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IMMIGRATION AFTER BREXIT

What should post-Brexit immigration policy
look like?

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Introduction

What should an overall post-Brexit British immigration policy toward the EU look like, with or without an agreement? How should the Government respond to the Brexit vote and the democratic pressure to reduce inflows and renew national social contracts (in employment and welfare), while remaining an open, hub country and economy especially in relation to skilled professionals and students from the EU?

Freedom of movement was clearly one of the biggest single factors behind the Brexit vote. A Brexit without a clear end to free movement in its current form is neither possible nor desirable.

One of the problems with contemporary freedom of movement is that it has created a new phenomenon - an indeterminate “neither one thing nor the other” category of resident: someone who is neither a temporary visitor/guest to a country, such as a tourist, nor someone who is making a permanent commitment to a new country in the manner of the traditional immigrant. Many of those taking advantage of free movement in recent years have enjoyed the rights of the latter with the attitude of the former, one of the reasons free movement has been unpopular in many areas. The openness of free movement has also made it very hard for local and national authorities to plan for future population growth and infrastructure needs with any certainty.

This paper welcomes the end to freedom of movement from the EU and above all the ability to bear down on low-skilled migration. It therefore recommends:

- No automatic right of residence for future EU citizens after Brexit bringing them into line with non-EU citizens.
- Work permits required by future EU citizens with a presumption of five years for skilled professionals and two years for unskilled workers (with a bias towards those ready to work anti-social hours).
- Expansion of temporary work schemes in agriculture and for young people from the EU
- Biometric ID cards required by all future EU citizens staying more than six months, in line with non-EU citizens

Outside the field of employment, however, a lot of continuity remains possible, and even when it comes to jobs and social rights future EU citizens should continue to have some limited customised access to the UK labour market and the social state as a symbol of the “deep and special” relationship the UK is seeking. This status should be reviewed, and possibly made more country specific, as the UK considers its immigration needs as a fully independent state.

A broad agreement on continuity of status for the 3 million-plus EU citizens resident in the UK and the 900,000 UK citizens in EU countries has been reached. The Government now faces the big logistical challenge of formalising arrangements for most of the 3m after the planned leaving date of March 2019. (Little of this will apply in reverse to UK residents in other EU states, as the only EU country with significantly more than 100,000 UK residents is Spain with about 300,000 individuals to deal with.)

To meet the challenge of registering the large proportion of the 3 million expected to seek residence, a streamlined version of the normal permanent residence application process will be needed. This means a simplified online form (already announced by the Government) and a waiving of the need to surrender your passport and the often-laborious process of proving continuity of residence over the five-year qualifying period. (The criminal record check must be kept.)

A few tens of thousands of EU citizens who have been resident five years or more are already going through the existing, rather bureaucratic permanent residence process. The Government is committed to introducing the new more streamlined online system by March 2019 but there is a case for bringing it forward to summer 2018.

Pressure on the system could be reduced by phasing the process: asking certain groups to come forward first (as suggested by Ian Robinson of immigration lawyers Fragomen) such as those resident for more than 10 years and public-sector employees such as nurses and doctors. Those EU citizens who have been legally resident prior to March 2019 but have not been here for five years will also need to formalize their status. There will be plenty of anomalous cases, maybe running into the tens of thousands, that will require labour-intensive attention but the majority of cases should be reasonably straightforward to verify against tax and employment records.

To foster integration, consideration should also be given to providing a short-cut to British citizenship at the same time as completing the permanent residence process. Some of the current stages of the citizenship process could be temporarily adjusted to speed it up. Furthermore, a special reduced cost offer could also be made to EU citizens during the transition period.

It is possible, though unlikely, that the negative perception of Brexit by EU citizens, combined with the falling value of sterling and the improvement in the Eurozone economy, will lead to a greater, and more rapid, exodus of existing EU citizens than anyone has predicted, leading to some economic disruption.

