further to restrict access to public resources (e.g. free healthcare) for EU migrants that are economically inactive; indexing of child benefit payments sent abroad; or enabling UK businesses and universities to give preference to UK citizens over EU nationals, for example, with respect to apprenticeship schemes and/or the charging of tuition fees for study.

The UK could also seek to find common cause with President Macron who has expressed a desire to tackle the undercutting of wages and conditions, by amending the Posted Workers Directive, so that posted workers have to receive the same pay and conditions as local workers.⁵²

■

Case Study

THE POSTED WORKERS DIRECTIVE

European companies often post employees to another EU country to work there temporarily (a maximum of 2 years). According to EU law, 'posted workers' must be paid at least the minimum wage of the host country, yet their wages can be lower than the wages of local workers. Critics say the law has been abused to undercut wages and conditions in higher wage countries.

In recent years, several European leaders have called for reform of the Posted Workers Directive. Most notably, President Macron⁵³ has said he wants to see new amendments brought in which would cut the maximum period such workers can be posted from 2 years to 1 year and ensure that posted workers receive the same pay, and have to be provided with the same conditions, as local staff. Whilst there is not unanimity across the EU, the European Commission is thought to be sympathetic to Macron's proposals.

52 <https://www.reuters.com/article/us-france-centraleurope-idUSKCN1B41KQ>

53 Macron: posted workers directive is a betrayal of the European spirit" <http://www.brusselstimes.com/eu-affairs/8962/macron-post-ed-workers-directive-is-a-betrayal-of-the-european-spirit>

■

Even within existing free movement rules, the UK has never enforced all of the restrictions available under EU legislation. For example, current free movement rules state that after 3 months, EU migrants need to be either working, actively seeking work, have a member of the family working or have sufficient funds to live.⁵⁴ If not, they can be returned to their home country. The UK does not register migrants when they arrive, nor systematically record when they leave, so has no way of knowing how long EU nationals have been in the UK or whether they have a right to remain. In contrast, Belgium requires all migrants to register at their Town Hall and writes to economically inactive migrants informing them they have no right to stay.⁵⁵

Impact on the negotiations

This would represent a small shift from the status quo and would thus leave the UK well placed to secure membership of the Single Market. In particular, the UK would be likely to find common cause with France (on the issue of posted workers) and Germany whose Chancellor, Angela Merkel, has repeatedly expressed a willingness to look at tightening up the rules around benefits eligibility.⁵⁶

Deliverability

This would be a relatively simple set of reforms to implement and would go with the grain of recent judgements by the European Court of Justice, which have, for example, confirmed the right of Member States to refuse supplementary pensions, unemployment benefits and child credit to non-working EU migrants.

Impact on public opinion

It is unclear whether such measures would meet the bar of public expectations within the UK. Whilst many of the reforms outlined would be popular in their own right (particularly further restrictions to benefits),

54 http://www.europarl.europa.eu/atyourservice/en/displayFtu.html?f-tuld=FTU_3.1.3.html

55 http://www.huffingtonpost.co.uk/richard-bird/immigration-blame-the-uk-_b_13120104.html

56 <https://www.theguardian.com/politics/2016/nov/16/angela-merkel-brexit-free-movement-eu>

some might see them as too similar to the package of measures negotiated by David Cameron in 2016, which ultimately did not prove compelling enough an offer to persuade people to vote Remain.

Impact on the economy

The impact of these measures on the British economy would be negligible, since very little would change from the existing status quo.

2. Restricting free movement for those without a job offer

As outlined above, when it was first enshrined in EU law, free movement of persons meant the freedom to move to a job, not the freedom to cross borders to look for work or claim benefits. Thus, it has been suggested that the UK and EU27 might agree to a stripped down version of freedom of movement, under which free movement of people would continue as before, with the exception of EU citizens moving to the UK to look for work without a job offer (and vice versa).

