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European Union Committee

14th Report of Session 2016–17

Brexit: UK-EU movement of people

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The European Union Committee

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Q in footnotes refers to a question in oral evidence.

SUMMARY

The Prime Minister has said that “The message from the public before and during the referendum campaign was clear: Brexit must mean control of the number of people who come to Britain from Europe” (Lancaster House, 17 January). In order to achieve this, the Government has undertaken to put an end to the free movement of persons, one of the four freedoms underpinning the Single Market.

In this report, we examine what the Government’s pledge to deliver control over EU immigration might mean in practice. The free movement of persons is a legal construct, and its foundations are in EU law. It is set to end automatically when the UK ceases to be a member of the EU bound by EU law.

The policy choice facing the Government will be about what aspects of the free movement of persons—if any—it would like to see reproduced in any future bilateral agreement with the European Union.

If negotiations under Article 50 were to conclude without an agreement on this issue, the default outcome is that UK nationals would become third-country nationals for the purposes of EU law and the domestic immigration rules of EU member states. For its part, the UK could place EU immigrants on the same footing as non-EU immigrants. At the other end of the spectrum of possible outcomes, negotiations could lead to new, reciprocal and preferential arrangements for UK-EU migration falling short of free movement as it exists today but coming close in some or even many respects.

The Government says it will be pursuing a “two-way agreement” with the EU regarding future migration flows. We support this objective, and judge that offering preferential treatment to EU nationals compared to non-EU nationals in the UK’s future immigration regime could increase the likelihood of securing reciprocal preferential treatment for UK nationals in the EU. It could also improve the prospects of achieving the UK’s objectives on access to the Single Market. In view of the read-across to these other goals, we consider it vital that the Government should not close off policy options on future regulation of EU immigration ahead of negotiations with the EU-27. In view of the link between the free movement of persons and access to the Single Market, transitional arrangements could be required if the UK left the EU while negotiations on a Free Trade Agreement were still underway, or yet to begin.

The Government’s primary objective in putting an end to the free movement of persons is restoring sovereignty: ensuring that immigration rules for EU nationals are devised and adopted in the UK. The restoration of national control over EU migration may or may not deliver a reduction in overall net migration. We note that until June 2016, net migration to the UK from outside the EU was consistently higher than EU migration, even though the relevant policy levers are already under national control.

Given that almost three-quarters of EU migrants to the UK come to work, or look for work, we anticipate that any new controls may focus on those categories, and take the form of a work permit system. However, the unanimous view of the public and private sector employers’ groups from whom we took evidence was that the Government should not apply the UK’s non-EU work permit system

to EU nationals. They warned that this would disproportionately affect some employers' ability to sponsor EU workers, and could result in labour shortages.

The composition of UK migration to the EU differs from that of EU migration to the UK, with the age profiles of UK citizens who are long-term residents in other EU countries suggesting that a larger proportion are retired or nearing retirement. A strictly reciprocal two-way agreement may not, therefore, be attractive to the EU-27. Restoring aspects of the equal treatment dimension of free movement, that is to say, the right to equal treatment compared to nationals of the host State, in any future agreement would be particularly significant for prospective migrants in non-work categories (such as UK nationals retiring in the EU or EU nationals studying in the UK).

To the extent that the Government has set out a direction of travel for how it wishes to manage migration of EU nationals in future, that vision seems to consist of three elements: first, that high-skilled immigration will remain welcome; second, that low-skilled immigration is potentially of concern; and third, that the UK should seek to reduce dependence on low-cost migrant labour. Each of those elements merits closer scrutiny, and we recommend that the Government should focus on improving its evidence base before building policy on these foundations.

The evidence base currently available to policy-makers responsible for devising a future framework for UK-EU migration is incomplete, and in some cases insufficiently reliable. This is an unsatisfactory basis from which to start developing policy, and also complicates scrutiny of the policies that may result. Different measures of who counts as a migrant sow confusion in public debate, facilitating both over- and under-statement of particular trends in political rhetoric, and contributing to a gap between perceptions and reality.

Brexit: UK-EU movement of people

CHAPTER 1: INTRODUCTION

The purpose and scope of this inquiry

1. The Government has listed “bringing back control of decisions over immigration to the UK” as one of its four “overarching strategic objectives” for the forthcoming negotiations on the UK’s exit from, and future relationship with, the European Union.¹ The Prime Minister has said that the result of the referendum on UK membership of the European Union sent “a very clear message” that “people wanted us to take control of our borders and control of immigration from the EU”.² She has indicated that the Government intends to “introduce control on free movement so that we have an end of free movement”.³
2. In view of the link between this issue and membership of—or access to—the Single Market, the precise manner in which the Government proposes to “end” free movement looks set to be a pivotal aspect of the United Kingdom’s approach to negotiations with the European Union. It could have far-reaching implications not only for the UK’s future trading relationship with the EU, but also for sectors of the UK economy—both public and private—that have come to rely on EU migrant labour, and for UK citizens whose current, reciprocal right to free movement within the EU is also set to end.
3. Following the referendum on 23 June 2016, the European Union Committee and its six sub-committees launched a coordinated series of inquiries, addressing the most important cross-cutting issues that will arise in the course of negotiations on Brexit.⁴ These inquiries, though short, are an opportunity to explore and inform wider debate on the major opportunities and risks that Brexit presents to the United Kingdom.
4. In this report, we examine possible arrangements for migration of EU citizens to the UK after the UK has ceased to be a member of the EU, with a view to identifying the main choices available to the Government and their likely implications—including for UK citizens wishing to move to the EU in future. We hope that our report will help draw attention to the implications of this aspect of the Government’s strategy, as well as making a constructive contribution to the development of the UK’s negotiating position.
5. The scope of the inquiry on which our report is based has been limited to future flows of EU citizens to the UK (and vice-versa)—we have not examined the position of EU citizens already living in the UK and UK citizens already living in the EU, which has been the subject of a separate inquiry and report by the European Union Committee.⁵ We remain of the

1 HC Deb, 12 October 2016, [col 328](#)

2 Oral evidence taken before the House of Commons Liaison Committee, 20 December 2016 (Session 2016–17), [Q 38](#) (Theresa May MP)

3 The Prime Minister, HC Deb, 26 October 2016, [col 273](#)

4 European Union Committee, [Scrutinising Brexit: the role of Parliament](#) (1st Report, Session 2016–17, HL Paper 33)

5 European Union Committee, [Brexit: acquired rights](#) (10th Report, Session 2016–17, HL Paper 82)

view that the Government should give a unilateral guarantee now—that is to say, before negotiations begin—that it will safeguard the EU citizenship rights of all EU nationals in the UK when the UK withdraws from the EU.⁶ This report is also intended to complement the Committee’s report on *Brexit: the options for trade*.⁷

6. In the course of our inquiry, we have examined future immigration arrangements for EU nationals. We have not considered future arrangements for non-EU nationals (including asylum-seekers and refugees) entering the UK via the EU. We have focused mainly on those EU nationals who move to the UK to work or look for work, both because they make up by far the largest proportion of EU nationals migrating to the UK (72% in the year ending June 2016) and because other Select Committees in both Houses of Parliament have been examining future arrangements for EU nationals moving to the UK to study, who make up the next largest proportion (13% in the year ending June 2016).⁸
7. It has been beyond the scope of our inquiry to examine the ramifications of possible changes to the UK’s immigration arrangements for EU nationals on individual sectors of the economy or the labour market more generally. We did, however, take evidence from NHS Employers in order to capture the perspective of a public-sector employer, and from the National Farmers’ Union in order to capture the perspective of an industry that has experience of sector-based and seasonal immigration schemes.
8. We are seized of the fact that when it comes to the free movement of persons, special considerations apply to the border between Northern Ireland and the Republic of Ireland, and that between Gibraltar and Spain. We have produced separate reports on the implications of the UK’s exit from the EU for UK-Irish relations and for Gibraltar.⁹ We are also mindful of the fact that the devolved administrations in Edinburgh, Cardiff and Belfast have their own perspective on this issue, and will shortly be producing a report on the implications of the UK’s exit from the EU for Scotland, Wales and Northern Ireland, as well as for the devolution settlements as a whole.¹⁰
9. **We make this report to the House for debate.**

Background

What is free movement?

10. The free movement of persons is one of the four ‘freedoms’ which together underpin the EU’s Single Market. One of the central aims of the European Union is to create an internal market between its members that removes and reduces barriers to trade by ensuring the free movement of goods, services,

6 *Ibid.*, para 147

7 European Union Committee, *Brexit: the options for trade* (5th Report, Session 2016–17, HL Paper 72)

8 Written evidence from the Office for National Statistics (BMP0004), Table 1

9 European Union Committee, *Brexit: UK-Irish relations* (6th Report, Session 2016–17, HL Paper 76); European Union Committee, *Brexit: Gibraltar* (13th Report, Session 2016–17, HL Paper 116)

10 European Union Committee, ‘Brexit: devolution inquiry’ (27 January 2017): <http://www.parliament.uk/business/committees/committees-a-z/lords-select/eu-select-committee/inquiries/parliament-2015/brexit-devolution> [accessed 1 March 2017]

persons and capital.¹¹ Table 1 sets out the treaty provisions underpinning each of the four freedoms.