This is what some employers fear and most seem to want to stick as close as possible to the status quo judging by the hostile reaction to the leak of an early draft of the Home Office document “The Border, Immigration and Citizenship System After the UK Leaves the EU” in early September. Much of the document was unexceptional and described an immigration regime similar to that in most rich countries, and indeed rather similar to the current UK regime towards non-EU citizens. It supports retaining the current free movement rules, with some amendments, but only for the transition out of the EU. Thereafter it speculates about a single framework for EU and non-EU citizens and suggests that EU citizens coming to work in the future should be granted 3 to 5 year visas for skilled workers and just 2 year visas for unskilled workers.

That is not an unreasonable proposal—a five-year visa could easily lead to permanent residence and many low skilled workers would still find a two-year visa attractive—though it would have to be carefully managed to ensure that those sectors that have become over-dependent on EU workers do not face a short-term crisis. This paper will, however, argue for a somewhat higher level of continuity among certain groups and more customization for EU citizens after Brexit than in the leaked draft.

Continuity and Customisation for EU Citizens

First of all it is worth considering just how much continuity is possible and desirable in *non-work* related movement of people. The idea that British young people will no longer be able to move freely around Europe, as Vince Cable and other hard Remainers often imply, is very unlikely to be the case. The freedom to work, study, travel and live anywhere in Europe will still be available to young British people, and to their European counterparts in Britain, with only minor adjustments mainly to employment.

There is a strong mutual interest in retaining visa free travel for tourism and short visits. Given that there are currently about 35m arrivals each year from EU countries both the immigration authorities and the tourism industry, here and in the EU, are strongly in favour of retaining the status quo. That raises the issue of visa free visitors from the EU overstaying and working without appropriate permission. (See page 17.)

(There is one wrinkle in this story which is that the EU itself is introducing a visa-lite for all non-Schengen countries including the UK—the planned ETIAS is similar to the US ESTA form which takes about 20 minutes to arrange online. If that does happen then clearly the UK should consider introducing something similar for EU citizens.)

Similarly with retirees and students. About 225,000 of the 900,000 British citizens who are resident in the rest of the EU are retired, almost exactly the same number as the number of EU retirees in the UK though they form only about 7% of the total here compared with around 25% of the British in other EU countries.

The main issue with retired citizens is healthcare and pensions. Under the current system the British Government pays the pensions of those living in other EU countries and reimburses EU governments for the healthcare costs incurred by British citizens (the UK paid out £580m in 2013/14 compared with just £12m that it received). There is no reason why these arrangements cannot continue.

What about students? There were about 125,000 EU students studying in the UK in 2015–16—70,000 undergraduates and 55,000 post-graduates—but this represents only about 6% of the total student body. A much higher proportion of the UK's academic staff, 17%, come from other EU countries but the majority

of them have been here for five years (or will have been by the end of the Brexit negotiation) so will face no change in circumstances.

Currently EU students pay the same tuition fees as UK students (except in Scotland where they pay nothing) and have the same access to the UK government loan system. This will last until the end of the Brexit negotiations, thereafter most of the higher education lobby groups assume that EU students will be treated like international students and will require visas and have to pay international fees with no access to student loans. Presumably based on this assumption there has been a small fall in EU student applications since Brexit, especially from poorer countries like Bulgaria and Romania.

While the UK considers its future needs, there is a case for leaving the current arrangements for students broadly as they are (though EU students should in future require visas and ID cards, or at least registration). The numbers are not large, only about 25,000 a year at undergraduate level, and it would send a helpful signal about the UK wanting to remain the leading European centre for higher education, innovation and research (nearly half of EU students are postgraduates). Similarly, the UK is likely to want to remain part of the EU research funding network and (with other non-EU countries like Israel) will presumably pay to remain a member. This might also apply to the Erasmus scheme of student exchanges (though leaving Erasmus and setting up our own exchange scheme is an option).