In practice, this would involve removing the right to reside from EU jobseekers. At the border, EU nationals would be asked about their intentions and refused entry if they identified as seeking to reside in the UK for the purpose of jobseeking. EU nationals intending to work would need to show evidence of a job offer to be given permission to reside, otherwise they would be unable to open a bank account, access welfare benefits and would be subject to removal.⁵⁷

Impact on the negotiations

Whether or not this option would be politically negotiable with the EU27 is open to debate. On the one hand, it would signal a small shift away from the current system of free movement and thus might lend itself to a potential compromise. On the other, there is no other third country that currently enjoys an equivalent deal on migration. Moreover, whilst it is true that this would represent a return to the original premise of ‘free movement of workers’ (enshrined in the Treaty of Rome) there is now a significant body of legislation and case law from the European Court

of Justice on free movement, which now makes the original concept somewhat redundant.

Deliverability

There are some question marks about the enforceability of this option. It would be difficult to enforce while maintaining visa free travel, as there would be nothing to stop EU nationals entering the UK as visitors, looking for work and applying for jobs, and then returning home and re-entering with a job offer. It would be burdensome for businesses to have to check the status and location of EU nationals before agreeing to hire them. Introducing a job offer requirement might also lead to some unintended consequences, for example, with an expansion in the number of employment agencies recruiting solely outside the UK, therefore denying local people the opportunity to apply for jobs.

Impact on public opinion

Restricting free movement for those without a job offer would be met with approval by most of the public, though it would have limited impact on total inflows in practice. This option would also not directly address anxiety about the pace of change and/or the pressure on local services and infrastructure.

Impact on the economy

Given the limited impact on total inflows, the impact on our economy would likely be negligible. In evidence to the Lords Select Committee, the British Chambers of Commerce also described free movement with a job offer as ‘the most appealing’ of the options’, because it would allow businesses ‘to access the skills they want’, a view echoed by the CBI.

3. Safeguard measures to restrict inflows (‘emergency brake’)

A third option would be for the UK and EU27 to agree to retain free movement but include safeguard provisions to restrict flows for a temporary period if there was clear evidence of exceptional inflows and/or excessive pressures, either on the labour market or on public services.

⁵⁷ Marley Morris, ‘Striking the right deal: UK-EU migration and the Brexit negotiations’, IPPR (28 April 2017)

The agreement would need to specify the precise measures which would be used to justify activation of safeguard measures. The UK would be able to draw on the ‘alert and safeguard’ mechanism for in-work benefits agreed by former Prime Minister David Cameron as part of the pre-referendum settlement between the UK and the EU (below). It would also need to identify a maximum time period for when the safeguard measures could apply. Again, Cameron’s negotiation provides a precedent (seven years), which might be useful in this regard.⁵⁸

The agreement would need to clarify a new mechanism for authorising the invocation of safeguard measures. (Under Cameron’s negotiation, this role would have been fulfilled by the European Court of Justice). This would probably require the establishment of an independent adjudication body, made up of delegations from the UK and the EU27. The establishment of such a body is likely to be a necessary precondition of any future trade deal in any case, so would not represent an insurmountable hurdle.

This system would be enforced in the labour market, by employers, rather than at the border, involving a similar arrangement to the worker registration scheme for ‘transitional control’ of EU8 and EU2 migrants after enlargement. EU nationals already here would be required to register their presence but otherwise would continue to benefit from free movement, as now. Once temporary measures were invoked, newly arriving EU nationals, as well as having to register, would face additional restrictions if they wanted to work in affected sectors, fulfilling a set of pre-agreed criteria relating to the skill classification of the job, for example. Restrictions could thus be targeted at certain sectors, rather than an overall numerical cap being set.⁵⁹

Precedents for provisions of this nature – also known as ‘safeguard’ clauses – can be found in at least four separate agreements:

- a. Acts of Accession of new Member States to the EU;

- b. David Cameron’s pre-referendum ‘emergency brake’.
- c. Article 112 of the European Economic Area (EEA) agreement (covering Iceland, Lichtenstein and Norway);
- d. The Treaty on the Functioning of the European Union (TFEU)

The 2005 Act of Accession of Bulgaria and Romania to the EU, for example, set out transitional arrangements for the free movement of persons and included a safeguard clause, giving existing Member States the right to re-impose restrictions on labour market access by Bulgarian and Romanian nationals during the seven-year transition period, if they were undergoing ‘serious labour market disturbances’. Spain invoked that safeguard clause with regard to Romanian workers in July 2011. The Spanish decision was subject to authorisation by the European Commission and reviewed by the European Council.