Table 1: EU Treaty provisions relating to the Four Freedoms

The Four Freedoms	Goods	Customs Duties Arts. 28–30 TFEU	Internal Taxation Art. 110 TFEU	Free movement of imports Art. 34 TFEU	Free movement of exports Art. 35 TFEU
	Persons	Freedom of establishment Art. 49 TFEU	Free movement of citizens Art. 20–21 TFEU	Free movement of workers Art. 45 TFEU	
	Services		Freedom to provide, receive services Art. 56 TFEU		
	Capital	Free movement of Capital Art. 63(1) TFEU		Free movement of payments Art. 63(2) TFEU	

Source: HM Government, Review of the Balance of Competences between the United Kingdom and the European Union: the Single Market, p 20: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/227069/2901084_SingleMarket_acc.pdf

11. The concept of free movement of persons has changed in meaning since its inception. The 1957 Treaty of Rome establishing the European Economic Community (EEC) contained provisions on the free movement of workers and on freedom of establishment, thus granting individuals rights as employees or service providers.¹² Closely associated with the relevant provisions in the Treaty of Rome was the general principle of non-discrimination on the grounds of nationality: a mobile worker from another Member State must enjoy the same treatment as nationals in a comparable situation.¹³ From the outset, supporting provisions were also enacted to ensure national social security systems would not act as a barrier or disincentive for workers and their families to move between Member States.
12. 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 (Regulations and Directives) and the evolving

11 The treaties originally referred to the ‘common market’ but this was replaced in the [Treaty of Lisbon \(OJ C 306\)](#) by the ‘internal market’ which is defined in Article 26(2) of the Treaty on the Functioning of the European Union ([OJ C 326](#)).

12 Article 3(c) EEC, [Treaty Establishing the European Community](#) provided that the Community aspired to “the abolition, as between Member States, of obstacles to freedom of movement for ... persons”. Articles 48 to 50 EEC provided for the free movement of workers, Articles 52 to 58 concerned the right to establishment and Articles 59 to 66 provided for the freedom to provide services.

13 Article 7 EEC, [Treaty Establishing the European Community](#)

case-law of the Court of the Justice of the European Union (CJEU).¹⁴ For example, three Directives adopted in 1990 extended residence rights to retirees, students, and those with independent means.¹⁵

13. The Maastricht Treaty, in which entered into force in 1993, introduced the notion of EU citizenship. Since then, anyone holding the nationality of an EU Member State has also been a citizen of the EU. The 2004 Citizens Directive¹⁶ (also known as the Free Movement Directive) sought to consolidate and codify in one instrument provisions on the right of citizens of the Union and their family members to move and reside freely in the territory of the EU Member States. A modernised set of rules for social security coordination was established in two Regulations adopted in 2004 and 2009.¹⁷ Box 1 sets out the main rights codified in the Citizens Directive.¹⁸

Box 1: The 2004 Citizens Directive

The Citizens Directive codifies the following rights:

- Article 4 provides **a right of exit**. All EU citizens who hold a valid identity card or passport and their non-EU family members—spouses, registered partners, dependent descendants, dependent ascendants¹⁹—have the right to leave the territory of a Member State to travel to another Member State. No exit visa can be imposed on an EU citizen.
- Article 5 provides **a right of entry**. Member States must grant all EU citizens who hold a valid identity card or passport and their family members the right to enter their territory. No entry visa can be imposed on an EU citizen.
- Article 6 provides **a right of residence for up to three months**. All EU citizens and their non-EU family members have the right of residence in another Member State for a period of up to three months without any conditions, other than holding a valid identity card or passport.

14 For a more detailed exposition, see HM Government, *Review of the Balance of Competences between the United Kingdom and the European Union, Single Market: Free Movement of Persons*, Chapter 1: Historical Development and Current State of Competence, 2014: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/335088/SingleMarketFree_MovementPersons.pdf [accessed 22 February 2017].

15 Council Directive 90/365/EEC on the right of residence for employees and self-employed persons who have ceased their occupational activity (*OJ L 180*, 13 July 1990, pp 28–29); Council Directive 90/366/EEC on the right of residence for students (*OJ L 180*, 13 July 1990, pp 30–31), and Council Directive 90/364/EEC on the right of residence for persons of sufficient means (*OJ L 180*, 13 July 1990, pp 30–31)

16 Directive 2004/38/EC, 29 April 2004, on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States (*OJ L 158/77*, 30 April 2004, pp 77–123)

17 Council Regulation 883/2004/EC on the coordination of social security systems, (*OJ L 200/1*, 7 June 2004, pp 1–49) and Council Regulation 987/2009/EC laying down the procedure for implementing Regulation 883/2004/EC on the coordination of social security systems, (*OJ L 284/1*, 30 October 2009, pp 1–42).

18 Since then, the EU has also adopted Regulation 492/2011/EU of the European Parliament and of the Council on the Freedom of Movement for Workers within the Union, (*OJ L 141/1*, 27 May 2011, pp 1–12), and Directive 2014/54/EU of the European Parliament and of the Council on Measures Facilitating the Exercise of Rights Conferred on Workers in the Context of Freedom of Movement for Workers, (*OJ L 128/8*, 30 April 2014, pp 8–14) among other measures.

19 Article 2(2) of Council Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States (*OJ L 158*, 30 April 2004, pp 77–123)

- Article 7 provides for a **right of residence for more than three months**. All EU citizens have the right of residence in another Member State for longer than three months if they meet any of the following conditions:
 - They are employed or self-employed (no further conditions apply).
 - They are economically inactive but have: i) “sufficient resources for themselves and their family not to become a burden on the social assistance system of the host Member State”; and ii) “comprehensive sickness insurance cover”.
 - They are accredited students and have: i) “sufficient resources for themselves and their family not to become a burden on the social assistance system of the host Member State”; and ii) “comprehensive sickness insurance cover”.
- These conditions are often referred to as **exercising treaty rights**.
- The right of residence for more than three months extends to non-EU family members of EU citizens meeting one of these conditions.
- Article 16 provides a **right of permanent residence**. All EU citizens who have resided for a continuous period of five years in the host Member State, **and who have exercised their treaty rights during that time**, have the right of permanent residence there. The right of permanent residence extends to (non-EU) family members of EU citizens who have resided for a continuous period of five years. Once acquired, the right of permanent residence can only be lost through absence from the host Member State for a period exceeding two consecutive years. The following temporary absences do not affect continuity of residence:
 - absences not exceeding a total of six months a year; or
 - absences of a longer duration for compulsory military service; or
 - one absence of a maximum of twelve consecutive months for important reasons such as pregnancy and childbirth, serious illness, study or vocational training; or
 - a posting in another Member State or a third country.
- Article 24 provides a **right to equal treatment**. All EU citizens and their non-EU family members have the right to be treated equally with nationals of the host State. The host State is not, however, obliged to grant social assistance to economically inactive people or students during the first three months of their stay.
- Article 27 provides a **right to expel** an EU citizen on grounds of public policy, public security or public health, subject to procedural safeguards. These grounds cannot be invoked to serve economic ends. The personal conduct of the individual concerned must represent “a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society.”

Source: Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States (OJ L 158, 30 April 2004, pp 77–123)

14. Free movement rights can be exercised by citizens of the 28 EU Member States, their dependants, and (in certain circumstances) other family members. The rights conferred by the Citizens Directive have in large part

also been extended to nationals of the European Economic Area who are not members of the EU (Iceland, Norway and Liechtenstein) and to Switzerland by virtue of separate agreements. EU citizens have a reciprocal entitlement to exercise free movement rights in those countries. For simplicity, we nonetheless refer to ‘EU’ and ‘non-EU’ categories in the remainder of our report.

15. The Citizens Directive was transposed into UK law by the Immigration (European Economic Area) Regulations 2006. The CJEU has continued to clarify and, in some cases, expand free movement rights through its case law, which has prompted the UK Government to amend the 2006 Regulations in some respects.²⁰ Last year, the 2006 Regulations were superseded by the Immigration (European Economic Area) Regulations 2016.²¹
16. The free movement of persons is an area of ‘shared competence’ between the EU and its Member States. While competence for the coordination of social security systems is shared between the EU and its Member States, Member States have exclusive competence for the design, organisation and funding of their social security systems.

Free movement of persons and the Single Market

17. As the trajectory described above implies, the origins of the concept of free movement of persons lie in the creation of the Common Market (later the Single Market). Although in practice the free movement of persons amounts to an immigration policy in respect of each other’s citizens that the EEC Member States collectively agreed to adopt, they did so 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.
18. This nuance cuts to the heart of the choices available to the Government, in that by putting an “end” to the free movement of persons, the Government is proposing to renounce one of the four freedoms that underpin the Single Market. The Prime Minister has signalled that, as a corollary of this and other objectives set out by the Government, the UK will not be seeking membership of the Single Market in negotiations on its future relationship with the European Union. It will instead be seeking “the greatest possible access to it through a new, comprehensive, bold and ambitious Free Trade Agreement”.²²
19. Decisions about the precise manner in which the Government proposes to “end” free movement are nonetheless inextricably linked to the UK’s objectives in relation to the Single Market. Membership of the Single Market is predicated upon acceptance of all four freedoms. Even a looser arrangement—such as the web of bilateral agreements that Switzerland has negotiated with the EU—has thus far involved accepting the free movement of persons in return for broad-based preferential access to the Single

20 See The Immigration (European Economic Area) (Amendment) Regulations 2012 ([SI 2012/1547](#)) and The Immigration (European Economic Area) (Amendment) (No. 2) Regulations 2012 ([SI 2012/2560](#)).

21 The Immigration (European Economic Area) Regulations 2016 ([SI 2016/1052](#))

22 Theresa May MP, Speech on The Government’s negotiation objectives for exiting the EU, 17 January 2017: <https://www.gov.uk/government/speeches/the-governments-negotiating-objectives-for-exiting-the-eu-pm-speech> [accessed 28 February 2017]

Market.²³ On the other hand, more recent Free Trade Agreements have not included the free movement of persons, but have provided more limited access to the Single Market. For example, the EU-Canada agreement does not cover a number of key service sectors, does not provide tariff-free access for all Canadian manufactured goods, imposes quotas on some Canadian agricultural exports, and requires Canada to accept EU rules when exporting to the EU.²⁴ The question for the UK is what level of access to the Single Market it is able to negotiate without accepting the free movement of persons, and—if it is seeking a greater level of access to the Single Market than that which the EU has offered in previous Free Trade Agreements—what the EU might seek in return, including on the free movement of persons.