We will also need to design a post-study work route for EU students that would allow them to stay for a couple of years after graduating. The current regime for non-EU students requires them to take up a graduate job above a certain pay threshold if they want to stay, and there may be a case for relaxing that threshold for EU students or allowing them to transfer with minimum bureaucracy to the Youth Mobility Visa (see page 15).

Who Are the Three Million?

But if conditions can remain broadly the same for tourists, retirees and students that will not be the case for future flows of EU citizens coming here to *work*. Some sort of work permit system, with restrictions on permanent residence, will be required and some sort of new arrangement for social entitlements for those coming after the cut-off date.

The default position would be to apply the current conditions that pertain to non-EU work immigrants from say India or Australia (broadly what is recommended in the leaked September document). That would mean more or less zero low skill immigration and for skilled immigration the restrictive Tier 2 rules would apply, currently capped at just over 20,000 people a year. It would also mean no full access to the social state—including in work and out of work benefits, social housing and the right to bring in dependants—for five years and compulsory biometric ID cards for anyone staying more than six months.

Some aspects of this default non-EU position are not practical for EU citizens. To understand why that is the case we need a brief overview of the existing stock of EU workers in the UK.

Of the three-million-plus EU citizens in the UK about 2.3m are workers, making up about 7% of the UK workforce. It is estimated that of that total only about 20% have the combination of qualifications and salary level that would qualify them for the current non-EU Tier 2 skilled worker route. Only about 8% of the 1.2m workers from central and eastern Europe are classified as high skilled compared to 40% of the 1.1m from western Europe. (About 28% of UK-born workers are in this category.)¹

The main sectors where EU workers are found include manufacturing, hospitality and transport, where they represent more than 10% of the national workforce; other areas where they have a significant presence include retail, health and social care, administration, agriculture and horticulture and construction. A total of 150,000 are employed in health and social care with about 10% of NHS doctors and 4% of nurses coming from the EU.

Some sub-sectors have become particularly dependent on EU staff: about one third of workers in food manufacturing (116,000), almost 20% in hotels and 18% in warehousing work.

London is the most dependent region with 17% of workers from the EU. About 190,000 EU citizens are found in London's financial and professional services sector and about one fifth and one third, respectively, of hospitality and construction workers in London are from the EU.

Some sectors of the UK economy have become so dependent on low and semi-skilled EU labour that moving to reduce or even phase out new arrivals (as has already been the case for low skill non-EU immigrants) should be a relatively gradual process.

So what kind of changes *would* be sensible and capable of balancing both the democratic demand for a reduction in inflows, especially of low skill EU immigration, and the immediate needs of the economy?

A New Work Permit System for EU Citizens

The post-Brexit management of EU citizens coming here to work will require a somewhat expanded work permit section of the Home Office and a greater role for the Migration Advisory Committee (MAC).

Staff numbers at the Home Office have fluctuated in recent years but the department has been impacted by Whitehall austerity measures like most others and since 2009/10 the number of permanent staff working on border functions (including visas) has fallen from nearly 23,000 to just over 18,000. That number will need to rise in the coming months and years, both to deal with the short-term demand of granting permanent residence to existing EU citizens but also to manage the permanent extra visa workload created by the end of free movement. For the first task the Home Office has already recruited an extra 700 staff with another 500 due by next April.

Meanwhile, the MAC should host sector forums to gather views of employers (and, where relevant, unions) about future manpower requirements, what potential there is for automation—especially in horticulture and agriculture²—and in making jobs more attractive to UK workers by investing more in training and higher pay. (Free advice and even some financial support should be available for small and medium-sized employers.)

The MAC should be wary of accepting at face value employer arguments about the necessity of continuing flows of skilled workers. Some British employers used the surge in freedom of movement from central and Eastern Europe after 2004 to sharply cut training budgets.³ Of the 4.5m jobs created over the last 15 years, 84% have been taken by people born outside the UK.