Case Study

DAVID CAMERON’S PRE-REFERENDUM ‘EMERGENCY BRAKE’ ON IN-WORK BENEFITS

In the ‘New Settlement for the United Kingdom’ agreed by the European Council in Feb 2016, David Cameron secured agreement to the creation of an ‘emergency brake’ that would have temporarily restricted EU nationals’ access to in-work benefits. The European Commission undertook that if, and as soon as, the Prime Minister notified the European Council of the UK’s decision to remain in the UK, it would seek to amend Regulation 492/2011 on the free movement of workers to introduce an ‘alert and safeguard mechanism’ (emergency brake) to respond to ‘situations of inflow of workers from other Member States of an exceptional magnitude over an extended period of time’ and on a scale affecting ‘essential aspects of [a member state’s] social security system, which would lead to ‘difficulties which are serious and liable to persist’ in the labour market, or place ‘excessive pressure’ on the functioning of public services.

This would have authorised the UK to limit the access of newly arriving EU workers to non-contributory in-work benefits for a total period of up to four years from the commencement of employment. The Council would have

⁵⁸ Marley Morris, ‘Striking the right deal: UK-EU migration and the Brexit negotiations’, IPPR, (April 28 2017)

⁵⁹ Marley Morris, ‘Striking the right deal: UK-EU migration and the Brexit negotiations’, IPPR, (April 28 2017)

been responsible for authorising the application of this emergency brake, and its use would have been limited to a period of seven years. The Commission's undertaking lapsed on the UK voting to leave the EU.

■

Article 112 of the EEA agreement allows the Contracting Parties unilaterally to apply safeguard measures 'if serious economic, societal or environmental difficulties of a sectoral or regional nature liable to persist are arising.' Upon becoming a member of the EEA, Liechtenstein was allowed to keep in force national provisions imposing 'quantitative limitations for new residents, seasonal workers and frontier workers' in respect of EU nationals and nationals of other EFTA states'. The European Commission concluded in 2015 that Liechtenstein's 'specific geographical situation' and 'unusually high percentage of non-national residents and employees' continued to make it necessary to maintain restrictions on the number of annual permits issued.

■

Case Study

SWITZERLAND AND THE EU ('BILATERAL MODEL')

The 'bilateral model' between Switzerland and the EU consists of a complex system of more than 120 agreements. Free movement is an integral part of those bilateral arrangements and is provided by the Agreement on Free Movement of Persons (AFMP), which entered into force in 2002. Crucially, the AFMP contains a 'guillotine mechanism' which comes into effect with the termination of all other agreements once the AFMP is no longer applied.

In their 2014 referendum, the Swiss population voted in favour of introducing mandatory quotas for foreign residents, including EU citizens. Such provisions would have been incompatible with the bilateral arrangements with the EU. Hence, in October 2015, the Swiss Parliament sought to reconcile the outcome of the referendum with continued access to the Single Market by introducing new provisions focused on restricting free movement, namely by giving recruitment preference to current residents (irrespective of their citizenship) and introducing quotas as the very last resort. It was felt

that such an approach would safeguard the principle of free movement and therefore satisfy the EU, helping to circumvent the EU's reluctance to arbitrary quotas. Jean-Claude Juncker, the European Commission President initially signaled that the new legislation would satisfy the contractual obligations on both parties. The talks, however, were put on hold after the UK referendum.

■

Finally, it is notable that following a run on its banks during the financial crisis of 2013, Cyprus used a safeguard clause in the TFEU 132 to introduce restrictions on the free movement of capital 'on grounds of public policy or public security'.⁶⁰ Arguably, this provides another legal precedent for the use of safeguard clauses to restrict free movement.