Transitional controls on free movement

20. When new Member States join the European Union, the existing, ‘old’ Member States may temporarily choose to restrict the right of citizens from the new Member States to take up employment in their labour market, subject to provisions in each accession treaty. Transitional arrangements of this kind were permitted for the accession of the EU8 countries in 2004 (Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia and Slovenia), the accession of the EU2 countries (Bulgaria and Romania) in 2007, and for that of Croatia in 2013. Transitional arrangements were not applied to Malta and Cyprus when they joined the EU in 2004.
21. In each case, transitional restrictions could be applied for a maximum period of 7 years, although each ‘old’ Member State could opt to lift its transitional restrictions at any stage during the seven-year period, or choose from the outset not to apply any restrictions. Meanwhile, the ‘new’ Member State was free to choose whether to introduce reciprocal restrictions on the citizens of ‘old’ Member States (for example, Croatia has done so while Bulgaria and Romania did not). Transitional restrictions were only permitted in respect of workers—they were not permitted in respect of the self-employed, nor could citizens of new Member States be prevented from travelling to other Member States or residing there under other, non-work categories (for instance, as self-sufficient persons).
22. Different Member States have made varying use of the right to impose transitional controls, and have sometimes taken different approaches for each accession. The UK was one of only three ‘old’ Member States (the others being Sweden and Ireland) that gave citizens of the EU8 countries full access to their labour markets when those countries joined the EU in 2004.
23. By contrast, after Bulgaria and Romania joined the EU in 2007, the UK—along with nine other ‘old’ Member States—applied restrictions for the full seven-year period. The nature of the restrictions applied varied from Member

23 **Q 84.** Following a referendum in February 2014 in which the Swiss voted to impose quotas on migrants, the Swiss Federal Council adopted a negotiating mandate in February 2015 with a view to adapting the Agreement on the Free Movement of Persons (AFMP) that Switzerland had reached with the EU in 1999. Switzerland was not able to reach agreement with the EU, and has instead adopted domestic legislation deemed compatible with the AFMP in order to preserve its other bilateral agreements with the EU.

24 See HM Government, *Alternatives to membership: possible models for the United Kingdom outside the European Union*, March 2016, para 3.1(b) https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/504661/Alternatives_to_membership_possible_models_for_the_UK_outside_the_EU_Accessible.pdf [accessed 22 February 2017]

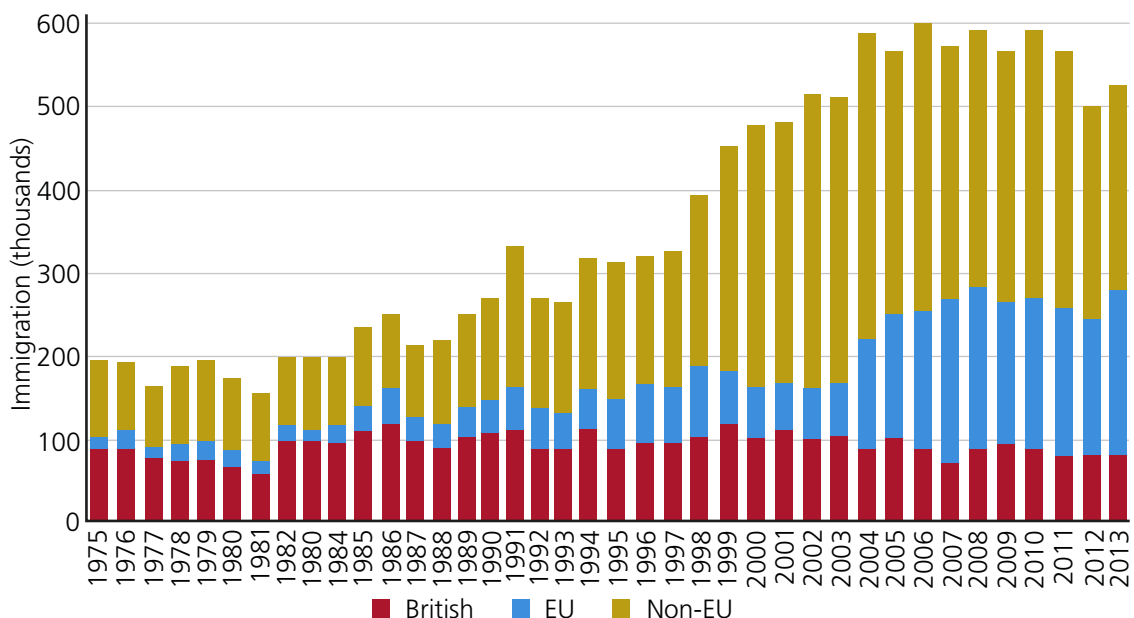
State to Member State. In the UK, Bulgarian and Romanian citizens were eligible to apply to the Home Office to take up skilled work on terms similar to those then applying to non-EU nationals. They were also eligible to apply to take up low-skilled work, but only under one of two schemes: the Seasonal Agricultural Worker Scheme and the Sector Based Scheme (which covered jobs in the food processing sector).

24. When Croatia joined the EU in 2013, the UK was one of 13 ‘old’ Member States to restrict Croatian nationals’ access to its labour market. Belgium, Cyprus, France, Germany, Greece, Italy, Luxembourg and Spain lifted their restrictions in July 2015, while Austria, Malta, the Netherlands, and Slovenia as well as the UK continue to apply restrictions. In the UK, Croatian nationals may currently only take up employment on the same terms as non-EU nationals.²⁵

Patterns of migration

25. The volume of EU migration to the UK has increased sharply since 2004, as reflected in both stocks of EU nationals in the UK and flows of EU nationals to the UK. The number of EU citizens in the UK doubled from around 1.1 million in 2004 to approximately 2.3 million by 2012.²⁶ Much of that increase can be linked to the 2004 enlargement, with the number of EU8 nationals in the UK increasing from 125,000 in 2004 to over one million by 2012.²⁷ As shown in Figure 1, between 1975 and 1990, EU nationals accounted for around 10% of all immigration to the UK. This increased after 1990 and increased again more sharply after 2004. In 2005, EU immigration as a proportion of all immigration to the UK stood at 27%, in 2013 it stood at 38% and in June 2016 it was estimated at 44%.

Figure 1: Immigration flows to the UK by nationality, 1975–2013



Source: HM Government, *Review of the Balance of Competences between the United Kingdom and the European Union, Single Market: Free Movement of Persons*, p 29. Note 2013 figures were provisional estimates. See also para 33 regarding the inclusion of British nationals.

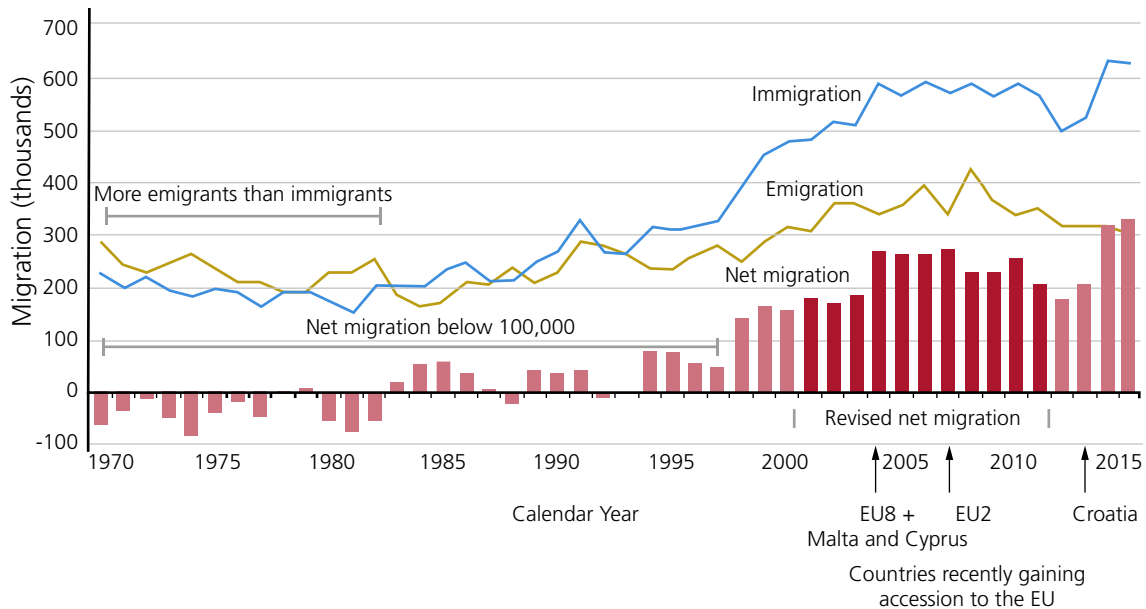
25 Note that where employment is incidental to the exercise of another Treaty right—e.g. students—different rules apply.

26 HM Government, *Review of the Balance of Competences between the United Kingdom and the European Union- Single Market: Free Movement of Persons*, para 2.8: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/335088/SingleMarketFree_MovementPersons.pdf [accessed 22 February 2017]

27 *Ibid.*, para 2.9

26. The current Government is committed to “delivering annual net migration in the tens of thousands”, as pledged in the 2015 Conservative manifesto.²⁸ For the year ending June 2016, net migration was estimated at around 335,000. As shown in Figure 2, net migration (the difference between immigration and emigration) has not been in the tens of thousands since 1997. It has, however, been estimated at less than 200,000 as recently as 2012.