That does not mean there are no British-born workers left. It is true that the unemployment rate of 4.3% is the lowest since 1975 but that is still 1.43m people and nearly one quarter have been unemployed for more than a year. Youth unemployment for 18- to 24-year-olds is 12% (and higher still for ethnic minority young people) and there are nearly 800,000 young “Neets” not in employment, education or training, that is 11.1% of all 18- to 24-year-olds. Of the 8.4m part-time workers, 1m would like to find full-time work and there is thought to be considerable hidden unemployment among the disabled. And the over-65s have a lower labour market participation rate at 11% than the G7 average of 15%.

Moreover, there has been a dramatic decline in full-time male employment. The proportion of men in such jobs in the 1950s was around 98 per cent and it is now around two thirds, even allowing for those in full-time education. The reasons for this change are complex but some of these men could probably be induced back into work with better training and higher wages.

And contrary to the assumption of Brexit pessimists the reduced labour inflow from central and eastern Europe in recent months already appears to be having a positive impact on wages and automation. According to The Economist real annual wages in agriculture increased by over 3% at the end of last year. Evidence on automation is more anecdotal but the potential is significant because it remains low by international standards in high migrant employing/low wage sectors like food manufacturing.

Although the Government abandoned a “nudge” policy requiring larger companies to disclose the proportion of non-UK nationals they employ, the MAC should publish such numbers for whole sectors as part of the process of setting advisory sector targets for EU employees, with the aim of gradually reducing the stock of low skill workers as some of those already here return home.

The existing employer sponsored work permit scheme for the quite small number of skilled workers coming from outside the EU to work currently works relatively well.

Some of this system can be adapted for EU workers in the future. However in other respects the current system is too expensive (especially for smaller businesses) and bureaucratic, and in the short to medium term should be made as “light touch” as possible for EU skilled workers.

The current work permit system is widely regarded as an efficient one by international standards but a recent report by the Recruitment and Employment Confederation describes the current system in this way: “The UK operates one of the most expensive visa systems in the world. Applicants, their dependents and their employers must variously pay visa application fees, the immigration health surcharge, the immigration skills charge (ISC) and for a Certificate of Sponsorship. The combined cost is substantial. If a Tier 2 worker were to enter to work for a large company for five years with a partner and three children, the

government fees could be up to £16,069.”⁴ This can also take up to six months to arrange.

Much of this should be by-passed for skilled EU workers in the short to medium term, for those with the required qualification level and a minimum salary of £32,000 a year. The assumption should be that a job offer from a “trusted sponsor”, a properly certified UK employer, should itself act as a work permit for a skilled EU worker; the Home Office should guarantee that granting permission for the arrangement will take no longer than one month.⁵ (For skilled workers there should be no need to follow the Resident Labour Market Test of advertising a job in the UK for 28 days before employing a foreigner.)

For lower skilled workers the work permit system should be less “frictionless”, with a three-month processing period, which should also include respecting the Resident Labour Market Test. However, as noted above, sectors like food manufacturing have become so dependent on workers from central and eastern Europe that some special arrangements might be required at least temporarily.

One option would be to offer a special “antisocial hours” visa, as proposed by Ian Robinson of the immigration lawyers Fragomen. There is a widespread assumption, not always true, that British workers have a poorer work ethic than people from central and eastern Europe. People who come from much poorer countries with more basic welfare states are often used to giving more effort for any given unit of pay (as immigrants they are also more likely to be drawn from the more energetic and ambitious sections of society).

But one of the main reasons freedom of movement has been so popular with employers is because the economic migrants from central and eastern Europe are readier to work anti-social evening, night and weekend shifts. They are often here mainly to earn money and many do not have family responsibilities, unlike most British workers (whose in-work benefits may also decline sharply if they work too many hours). Why not make a virtue of these different priorities and give preference in work permits to those prepared to work anti-social hours for all or some of their period working in the UK? (Though such permits should not be employer-specific.)