Impact on the negotiations

The precedents outlined above mean that a system involving temporary safeguard measures is likely to be considered more acceptable by the EU27 than some of the other options floated, thus increasing the chance of a deal. An arbitration mechanism would introduce a degree of transparency over how the UK (or the EU27) could implement temporary safeguard measures and would compel either party to evidence its decision.

Deliverability

There are a number of practical difficulties associated with an emergency brake option. Foremost amongst them is the difficulty in specifying the precise conditions under which the brake would be pulled. There is scepticism within Brussels about whether it would ever be possible for the UK to justify triggering the brake on the basis of economic considerations (particularly with unemployment having remained relatively low in the UK and as yet little concrete evidence of pressure on public services attributable to EU migration having emerged). On the other hand, the European Commission has only recently acknowledged the principle that there have been very high levels of migration to the UK (see above) so it is

⁶⁰ Statement by the European Commission on the capital controls imposed by the Republic of Cyprus (March 2013) http://europa.eu/rapid/press-release_IP-13-298_en.htm

not impossible to envisage a scenario whereby the UK would be able to justify invoking safeguard measures.

The other implementation challenge would be the need for a system of registration and identity checks for EU nationals, requiring significant infrastructure investment. However, while the implementation would be complex compared to the status quo, it is not obviously more difficult to manage than alternative policy options, which would also require systems of registration/identity checking – a fact that has been implicitly acknowledged by Government Ministers.⁶¹

61 Commissioning letter from the Home Secretary to the Migration Advisory Committee (July 2017) https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/633321/Commission_to_the_MAC.pdf

Impact on public opinion

An emergency brake would give the government a greater degree of control over free movement than it has now, since it would provide the government with a concrete mechanism with which to respond to evidence of pressures in the labour market and/or on public services. This would also be a significantly more substantive ‘emergency brake’ than the version negotiated by David Cameron in 2016.

Impact on the economy

Temporary controls on the flow of workers would for the most part allow for a continued system of

TABLE Assessing the most plausible policy options for reforming free movement

Option	Impact on the negotiations	Deliverability	Impact on public opinion	Impact on the economy
Leaving free movement intact but greater conditionality in accessing benefits/services	Relatively small departure from status quo so would leave the UK well placed to negotiate a deal on the Single Market	Straightforward to implement	Unlikely to meet the bar of public opinion – too similar to David Cameron’s pre-referendum package	Negligible impact on the economy
Restricting free movement for jobseekers	Would represent a return to the ‘original’ conception of free movement - but would run up against considerable body of EU legislation/case law	Difficult to enforce in practice due to the difficulty of distinguishing between those illegally residing and temporary visitors. Also cumbersome on business	Would be popular, but concerns would remain due to the limited impact on total inflows	Would reduce flexibility from the status quo, but negligible impact on inflows means overall impact minimal
Safeguard measures (‘emergency brake’)	The fact that safeguards would be temporary and the existence of at least four legal and political precedents for such mechanisms suggests this option would be negotiable	Key challenge would be agreeing the conditions by which safeguards could be invoked, but Cameron’s negotiation provides a possible precedent. Requirement for registration would entail significant investment	Capable of securing public consent, since addresses one of the key drivers of public concern – the pace of change, particularly if packaged as part of a deal on the Single Market	Applying the model sectorally (rather than a crude national cap) would enable the government to smooth out the impact on particular sectors/regions

flexible labour mobility between the UK and the EU, except in certain periods. This would enable the government to adjust its economic model and ensure sectors are given the time/resources to invest in alternative approaches.