Figure 2: Long-term international migration to the UK, 1970–2015

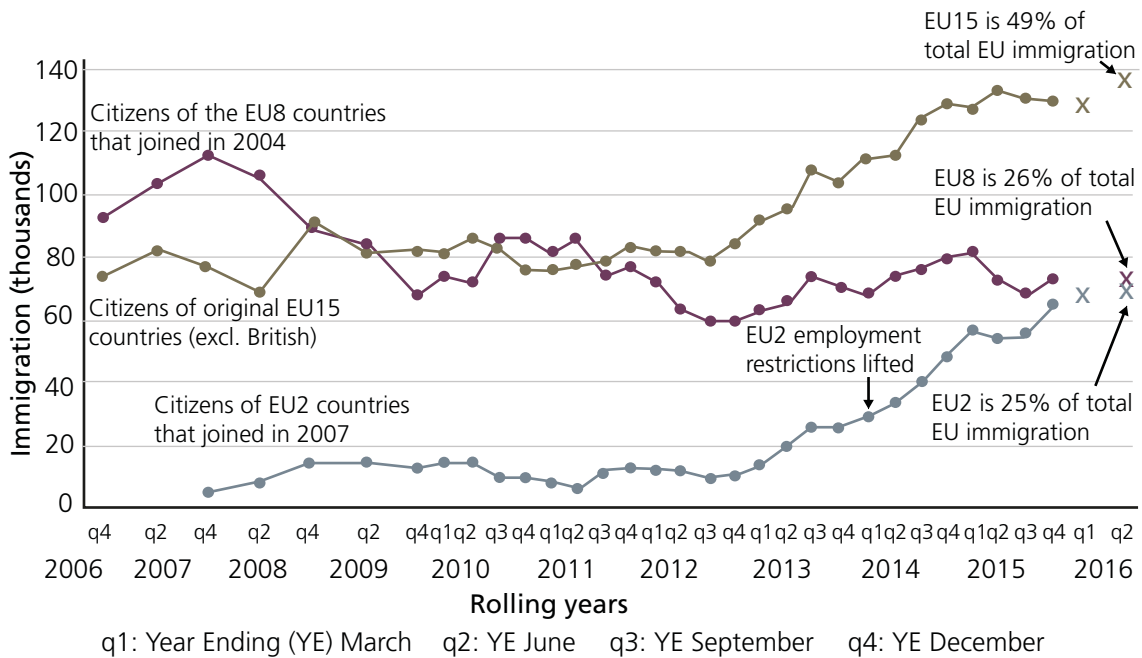


Source: Written evidence from the Office for National Statistics (*BMP0004*), Figure 1

27. The composition of EU immigration to the UK has changed over time. Although the sharpest rise in EU immigration can be attributed to citizens of the EU8 countries arriving in the UK following the 2004 accession, since 2012 the pattern has changed, with rising immigration from the ‘old’ EU-15 Member States and the EU2 countries (Bulgaria and Romania), while immigration from the EU8 countries has steadied. In the year ending June 2016, almost half (49%) of EU immigration was made up of citizens from the ‘old’ EU-15 Member States, while EU2 and EU8 nationals made up around a quarter each (25% and 26% of EU immigration, respectively).

28 The Conservative Party, *The Conservative Party Manifesto 2015*, p 29: <https://s3-eu-west-1.amazonaws.com/manifesto2015/ConservativeManifesto2015.pdf> [accessed 28 February 2017]

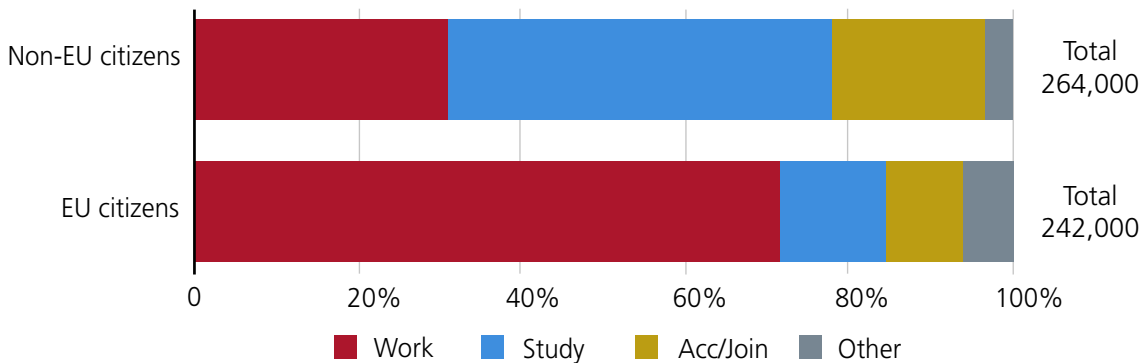
Figure 3: EU immigration to the UK, 2006 to 2016, year ending June 2016



Source: Written evidence from the Office for National Statistics ([BMP0004](#)), Figure 5

28. In the year ending June 2016, the majority of EU nationals moving to the UK reported doing so in order to work (72%). Of those coming to work, 57% reported they had a definite job to go to, while 43% arrived looking for work. By contrast, the most common reason given by non-EU nationals for moving to the UK was study (47%). Figure 4 shows the reasons for migration given by EU and non-EU citizens in the year ending June 2016.

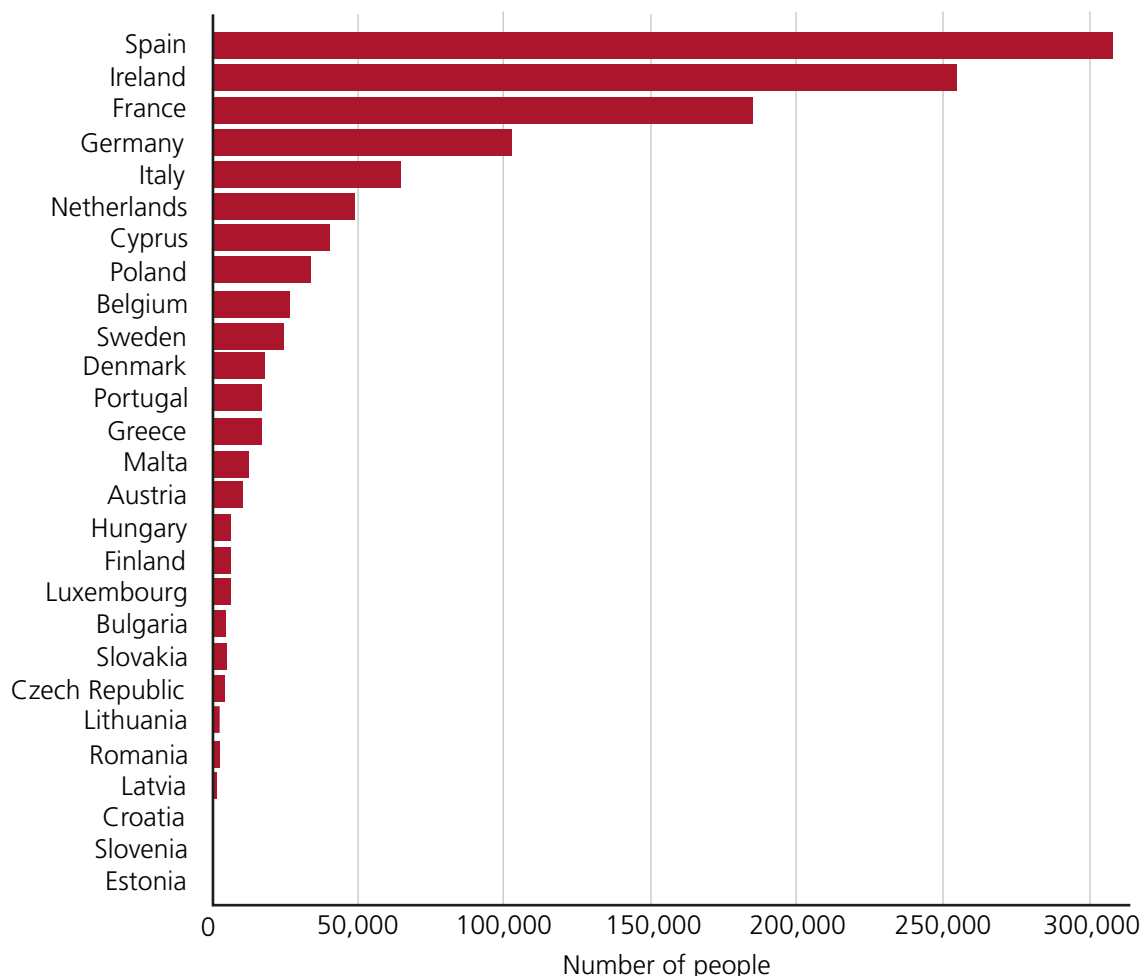
Figure 4: IPS data by reason of migration for EU and non-EU citizens, year ending June 2016



Source: Written evidence from the ONS ([BMP0004](#)), Table 1

29. Data on UK citizens exercising their free movement rights elsewhere in the EU are less readily available. The ONS told us they estimated that around 35,000 UK citizens had emigrated to other countries in the EU in 2015.²⁹ This amounted to 28% of the 124,000 UK citizens emigrating overseas in 2015. The ONS does not produce a breakdown of the figures to shed light on UK citizens' reasons for emigrating.