In any case, it is important to remember that whatever the short-term labour requirements none of those coming from the EU after the cut-off date will have automatic permanent residence or full access to the social state, as they

currently do. Indeed, the assumption of the leaked document of a five-year work visa limit for skilled workers and two years for unskilled is a reasonable one, though it should also be possible to extend such visas.

Temporary Work Schemes after Brexit

Alongside the modified work permit scheme for EU workers, described above, there is potential for adapting other *non-permanent* migration schemes for a post-Brexit world. There are three in particular: the Seasonal Agricultural Workers scheme (SAWS), the Youth Mobility Scheme and Intra-Company Transfers (ICTs).

The first two could be particularly useful for short-term, time limited, low skill employment that does not lead to permanent residence. The Seasonal Agricultural Workers Scheme (SAWS) operated successfully for 60 years until it was phased out in 2014 in part because of the large availability of such labour from eastern Europe. The National Farmers Union (NFU) called it a “robust and effective” scheme controlled by the Home Office which provided a pool of temporary overseas workers to do outdoor and sometimes physically demanding work in remote locations that is not usually popular with UK workers. The NFU also says that the old SAWS scheme had “exceptionally high rates” of workers returning home, at around 98%.

The NFU is currently lobbying to bring back the old SAWS scheme which, it claims, could be up and running within six months. David Camp of the Association of Labour Providers suggests that: “Defra should convene a multi-stakeholder group now to design this scheme. Industry and trade association representatives are ready and waiting to support Defra in the task.”⁶ He also suggests that the scheme could be extended beyond the traditional areas of agriculture and horticulture to include salad packing and meat and fish processing. (This should not discourage more automation, which is now looking more attractive in certain sectors, but is likely to be some years away in soft fruit.)

The current Youth Mobility Scheme should be extended on a reciprocal basis to all EU countries for a trial period. The current scheme allows 18 to 30 year olds to work in the UK for two years with no right of residence. It currently attracts about 50,000 young people a year, with reciprocal quotas in most cases, from Australia, New Zealand, Canada, Japan, Monaco, Hong Kong, South Korea and Taiwan. Such an extension to young EU citizens should help to allay some of the fears of employers in the hospitality and coffee shop sector. It might also be possible, as with “antisocial hours visas” to nudge youth mobility workers

towards sectors with shortages. Two-year visas might be extended for another year or two if people are prepared to work, for example, in the social care sector.

The Intra-Company-Transfer scheme which is currently used by many larger non-EU based companies to transfer staff to the UK for limited periods should be extended to EU based companies. At present ICTs are not capped but most workers have to leave after five years (or nine in exceptional cases). The number coming through this route for more than one year has increased substantially and, including dependants, amounted to around 60,000 people in 2014.

The standard form of ICT is, say, a Japanese employee of Nissan being sent for a two-year period to the UK to help with the launch of a new production line. But in recent years there has been a big increase in so-called third party contracting in which, for example, an Indian IT consultancy, will send an employee to work for a client of the local branch of the consultancy such as British Airways. About 80% of all people coming in under the ICT system are in the IT sector. The ICT system is popular with employers though questions have been raised by the MAC about whether it can mean reduced training and job opportunities for British IT workers.

Regulation Via ID Card

The advantage of the three schemes just described is that they all cater for different forms of *temporary* migration, which in the long run is the best way to combine the desire for slower demographic change with the needs of business. The schemes can also be extended or contracted at quite short notice.

How will it be possible to stop EU citizens arriving as a visa-less tourist and then staying and working illegally? This is a more general problem for immigration systems in rich countries like Britain where the main abuse is not so much illegal entry as people over-staying visas of various kinds: visitor, student, worker. (The Home Office has recently revised down its estimates of how many people do overstay the roughly 2.6m visa arrivals each year to around 70,000).