WIDER REFORMS TO SECURE GREATER CONTROL

It is important to state that in this paper we have primarily focused on the narrow range of options facing the UK in negotiating free movement reform with the EU27. However, the concerns people have about immigration obviously go much wider than the question of how future flows of EU migrants should be regulated. The government should view free movement reform as just one part of a wider package of measures to reform the UK's immigration system, including, for example:

- **Labour market reform** to improve the quality of jobs and wages and thus lower the demand for low skilled, low paid migration. This goes with the grain of policies put forward by the Labour Party since 2012, including clamping down on recruitment agencies who hire solely from abroad, tougher enforcement of the national minimum wage and tightening up of professional license to practice rules. But it could and should extend into new areas, such as the incentives put on employers to invest in their workforce and train their own staff.
- **Greater democratic accountability**, for example, with the Home Secretary required to present an annual report to Parliament, setting out the patterns and flows of migration; the economic contribution from migration to the Exchequer; and the measures taken by the government to manage impacts and pressures.⁶² This would also create a powerful incentive for the Home Office to set sensible targets for immigration controls, replacing the current discredited net migration target, with a more balanced and realisable range of measures.
- **A national strategy for social integration** to tackle the worrying drift towards social segregation in some of our major cities⁶³ and ensure that new

migrants knit more closely with the communities in which they settle. This would need to look at the provision of English language, social housing, schools and health services in fostering greater mixing.

- **Tougher enforcement against illegal migration.** Whilst the number of illegal migrants within the UK remains the subject of debate, it is widely accepted that the UK's enforcement infrastructure is weak, undermined by its continuing inability to properly count people in and out (despite the introduction of 'e-borders' in 2015) and ensure people leave when their visas have expired.⁶⁴ Brexit or not Brexit, public concern about immigration is unlikely to fall unless illegal migration is properly dealt with.⁶⁵

These proposals will be expanded upon in our forthcoming paper later in the Autumn, which will set out the principles and foundations of a progressive, mainstream immigration system.

LIMITING THE DAMAGE, IN THE EVENT OF BREXIT

Should the UK end up leaving the EU and exiting the Single Market, there are two main options for reforming the current immigration system of EU migration. These are set out below.

A Preferential work permit system

This would involve a two-tiered approach:

- Reciprocal free movement for skilled workers and non-active nationals (students and retirees) between Europe and the UK – enabling EU nationals to move to work in the UK (and vice versa) without a visa, providing the jobs they took exceeded a minimum skills threshold (based on the ONS' Occupational Classification codes)
- A preferential system of sector-based quotas to fill low skilled and semi-skilled jobs that employers cannot fill through local recruitment, with EU

62 See 'Immigration: the manifesto challenge', British Future (May 2017) <http://www.britishfuture.org/wp-content/uploads/2017/05/Immigration-Manifesto-2017.-British-Future.pdf>

63 Sadiq Khan, Evening Standard <http://www.standard.co.uk/news/mayor/sadiq-khan-rapid-immigration-is-leading-to-communities-fee-ling-isolated-a3345791.html>

64 See Palmer and Wood, 'The politics of fantasy: immigration policy in the UK after Brexit' (Jan 2017) <http://www.civitas.org.uk/content/files/thepoliticsoffantasy.pdf>

65 'UK public opinion toward immigration: overall attitudes and levels of concern', Migration Observatory (Nov 2016) <http://www.migration-observatory.ox.ac.uk/resources/briefings/uk-public-opinion-toward-immigration-overall-attitudes-and-level-of-concern/>

nationals offered the first chance to fill those quotas. These might include jobs in agriculture, hospitality and food processing and would provide migrant workers with routes to settlement, citizenship as well as the opportunity to live with their immediate family.

■

Case Study

GUARANTEEING PREFERENTIAL ACCESS FOR UK/ EU27 NATIONALS

Given the huge number of people affected by these changes (both EU citizens in the UK and vice versa) and the geographical proximity, there is a strong case for enshrining the principle of preferential access for EU-UK workers in a new post-Brexit system of immigration. Such a system might be perceived by some as discriminatory, but the UK has historically adopted preferential rules for migrants from particular countries (for example, those from the Commonwealth) and in recent years, no European countries have treated all countries equally.

Whilst agreeing to preferential access would be likely to improve the UK's prospects of negotiating an ambitious free trade agreement with the EU27, there is a possibility that by agreeing to the principle, the UK would be setting an important political precedent, which might limit its negotiating power in future trade agreements outside of the EU.