Figure 5: Number of UK-born migrants living in other EU member states, 2015 estimates



Source: ONS, *What information is there on British migrants living in Europe?* Figure 2, data from United Nations

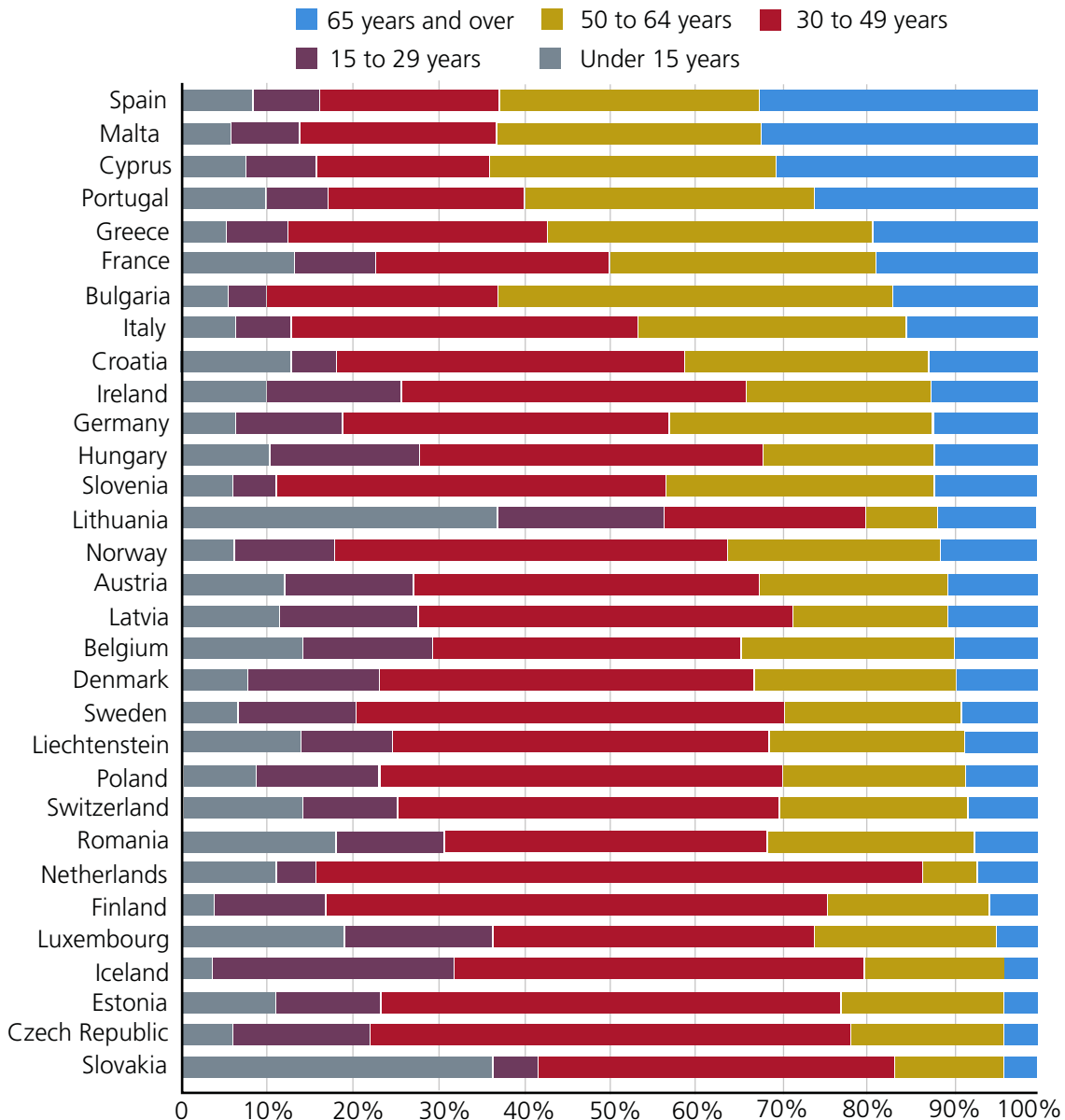
30. UN migration statistics from 2015 suggest that there are around 1.2 million UK nationals living elsewhere in the EU.³⁰ Of those, the largest groups are thought to be in Spain (310,000), Ireland (255,000), France (185,000) and Germany (105,000), as shown in Figure 5. Separately, the ONS has produced a report compiled from data collected by Eurostat to estimate the number of British citizens who are long-term residents of other EU countries.³¹ The measure used in that report is based on citizenship rather than country of birth (in Ireland, for instance, there is a large difference between numbers of UK-born—287,600—and UK citizens—112,090). It does not include British citizens who spend only part of the year living in the EU, nor does it include those who hold the nationality of the EU country they are resident in (for instance, someone with both French and British citizenship living in France would not count as British under this measure). It produces an estimate of around 900,000 UK citizens who were long-term residents of other EU countries in 2011. The ONS uses the same data to explore the age profiles of UK citizens who are long-term residents of other EU countries, as shown in Figure 6. Spain, France, Ireland and Germany are home to the

30 Q 73

31 ONS, *What information is there on British migrants living in Europe?* (27 January 2017): <https://www.ons.gov.uk/peoplepopulationandcommunity/populationandmigration/internationalmigration/articles/whatinformationisthereonbritishmigrantslivingineurope/jan2017> [accessed 22 February 2017]

largest numbers of UK citizens. In Spain and France (as well as a number of other EU countries) the majority of British citizens living there are aged 50 or over.

Figure 6: Age profiles by citizenship, 2011 European Census data, ranked by biggest proportion of 65 years and older



Source: ONS, *What information is there on British migrants living in Europe?* Figure 1, data from Eurostat, 2011

Migration statistics

31. In the course of our inquiry, we were struck by the weaknesses and gaps in the UK's migration statistics. The House of Commons Public Administration Select Committee published a report on *Migration Statistics* in July 2013, in which they recommended that the Government end reliance on the International Passenger Survey as the primary method of estimating migration, suggesting that it "is not fit for the purposes to which it is put".³²

³² Public Administration Select Committee, *Migration Statistics* (Seventh Report, Session 2013–14, HC 523)

32. The International Passenger Survey—which is the source for most of the data on migrant flows in and out of the UK presented above—is a sample survey that collects information from passengers as they enter or leave the UK through UK air and sea ports. The confidence intervals for the estimates drawn from the survey mean that the margin of error around individual figures can be relatively large, especially when the migrant sample is broken down to identify particular sub-groups. For example, net migration of Romanian and Bulgarian citizens was estimated at 61,000 in the year ending June 2016 compared to 49,000 the previous year, but even though that would represent a 25% increase, the difference is not statistically significant.³³ The ONS explained:
- “On the overall level we say that net migration is about 335,000 plus or minus a confidence interval of 40,000. As you break it down into smaller components, those confidence intervals get much wider because ... you have a smaller sample.”³⁴
33. We were also struck by some aspects of the definitions used for different measures—which though defensible in the context of the purpose for which data are collected, can make findings misleading for the purpose of informing the policy debate. For example, the UK’s official migration statistics use the UN-recommended definition of a long-term international migrant, which is “a person who moves to a country other than that of his or her usual residence for a period of at least a year (12 months) so that the country of destination effectively becomes his or her new country of usual residence”.³⁵ The ONS explained in their written evidence that this allowed them to compare trends in migration in the UK with trends in migration in other countries. However, it also means that immigration figures include UK nationals. For example, in the year ending June 2016, 12% of all immigrants arriving in the UK were British citizens.³⁶
34. Net migration figures exclude ‘short-term’ migrant flows, defined as those entering or leaving the UK for less than 12 months. This means that migrants entering the UK for shorter periods—for example under the Seasonal Agricultural Workers Scheme (SAWS), which operated until the end of 2013—are not included in the net migration figures, even when these routes can generate significant inflows (for example, the SAWS quota was 21,250 in 2013). It has been suggested that this can create a perverse incentive to favour temporary or seasonal migration schemes.³⁷ By contrast, the net migration figures do include EU and non-EU students—provided the course they are enrolled on is longer than 12 months.
35. The ONS told us they were satisfied that the International Passenger Survey “is fit for purpose for producing [international migration] estimates at the national level”, but recognised that “demand for information on migration has increased significantly over the last few years”. They anticipated that “unlocking the power of information already held within Government by

33 Written evidence from the Office for National Statistics ([BMP0004](#)), Section 3.2

34 [Q 54](#)

35 Written evidence from the Office for National Statistics ([BMP0004](#)), Box 3

36 Written evidence from the Office for National Statistics ([BMP0004](#)). Other surveys, such as the Annual Population Survey, use country of birth as a measure, but the ONS point out that in 2015, 40% of the 8.6 million UK residents born outside the UK were British nationals—see written evidence from the ONS, Section 3.2.