The long-term answer is a more extensive use of ID cards and a greater willingness on the part of employers and gatekeepers to the welfare state to routinely require their use in everyday life.⁷ (The need to *internalize* the management of the UK border with greater help from employers and public-sector professionals is rightly recognized in the leaked Home Office paper.)

All EU citizens in the future who are here for more than six months, whether as a student or a worker, should be required to register with the authorities (as is already the case in most European countries) and hold a biometric ID card or something similar, as is currently the case for everyone from outside the EU. (This should *not* apply to the three million pre-Brexit EU residents, though they will need permanent residence or some other form of documentation to prove their unique status.)

The biometric ID card contains name, date and place of birth plus biometric information (facial image and fingerprints) and shows an individual's immigration status and entitlements while they remain in the UK. This allows employers to use the Government's free online Biometric Residence Permit checker to establish the right to work. (This could be used to ensure that people on anti-social hours visas work the appropriate shifts.)

Social Rights for EU Citizens?

What about access to the social state? Currently anyone who is legally resident in the UK is allowed access to the education and health systems, though most non-EU citizens are required to take out health insurance until they acquire permanent residence. Access to in and out of work benefits, social housing, student loans and the right to bring in dependents is only available to those who have permanent residence, obtainable usually after five years in the country (longer for students). Hitherto EU citizens have been treated in most respects as if they are British citizens with permanent residence and thus have full access to the social state almost as soon as they arrive.

The question is should future EU citizens revert to the same position as non-EU citizens, in other words a five year wait for full access, or should there be some half-way house between the rights of a British citizen and the five-year wait for full social access?

There is a case for saying that our 44-year membership, combined with the Government's desire to retain a "deep and special" relationship with its member states, means that access to the social state for EU citizens in the future should be granted earlier than the present five years. This would still exclude most future EU unskilled workers on two-year work permits from housing benefit and tax credits.

These acts should be viewed as gestures of goodwill, as Britain seeks to secure a positive Brexit agreement with the EU and build strong ties with European neighbours post-Brexit. However, as Britain 'pivots to the world', these positions should be reviewed. Non-European economies are growing faster and Britain's relationship with these rising states will take on increasing importance.

Conclusion

The arrangements described in this paper would leave the UK with broadly five categories of resident: full British citizens, those with permanent residence/indefinite leave to remain who are not citizens (including many of the 3m pre-Brexit EU residents), the post-Brexit EU citizens who come to live or work in the UK in most cases temporarily, plus two categories of people who come from the rest of the world, those coming permanently (mainly through family reunion and refugee channels) and those who are here temporarily as students or skilled workers.

One difficulty with a privileged position for EU citizens beyond the transition period is that it might conflict with equalities legislation and the principle of non-discrimination. When we are no longer members of the EU, when EU law is no longer supreme, there may be no legal grounds for providing more favourable arrangements for a French citizen compared with a French Canadian. In any case, Britain will want to re-examine the nations and skills it prioritises after Brexit.

The above provides the basis for a system of fair, rather than free, movement which takes into account the interests of low-skilled British citizens who have faced the brunt of EU labour competition, as well as British business. Almost all of these rules could be implemented unilaterally in the event of a 'No Deal' Brexit scenario.

Endnotes

¹ Most of the figures in this section are drawn from [the Recruitment and Employment Confederation report](#) on Brexit of June 2017 plus [the CIPD report](#) on the same subject also of June 2017

² See Matt Ridley [Times comment](#) Monday September 18th 2017

³ See Francis Green et al at UCL "[What has been happening to the training of workers in Britain?](#)"

⁴ REC report Brexit June 2017

⁵ A British Future poll found that there was 80% plus support for continuing with free movement for skilled EU workers, see [Time to Get it Right](#), 4th September 2017.

⁶ David Camp, [Building a Model Seasonal Workers' Scheme](#), Association of Labour Providers position paper July 2017