■

For the first tier, the UK Government would need to introduce a light touch system of worker registration for all EU nationals, including those groups for which free movement is maintained. This would be necessary for employers to prove that certain workers were eligible for special treatment under the UK-EU agreement. This could be based on the worker registration scheme used for EU8 and EU2 nationals during the period of transitional labour market controls after enlargement. (Under this scheme, eligible workers had to apply for and acquire a 'worker authorisation document' from the Home Office to confirm their eligibility before starting work.) The existing Standard Occupational Classification codes would then be used to determine the jobs that qualify

for the first tier.

The second tier would comprise sector-based quotas to fill low skilled and semi-skilled jobs that employers could not fill through local recruitment. EU nationals would be offered the first chance to fill those quotas. If those quotas could not be filled by those from the EU, they could be offered to non-EU nationals. Jobs that might be covered within this tier might include routine agricultural jobs, as well as those in hospitality and food processing. A decision would need to be made about whether EU nationals entering under this system would have the same access to public funds/ equal treatment as EU nationals under the existing free movement rules.

It is important to be explicit that (because of the need for a registration system) this model would not be free movement in the way it is currently understood, even for eligible workers and employers. Nevertheless, the process would involve many fewer eligibility requirements than the non-EU work permit system and thus would at least retain the principle of 'preferential access'.

Impact on the negotiations

By permanently ending free movement for certain groups of EU nationals, it is inconceivable that this option would be negotiable as part of a deal to keep Britain in/close to the Single Market. However, there is every reason to believe it would be negotiable as part of an ambitious free trade agreement. In particular, the fact that it would guarantee the principle of preferential access for EU/UK nationals, including the full benefits of free movement for certain groups, would make it an appealing policy for the EU27.

Deliverability

This system would be complex to administer, as it would require drawing a significant distinction between certain groups of EU nationals and others within the UK's immigration system. It would also be subject to abuse – most notably in cases where EU nationals may feign a particular occupation or grouping to gain access to the benefits of free movement. Compliance difficulties would be greater if eligibility for permit-free work was based not on salary (which is at least in

principle relatively easy to verify) but on occupation sectors (which is easier to misrepresent). Nonetheless, it seems feasible that, with the right level of investment and a period of transition, this system could be delivered.

Impact on public opinion

This option would be likely to secure public consent. It would enable the government to respond to popular anxiety about low skilled migration (as well as support for skilled migration) and offers an alternative to the current discredited blanket net migration target. Importantly, it would enable the UK Government to exercise more control than is currently allowed under existing free movement rules.

Impact on the economy

This option would enable employers to have access to highly skilled workers, both from within the EU and elsewhere. It would also enable those sectors that needed low-skilled workers and could not fully recruit them from the local workforce to secure the staff they need. However, the fact that such a reform would be likely to preclude UK membership of the Single Market would almost certainly outweigh these benefits over the longer term.

Non-preferential work permit system

A further approach would be to have an immigration system in which EU and non-EU migration were treated equally. Under such an approach, both EU and non-EU migrants would compete for skilled ('Tier 2') visas, with a debate over how far to increase the current quota (20,700). The government would also need to decide how to open up a route for some low- and semi-skilled migration, currently excluded from the non-EU system ('Tier 3' has never been opened).



Case Study

THE NON-EU WORK PERMIT SYSTEM

The UK operates a work permit system in respect of non-EU nationals. Work visas are issued under five main routes: Tier 1 ('High Value'); Tier 2 ('Skilled'), Tier 3 ('low skilled'), Tier 4 ('Students') and Tier 5 ('youth Mobility and

temporary workers'). Tier 3 has never been implemented.

'Tier 2', under which the majority of work-related visas are issued under the Points Based System, is itself made up of four routes: Tier 2 (General), Tier 2 (Intra Company Transfers), Tier 2 (Minister of Religion) and Tier 2 (Sportsperson). The most used route is the Tier 2 Intra-Company Transfer (ICT) route, under which individuals already employed by a company abroad can transfer to an office of the same company in the UK if they are in a graduate job and meet occupation-specific salary requirements.