37 Oral evidence taken before the House of Commons Home Affairs Committee, 24 January 2017 (Session 2016–17), [Q 37](#) (Phoebe Griffith)

the DWP, the Home Office and HMRC would provide an opportunity better to measure the wide range of aspects of migration in which people are interested”. In particular, it would cast light on the characteristics of migrants already in the UK—such as what they are doing and their impact on the economy in terms of the taxes they are paying and the resources they are using. The ONS explained that “legal and other barriers make it difficult to share data across Government”, but anticipated that the Digital Economy Bill currently before Parliament would open up access and allow data from administrative sources to be linked together.³⁸

36. Madeleine Sumption, Director of the Migration Observatory at Oxford University, told us that the extent to which any deficiencies in the data were a problem for policy “depends on what you want to do with it”.³⁹ Jonathan Portes, Senior Fellow at the Economic and Social Research Council’s *UK in a Changing Europe* programme, highlighted what he saw as a “fundamental conceptual problem with net migration statistics” based on the definition of an immigrant as someone who arrived in the UK intending to stay for more than a year:

“That was probably quite meaningful ... in the 1950s, 1960s and 1970s, when people who planned to come and live here came from the Caribbean or India with a work visa ... If you are coming from Poland, Latvia or France, there is no legal, moral or practical obligation on you. When you come here and flash your passport with no visa in it, you may very well not know whether you intend to stay for a month, six months, or the rest of your life. Even if you did have some vague intention, it could well change and you are perfectly entitled to do that.”⁴⁰

37. Mr Portes identified as a “priority” the use of administrative databases to track people’s interactions with the tax and benefits system, in order to “begin to get a picture not just of who comes in and is here at any one time but what people’s life trajectories look like”.⁴¹ Marley Morris of the IPPR drew attention to the limited data on the “churn” of EU migration, and the problem it posed for assessing the impact of imposing restrictions on new arrivals.⁴²

Conclusions

38. **Net long-term migration to the UK by EU nationals has risen sharply since 2004, but until end June 2016, remained lower than net long-term migration to the UK by non-EU nationals. Almost half of EU immigrants arriving in the UK in year ending June 2016 were from ‘old’ Member States, and 72% reported ‘work’ as their reason for immigrating, with the remainder mostly coming to study (13%) or accompany or join family (9%). Migration of UK nationals to other EU countries is smaller in volume, and different in composition, with the age profiles of UK citizens who are long-term residents in other EU countries suggesting that a larger proportion are retired or nearing retirement.**

38 [Q 50](#)

39 [Q 3](#)

40 [Q 3](#)

41 [Q 3](#)

42 [Q 20](#)

39. **The evidence base currently available to policy-makers responsible for devising a future framework for UK-EU migration is incomplete, in some cases insufficiently reliable, and dispersed across a range of sources that are not always directly comparable, for example because some use citizenship while others use country of birth to identify migrants. This is an unsatisfactory basis from which to start developing policy. For example, without data on the turnover of EU migrants, that is to say on how long each person tends to stay in the UK, it is difficult to assess whether the stock of EU nationals already resident in the UK could help mitigate adverse effects, such as labour shortages, that could arise from placing restrictions on new arrivals. Although action is in hand to improve and expand the range and quality of migration data, it is unfortunate that any improved data will not be available in time to inform the decisions of Ministers and officials developing the UK's initial negotiating position—or those seeking to hold them to account.**
40. **Different measures of who counts as a migrant can also prove misleading when used in public debate. For example, definitions sometimes include UK nationals, who made up 12% of immigrants in the year ending June 2016. In 2015, UK nationals also made up 40% of the 8.6 million UK residents born outside the UK. Use of the UN-recommended definition of a long-term international migrant may be appropriate for some purposes, but has the potential to skew policy decisions, since it means that some groups of migrants (such as students enrolled on courses of over 12 months' duration) count towards net migration figures, while others (such as temporary or seasonal workers taking up residence in the UK for less than 12 months) do not.**

CHAPTER 2: THE UK'S OBJECTIVES

41. In this chapter we explore what ‘controlling’ immigration of EU citizens to the UK might mean in practice. We also examine how different interpretations of what the Government’s objective implies could affect what, if anything, there is to negotiate with the European Union after Article 50 is invoked.

What is to be achieved by ending free movement?

Sovereignty

42. The Prime Minister has said that the UK “will do what independent, sovereign countries do: we will decide for ourselves how we control immigration”.⁴³ The most natural reading of her words is that the aim of ending free movement is to restore full sovereignty over the UK’s immigration policy in respect of EU nationals. The Prime Minister’s remarks also appear to imply that the UK would devise and adopt a domestic policy governing the circumstances in which EU citizens are entitled to be admitted to the UK for long-term stays—a domestic policy that would replace the relevant provisions in EU law.
43. The evidence we took from Ministers was consistent with this interpretation, as is the Government’s White Paper.⁴⁴ The Rt Hon David Jones MP, Minister of State at the Department for Exiting the European Union, told us that “it is our ambition to regain control of migration. That, of course, means not only the apparatus by which that control is exercised but the legislative framework—in other words, control residing here at the United Kingdom Parliament rather than in the European Union.”⁴⁵ He added that the aim was to “recover control of migration so that migration policy is ... developed by the British Government and approved by the British Parliament”.⁴⁶
44. Although Mr Jones indicated that the Government’s objective would be “to ensure that we recover control over our borders”,⁴⁷ his colleague Robert Goodwill MP, Minister of State at the Home Office, pointed out that “this perception that we do not control our borders ... is not a correct perception.”⁴⁸ He emphasised that the UK—which does not participate in the Schengen border-free area—does control its own borders, and operates border controls that involve checking everyone, including EU nationals, arriving from continental Europe:

“We carry out 100% checks on all scheduled passengers arriving at the border to confirm identity, nationality and eligibility for entry into the UK, and carry out checks against police and security immigration watch lists to identify people of concern. We therefore can and do refuse EU nationals entry to the UK. Between 2010 and September 2016, our Border Force officers have refused entry to nearly 9,000 EEA nationals.”⁴⁹

43 Theresa May MP, Speech to the Conservative Part Conference on Brexit, 2 October 2016: <https://www.politicshome.com/news/uk/political-parties/conservative-party/news/79517/read-full-theresa-maysconservative> [accessed 28 February 2017]

44 HM Government, *The United Kingdom’s exit from and new partnership with the European Union*, Cm 9417, para 5.4

45 [Q 64](#)

46 [Q 65](#)

47 [Q 67](#)

48 [Q 62](#)

49 [Q 62](#)

45. Mr Goodwill also noted that EU nationals can only stay in the UK “if they are exercising a treaty right: a right to work, study or to live independently”, and that where immigration enforcement officials find EU nationals who are not exercising treaty rights (for example, they are destitute) those individuals are liable to be removed to the country from which they came.⁵⁰
46. The Institute of Directors told us that the UK had never enforced some of the restrictions available under the existing free movement rules.⁵¹ Exit checks at UK borders were re-introduced in March 2015, with a view to providing “the most comprehensive picture we have ever had of whether those who enter the UK leave when they are supposed to”.⁵² However, Mr Goodwill told us that at the moment, the Government is not confident that the data obtained from those checks are “sufficiently robust or finessed to be used effectively”.⁵³

Numbers

47. Making EU citizens subject to immigration rules devised in the UK may or may not reduce the number of EU citizens moving to the UK: the outcome would depend on the effect those controls have on the number of people coming to the UK. The rules for non-EU immigration, which are devised by the UK Government and approved by the UK Parliament, have until end June 2016 been associated with more immigrants arriving in the UK from outside the EU than from within the EU (see Figure 1).
48. Whether any new controls on EU immigration introduced by the Government should aim to reduce the number of EU migrants coming to the UK is therefore a distinct policy question.
49. Migration Watch UK told us that the Government’s objective should be to achieve “a substantial reduction in net EU migration”. Their chairman, Lord Green of Deddington, suggested that “if we fail to achieve that, we will have some very angry Brexiteers and some very angry Remainers, who will ask why we were put through all this for really very little impact on one of the major considerations before the electorate”.⁵⁴
50. The Prime Minister has indicated that the Government “will retain its intention of bringing net migration down”, and noted that “one part of migration we have not been able to put controls on so far is migration from the European Union”.⁵⁵ She has pledged to “get control of the number of people coming to Britain from the EU”.⁵⁶
51. Mr Goodwill told us that “increasing the way we can control our borders will enable us to make further progress in achieving that objective of reducing net migration to the tens of thousands”.⁵⁷ However, while Ministers saw the

50 [Q 62](#)

51 [Q 31](#)

52 HM Government, ‘Exit checks fact sheet’, 29 March 2015: <https://www.gov.uk/government/publications/exit-checks-on-passengers-leaving-the-uk/exit-checks-fact-sheet>

53 [Q 72](#)

54 [Q 15](#)

55 Oral evidence taken before the House of Commons Liaison Committee, 12 January 2016 (Session 2015–16), [QQ 54–55](#) (Theresa May MP)

56 Theresa May MP, Speech on The Government’s negotiation objectives for exiting the EU, 17 January 2017: <https://www.gov.uk/government/speeches/the-governments-negotiating-objectives-for-exiting-the-eu-pm-speech> [accessed 28 February 2017]

57 [Q 70](#)

referendum result as providing “the opportunity to control the numbers that come here”,⁵⁸ they were equivocal about what use they planned to make of that opportunity.

52. According to Mr Goodwill, “the point is that while we are members of the European Union, we have none of those tools at our disposal should we wish to limit or control the numbers coming in.” He added that the Government “do wish to control the numbers coming in”.⁵⁹ But he distanced himself from the notion of “limits”,⁶⁰ and told us that it would be “a mistake to read across from our wish to control numbers to say we would not be in a situation where, if we needed to bring people in, we could. The difference is that we can, as we can already with people from outside the EU, control those numbers.”⁶¹
53. Mr Goodwill indicated that the UK would in future “be able to control the numbers coming from Europe”, but also that “the way that we do that will take into account the needs of the UK economy”.⁶² He emphasised that controlling numbers “is not just about stopping people coming here; it is also about, for example, understanding how different schemes could be in place to encourage people to come here”.⁶³

Characteristics

54. A further policy question is whether the Government should aim to control the characteristics of EU migrants admitted for long-term stays or the type of employment they are entitled to take up. The Prime Minister has made reference to people finding themselves “out of work or on lower wages because of low-skilled immigration”.⁶⁴ The Chancellor of the Exchequer, Rt Hon Philip Hammond MP, has suggested that public concern about levels of migration relates to “people competing for entry-level jobs with people in the UK”⁶⁵ and indicated that the Government wish to reduce “the current dependency on low-cost migrant labour”.⁶⁶

Constraints

55. In considering how best to exert control over EU migration in future, there are two principal constraints that may influence the Government’s approach.