'Tier 2' (General) visas are capped at an annual limit of 20,700, and are available subject to minimum skill and pay thresholds. Tier 2 (General) is itself made up of two routes: the shortage occupation list (SOL) route and the resident labour market test (RLMT) route. Under the RLMT route, the employer needs to attest that there is no suitable resident worker available to fill the post, having advertised it to resident workers for a set period. Jobs offered through the RLMT route need to meet skill and salary thresholds (£30,000 from April 2017, subject to occupation-specific requirements). In 2016, 90% of Tier 2 General applications were made under the RLMT route. Jobs on the Shortage Occupation List are exempt from the requirement to meet the resident labour market test, and are subject to salary thresholds specific to each job (which can be lower than the RLMT threshold).



Impact on the negotiations

Adopting this policy would effectively mean giving up on maintaining close economic ties to the EU, since it would mean a total departure from the principle of free movement and would not guarantee preferential access for UK-EU citizens.

Deliverability

There would be some major implementation challenges surrounding this option, not least the resource implications of an immigration system (already under significant pressure) effectively doubling its workload.

Impact on public opinion

Whilst there would be a significant minority who might welcome this option, the polling evidence suggests

most of the public are more pragmatic about the possibilities of negotiating a deal on free movement than is often assumed; it is unlikely that a majority of people would support this system if the trade-off was losing access to the Single Market.

Impact on the economy

The impact of this option would be devastating for our economy, robbing businesses of access to the skills they need to compete, particularly at a time when the economy is already facing considerable uncertainty.

TABLE Limiting the damage in the event of Brexit

Option	Impact on the negotiations	Deliverability	Impact on public opinion	Impact on the economy
Preferential work permit system	Permanent ending of free movement for certain groups would likely make this model incompatible with membership/close access to the Single Market, though 'preferential access' would enable a more ambitious free trade deal	Complex to administer as would require differentiation of EU nationals into different groups. Would be harder to enforce if based on skills-level (rather than salary). Requirement for registration would entail significant investment	The most closely aligned to public priorities of all the various policy options (greater selectivity, less low skilled migration), though this would be tempered by knowledge that it would limit the UK's ability to secure membership of the Single Market	Would arguably provide greater certainty for businesses and migrants than the temporary emergency brake but would risk reducing the incentive for EU migrants to choose Britain over other EU countries
Non preferential work permit system	Would represent the total abolition of free movement and the lack of 'preferential access' would in all likelihood limit the scope of the trade agreement	Would involve replicating the current system for non-EU migration for EU migrants, requiring significant investment/ infrastructure	Would be popular in isolation, but that would be tempered by the knowledge that it would leave the UK in a very weak position re: securing a positive trade deal	Impact of replicating the non-EU system on EU migrants would be catastrophic for our economy, robbing key sectors of both skilled and unskilled labour

Conclusion

It is widely accepted that last year's referendum vote was at least partly driven by public anxiety about immigration. That anxiety is real and must be dealt with. But delivering a 'hard Brexit' is not the sole, or even the best way to do so.

We believe a deal on free movement, which bridges the gap between the two extremes currently on offer – between a 'hard Brexit' on the one hand, and a continuation of the status quo, on the other - is still possible. Whether or not this is achieved will depend on the ability of the UK and EU27 to conduct the Brexit negotiations not only with a clear view of their short-term goals but also of their long term interests. On the British side, that means greater clarity and consistency about the purpose of free movement reform and how it will fit within the UK's broader strategic objectives. On the EU side, it means avoiding the temptation to apply punitive terms to the UK's exit for short-term political reasons. An outcome that isolated the UK and blunted the incentives for wider EU reform would be in nobody's longer term interests.

Having examined the policy choices regarding free movement, the most plausible option is for the UK to seek an agreement to implement a strengthened 'emergency brake', which would enable the UK to limit free movement during periods of exceptionally high EU inflows. The fact that there are legal and political precedents for such a mechanism, suggest this option has the best chance of being negotiated in a scenario whereby the UK sought to remain within the EU, or failing that, as members of the Single Market (potentially as part of a new UK-EU continental partnership). An emergency brake would also directly address a major driver of public concern about the current system: the pace of change. Even within current free movement rules, there are ways in which the system could be tightened up and reformed both within Europe and domestically, for example, by ensuring those that are economically inactive are proactively removed from the country and through reforms to our labour market and systems of training.