Supporting the UK labour market and economy

56. The Chancellor has emphasised that “as we approach the challenge of getting net migration figures down to the tens of thousands, it is essential that we look at how we do this in a way that protects our economy and the vital

58 [Q 68](#)

59 [Q 63](#)

60 [Q 73](#)

61 [Q 76](#)

62 [Q 75](#)

63 [Q 75](#)

64 Theresa May MP, Speech on The Government’s negotiation objectives for exiting the EU, 17 January 2017: <https://www.gov.uk/government/speeches/the-governments-negotiating-objectives-for-exiting-the-eu-pm-speech> [accessed 28 February 2017]

65 Oral evidence taken before the House of Commons Treasury Committee, 19 October 2016 (Session 2016–17), [Q 60](#) (Philip Hammond MP)

66 Oral evidence taken before the House of Commons Treasury Committee, 12 December 2016 (Session 2016–17), [Q 340](#) (Philip Hammond MP)

interests of our economy”.⁶⁷ He has said that the Government “do not want to find UK firms suffering from a lack of labour supply”, and argued that “just because you have a system of controlling migration, that does not mean you have to use it to slam all doors shut”.⁶⁸

57. The Prime Minister has emphasised that the UK “will always want immigration, especially high-skilled immigration ... from Europe”, and that immigration can help in “filling skills shortages” and “delivering public services”.⁶⁹ Consistent with this, Ministers appear to envisage that both high- and low-skill migration from the EU will continue to some extent. The Chancellor has said that he “cannot conceive of any circumstance in which we would want to impede or prevent the flow of highly skilled, highly paid people”.⁷⁰ This echoes his evidence as Foreign Secretary to the European Union Select Committee, before the referendum, when Mr Hammond commented: “I do not think that anyone is contesting the need to attract highly-skilled people to do highly-skilled jobs”.⁷¹ Addressing concerns about the impact on specific sectors of restricting low-skill migration from the EU, Mr Goodwill told us that “Brexit gives us the opportunity to have an off-the-peg immigration policy that addresses many of the concerns those in the care sector, the health service and in agriculture have expressed”.⁷²
58. More generally, Ministers have indicated that they are open to taking different approaches to different sectors.⁷³ Mr Goodwill pointed out that the UK already operates “shortage occupation lists and resident [labour] market tests for non-EU [nationals]”, and that it has in the past operated a seasonal agricultural workers scheme, “which is another way of recruiting particular types of people”.⁷⁴ By contrast, the Government has ruled out a devolved or regional approach: “I do not believe either a regional devolution or indeed a centrally managed regional immigration policy would work in the United Kingdom”, Mr Goodwill told us.⁷⁵

Reciprocity

59. Another issue the Government will need to consider is how any future regime for admitting EU nationals to the UK for long-term stays might affect UK citizens’ ability to move in the opposite direction. Mr Goodwill appeared to envisage that any future arrangement would be reciprocal: “whatever agreement we have with the European Union will be a two-way agreement. It will apply to EU citizens wishing to come and work here, and there will be parallel negotiations about British people who want to live, work or study in the European Union”.⁷⁶

67 Oral evidence taken before the House of Commons Treasury Committee, 19 October 2016 (Session 2016–17), [Q 1](#) (Philip Hammond MP)

68 Oral evidence taken before the House of Commons Treasury Committee, 12 December 2016 (Session 2016–17), [Q 333](#) (Philip Hammond MP)

69 Theresa May MP, Speech on The Government’s negotiation objectives for exiting the EU, 17 January 2017: <https://www.gov.uk/government/speeches/the-governments-negotiating-objectives-for-exiting-the-eu-pm-speech> [accessed 28 February 2017]

70 Oral evidence taken before the House of Commons Treasury Committee, 12 December 2016 (Session 2016–17), [Q 335](#) (Philip Hammond MP)

71 See oral evidence taken before the European Union Select Committee, 26 January 2016 (Session 2015–16), [Q 167](#).

72 [Q 75](#)

73 [Q 69](#)

74 [Q 69](#)

75 [Q 69](#)

76 [Q 73](#)

60. The Government indicated that it would be seeking to protect the rights currently enjoyed by UK citizens as a result of EU free movement rules as far as possible:

“We have a large number of British people who want to retire to Spain. We need to make sure that those people’s rights can be protected, that they will be given the benefits that they currently have as far as possible, and that we have a situation where freedom of movement for British people is secured, within the overall objective of controlling the numbers that come to the UK.”⁷⁷

Conclusions

61. **The Government’s primary objective in putting an end to the free movement of persons appears to be restoring sovereignty: ensuring that immigration rules for EU nationals are devised and adopted in the UK. Although it is seeking to bring the policy levers back under national control, how it plans to use those levers to regulate immigration from the EU is less clear.**
62. **In particular, the Government has thus far stopped short of saying it intends to limit or reduce net migration from the EU, although this can arguably be implied from the ‘tens of thousands’ target for net migration overall. We welcome the indication from the Government that its approach to regulating EU immigration will take into account the needs of the UK economy.**
63. **Until end June 2016, migration to the UK from outside the EU was consistently higher than EU migration, even though the relevant policy levers are under national control. Restoration of national control over EU migration may or may not, therefore, deliver a reduction in overall net migration. Experience in recent years suggests that sharp fluctuations in net migration are more likely to result from other factors, such as the performance of the UK economy in both absolute and relative terms.**
64. **We strongly support the Government’s intention to protect the entitlements that UK nationals currently enjoy as a result of EU free movement rules, but how realistic that objective is will depend on the precise manner in which the UK proposes to reform the equivalent entitlements enjoyed by EU nationals, especially those looking to come to the UK to work.**

Implications for Brexit negotiations

65. How the Government interprets its own stated objective of obtaining “control of the number of people coming to Britain from the EU”⁷⁸ has implications for the conduct of negotiations on the UK’s future relationship with the EU.
66. If sovereignty is the Government’s primary objective, and it wishes to replace the principle of free movement of persons with UK immigration rules for EU nationals, those future immigration rules need have no grounding in a

77 Q 70

78 Theresa May MP, speech on the Government’s negotiation objectives for exiting the EU, 17 January 2017: <https://www.gov.uk/government/speeches/the-governments-negotiating-objectives-for-exiting-the-eu-pm-speech> [accessed 28 February 2017]

treaty with the EU—they could be enacted unilaterally by the UK, taking effect from the moment the UK leaves the EU. Jonathan Portes noted that the Prime Minister’s remarks in her party conference speech in October 2016 could be read to imply that a future system would be “entirely under our control, we can change it whenever we like, we can adjust the numbers up and down and the rules back and forth, and there will be no treaty or legal basis for any new system”.⁷⁹ On this basis, “whether we or the EU are going to negotiate at all” is open to question.

67. In practice, it seems likely that the UK will have an interest in how UK nationals will fare in the EU’s immigration regime post-Brexit—consistent with the Government’s stated intention to protect UK citizens’ current entitlements under free movement rules as far as possible.⁸⁰ That interest may be reciprocated by the EU-27, leading to a negotiation.⁸¹
68. A negotiation also seems the more likely outcome to the extent that, in any negotiations on a UK-EU Free Trade Agreement, concessions on this issue may be traded against concessions in other parts of the negotiation (such as on access to the Single Market) that would be enshrined in the agreement. Stephen Booth, of Open Europe, noted:

“Most sophisticated and modern free trade agreements, for example the Canadian deal that has been agreed with the EU, include provisions on Mode 4 services, which is effectively the free movement of labour to provide services ... Given the closeness of the UK and the EU, you can see that being developed further, into perhaps a quite highly developed chapter on free movement of labour.”⁸²

69. Marley Morris, of the Institute for Public Policy Research (IPPR), also made the link to negotiations on access to the Single Market, and suggested there were “two fundamental schools of thought”:

“One is that we do not really need to negotiate on immigration at all. We just need to set out our policy on immigration, go to the EU and say, ‘This is our policy and what we want to do’, and then we make sure that all the other negotiations work around that ... The second school of thought says, ‘Actually, immigration is up for negotiation ... we want to keep as much as possible our membership of the Single Market, perhaps partial membership of the Single Market as in the case of Switzerland, but we want those kinds of close relationships that we have now and so we are prepared to find some kind of compromise on immigration policy in order to keep those relations.’”⁸³

70. The Prime Minister has indicated that the UK will not be seeking membership of the Single Market but will instead be seeking “the greatest possible access to it through a new, comprehensive, bold and ambitious Free Trade Agreement”, which “may take in elements of the current Single Market

79 [Q 2](#)

80 See para 56.

81 There are also important bilateral aspects to such a negotiation, e.g. with Ireland in respect of the Common Travel Area, and with Spain in respect of the border with Gibraltar, as indicated in para 8.

82 [Q 80](#)

83 [Q 15](#)

arrangements in certain areas”.⁸⁴ This raises the prospect that just as the UK and the EU may find themselves negotiating a Free Trade Agreement in reverse—starting from a position of full integration, and seeking to maintain aspects of the status quo while reducing integration in some areas⁸⁵—so on free movement of persons, the UK and EU may find themselves negotiating on which elements of the current arrangements are to be dismantled.