Should Brexit go ahead, the least damaging outcome for Britain would be to establish a preferential work permit system, whereby free movement continues for certain categories of people, for instance, highly skilled professionals and students, but is restricted for others, for example, low skilled workers.

It is clear that the UK's negotiation strategy is going to need to change, in two crucial ways. Firstly, a more holistic approach is required, which recognises the interdependencies between free movement reform and the Single Market, rather than prioritising one objective above all others. As a starting point, the government's forthcoming Immigration Bill (due to be published in the Autumn) must make clear that any proposed changes to free movement will not occur in a vacuum - that they will be contingent on wider choices/ negotiations about the future economic and political relationship between the UK and EU27.

Secondly, its approach needs to better reflect the new political reality – of a hung parliament and reduced political mandate. That will mean doing more to expose the trade-offs involved in negotiating free movement reform so that they can be debated (rather than pretending such trade-offs do not exist). It will also mean working harder to secure a broad-based consensus, across political parties, nations, regions, businesses, and trade unions. Without doing so, there is a real risk that any deal that is negotiated will fail to secure public consent and be deemed illegitimate.

YOUR VIEWS

Now that you've read the report, join the debate and share your views with us on the five questions below. Let us know what you think on Twitter (@InstituteGC), using the #EuropeRTC hashtag, or join the conversation on our Facebook page (facebook.com/instituteglobal). You can also email us at yourviews@institute.global and we'll share your thoughts with the author of the report.

Q1. Do you feel that immigration has had a positive or negative impact on the UK, nationally and in your local community?

Q2. What policy changes would you most like to see to the immigration system coming out of the Brexit negotiations?

Q3. Would an 'emergency brake' be a satisfactory way of dealing with public concern about EU migration in future?

Q4. Should there be further restrictions on EU migrants' ability to work in the UK?

Q5. Are the government right to insist that free movement reforms trump all other considerations, including membership of the Single Market?

ABOUT RENEWING THE CENTRE

The Institute for Global Change is a non-partisan organisation, which aims to help make globalisation work for the many, not the few. We do this by helping countries, their people, and their governments, address some of the most difficult challenges in the world today. This is the first publication falling under the 'Renewing the Centre (RtC)' pillar, which works to revitalise the centre ground and equip today's leaders to combat the rise of a new false populism.

ABOUT THE AUTHOR

Harvey Redgrave is a senior policy fellow at the Institute for Global Change, leading on immigration and integration. In addition to his work at the Institute, Harvey is Director of Strategy at Crest Advisory, the country's leading crime and justice consultancy. Previously, he spent four years as head of home affairs policy for the Labour Party and several years as a civil servant, including as a Deputy Director in the Prime Minister's Strategy Unit, where he worked under three Prime Ministers.

ACKNOWLEDGEMENTS

I would like to thank Professor Rob Ford, Professor Jonathan Portes, Sunder Katwala and Carlos Vargas-Silva for comments on earlier drafts of this report. I am indebted to Marley Morris at IPPR, whose report – 'Striking the right deal' – influenced my thinking. I would also particularly like to thank Yascha Mounk and Benjamin Delsman for their advice and comments, as well as all my colleagues at IGC for their valuable input into the report. All errors and omissions remain my own.

FOLLOW US

facebook.com/instituteglobal

twitter.com/instituteGC

GENERAL ENQUIRIES

info@institute.global

FIND OUT MORE
INSTITUTE.GLOBAL

Copyright © September 2017 by the Tony Blair Institute for Global Change

All rights reserved. Citation, reproduction and or translation of this publication, in whole or in part, for educational or other non-commercial purposes is authorised provided the source is fully acknowledged. Tony Blair Institute, trading as Tony Blair Institute for Global Change, is a company limited by guarantee registered in England and Wales (registered company number: 10505963) whose registered office is 50 Broadway, London, SW1H 0BL.