71. The Minister, Mr Jones, was in no doubt as to the outcome he expected: “It is inevitably going to be the case that there will have to be an agreement contained in whatever treaty is concluded at the end of the negotiations as to the issue of migration flows”.⁸⁶ He anticipated that in view of the link between the free movement of persons and access to the Single Market, “not only will we be keen to address this issue, but obviously the continuing 27 will be keen to address it too.” The Minister consequently predicted that “the issue of migration will figure strongly in the negotiations and the ultimate treaty”.⁸⁷
72. As for who the UK will be negotiating with, Mr Jones noted that under Article 50, “the Council, comprising the 27 continuing states, will be responsible for concluding the agreement with the United Kingdom, and that of course will be subject to the consent of the European Parliament”. He nonetheless noted that “this is an issue that has different weight in different member states”, citing Romania as an example, and indicated that “we, for our own part, will be entirely happy to engage both with Mr Barnier and his teams, or, should it be necessary, with individual member states”.⁸⁸
73. Stephen Booth predicted that the EU-27 would be “pretty determined to negotiate on this issue as a bloc”, which was in any event what the institutional framework would require. He warned that trying to “pick off countries that we want a deeper relationship with” would be a “dangerous game for the UK to play, particularly at this stage in negotiating our departure”. He nonetheless predicted that Ireland would be “the big exception”, in view of the Government’s commitment to maintaining the Common Travel Area.⁸⁹
74. Camino Mortera-Martinez, of the Centre for European Reform, suggested that alternative scenarios were also conceivable, for example that negotiations might lead to “some sort of baseline, basic rights for all the EU-27, and then you have supplemental bilateral agreements in which, put in simple terms, you say, ‘I send you my pensioners and you send me your students’.” She anticipated that the UK would have to work out “what other countries are interested in”, citing Spain as an example: “[Spain] is not going to be interested in sending pensioners to Britain; it will be interested in sending students.”⁹⁰
75. Whether any negotiation on future migration flows takes place before or after the UK’s withdrawal is open to question. Indeed, we note in this context that the precise scope of negotiations under Article 50 is likely to be one of

84 Theresa May MP, speech on the Government’s negotiation objectives for exiting the EU, 17 January 2017: <https://www.gov.uk/government/speeches/the-governments-negotiating-objectives-for-exiting-the-eu-pm-speech> [accessed 28 February 2017]

85 European Union Committee, *Brexit: the options for trade* (5th Report, Session 2016–17, HL Paper 72), para 160

86 [Q 64](#)

87 [Q 64](#)

88 [Q 66](#)

89 [Q 82](#)

90 [Q 82](#)

the very first issues that will require negotiation between the UK and the EU-27. David McAllister MEP, of Germany, told the Select Committee in Strasbourg on 18 January 2017: “Brussels will focus on five major issues: disengagement of the UK from the EU budget; catering for the acquired rights of EU citizens; relocating the EU agencies; disentangling the UK from EU international treaties; and establishing any necessary transitional arrangements.”⁹¹ Sir Ivan Rogers, in evidence to the House of Commons European Scrutiny Committee, offered a similar assessment of the five issues the EU-27 would expect to cover in a withdrawal treaty, contrasting it with the UK’s reading of Article 50. He argued that “everything you need to decide going in the withdrawal treaty is a function of where you are going to end up”, and that negotiations about withdrawal and negotiations about the future relationship would inevitably collide.⁹²

76. Mr Jones told us that “even if the negotiations were to fail, Article 50 provides that at the end of the two-year period prescribed in the Article we would simply leave the European Union. That means of necessity control would reside with this Parliament”.⁹³ He highlighted the Government’s intention to introduce a repeal bill that would have the effect of absorbing EU-derived law into UK law, adding that it would no doubt be revisited very quickly, and that “whatever regime exists at present would be replaced by a British regime developed by the British Government and approved by the British Parliament”.⁹⁴ In its White Paper on *The United Kingdom’s exit from and new partnership with the European Union*, the Government announced that it expects to bring forward a separate bill on immigration, and indicated that there “may be a phased process of implementation to prepare for the new arrangements”.⁹⁵ We note that there is a difference between a phased process of implementation for an agreement that has already been struck, and transitional arrangements intended to bridge the gap between free movement as it exists today and new arrangements yet to be agreed. In view of the link between the free movement of persons and access to the Single Market, it is conceivable that new arrangements for future migration between the UK and the EU will not be finalised until the contours of a Free Trade Agreement (FTA) have taken shape. This Committee has previously concluded that it would be “impossible to agree [an FTA] within two years”.⁹⁶ Transitional arrangements could therefore be required if the UK were to leave the EU while negotiations on an FTA are still underway, or yet to begin.

Conclusions

77. **Just as the UK and the EU may find themselves negotiating a Free Trade Agreement in reverse—starting from a position of full integration, and seeking to maintain aspects of the status quo while reducing integration in some areas—so on free movement of persons, the UK and EU may find themselves negotiating on which elements of the current arrangements are to be dismantled.**

91 Oral evidence taken before the European Union Select Committee, 18–19 January 2017 (Session 2016–17), [Q 9](#)

92 Oral evidence taken before the House of Commons European Scrutiny Committee, 1 February 2017 (Session 2016–17), [Q 8](#)

93 [Q 64](#)

94 [Q 64](#)

95 HM Government, *The United Kingdom’s exit from and new partnership with the European Union*, [Cm 1497](#), para 5.4

96 European Union Committee, *Brexit: the options for trade* (5th Report, Session 2016–17, HL Paper 72), para 162

78. **At one end of the spectrum of possible outcomes, this could lead to the dismantling of the current arrangements in their entirety, so that EU Member States treat UK nationals in the same way they treat third-country nationals and vice-versa. At the other, it could lead to new, reciprocal and preferential arrangements for UK-EU migration. These may fall short of free movement as it exists today but come close in some or even many respects.**
79. **The Government has told us that it expects to negotiate with the EU as a bloc on this issue, and seems likely to pursue preferential arrangements for UK-EU migration after the UK has ceased to be a member of the EU. We support this objective. However, it is not self-evident that the negotiation envisaged by the Government will be within the scope of Article 50. Indeed, the precise scope of those negotiations is itself likely to be a matter for negotiation between the UK and the EU-27. Nor is it self-evident that current rules on the free movement of persons can be fully absorbed into UK law in the Great Repeal Bill or a separate immigration bill, since UK nationals' current entitlements require reciprocal commitments from other countries. This raises the prospect that, if negotiations under Article 50 were to conclude without an agreement on this issue, UK nationals would become third-country nationals for the purposes of EU law and the domestic immigration rules of EU member states once the UK leaves the EU.**
80. **In view of the link between the free movement of persons and access to the Single Market, it is conceivable that new arrangements for future migration between the UK and the EU will not be finalised until the contours of a Free Trade Agreement (FTA) have taken shape, which could take longer than the two years provided for in Article 50 TEU. Transitional arrangements could therefore be required if the UK were to leave the EU while negotiations on an FTA are still underway, or yet to begin.**

CHAPTER 3: DISMANTLING FREE MOVEMENT

81. As set out in Chapter 1, the free movement of persons is a legal construct, and its foundations are in EU law. Free movement will thus end automatically when the UK ceases to be a member of the European Union and EU law ceases to apply, unless the Government negotiates continuing UK membership of the Single Market by other means, such as joining the European Economic Area, an option that the Prime Minister has explicitly ruled out.
82. The policy question for the Government, therefore, is to what extent it should seek to reproduce the free movement of persons, or elements thereof, in a future bilateral agreement with the EU. Switzerland’s experience demonstrates that it is in principle possible for a country outside the EU and the EEA to reach a bilateral agreement with the European Union on the free movement of persons.⁹⁷
83. For practical purposes, the free movement of persons as enshrined in EU law has two main dimensions:
- the right to entry and residence in another Member State—which might loosely be described as the ‘immigration’ dimension; and
 - the right to equal treatment compared to nationals of the host State—a second dimension, which might loosely be described as the ‘terms and conditions’ of residence.
84. In considering which aspects of the current arrangements to dismantle in any future agreement with the EU, the UK can in principle dismantle elements of one or both dimensions. It could seek to impose new restrictions on EU nationals’ ability to enter and/or reside in the UK, and/or it could seek to impose new, discriminatory (relative to UK nationals) terms and conditions for EU nationals taking up residence in the UK.
85. In this chapter, we focus primarily on the ‘immigration’ dimension of the free movement of persons, but we emphasise that the ‘equal treatment’ dimension is no less important, especially for migrants in non-work categories such as EU students (who currently pay tuition fees at the same rate as UK students) and those who are economically inactive, such as UK retirees (who are eligible to access healthcare on the same basis as nationals of their host country). We return to this at the end of this chapter.
86. Within the ‘immigration’ dimension, we focus on the right to long-term (more than 3 months) residence. This is because there was a clear consensus among our witnesses that the UK 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-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 United States.⁹⁸

97 Agreement on the Free Movement of Persons (OJL 114, 21 June 1999). See footnote 23.

98 Q 7, Q 21. See also the Home Secretary’s evidence to the House of Commons Home Affairs Committee, as part of which she indicated that “having visa travel for the European Union in the same way that we have it for other countries is certainly something we would seek to avoid in any discussions”, 31 January 2017 (Session 2016–17), Q 286.

87. We present below our witnesses' views on three possible models for regulating EU immigration after the UK leaves the EU. We do not endorse any of these models, nor are they intended to capture the full range of options that might be available to the UK. They do, however, include some of the models the Government is reported to be considering.⁹⁹
88. The first two models—free movement with an 'emergency brake', and free movement with a job offer—retain the basic principle that EU nationals may settle in the UK for long-term stays, but would impose new restrictions on that entitlement. In both cases, we use the label 'free movement' to refer to that basic presumption, rather than to the legal provision that currently exists under EU law.
89. The third model—work permits—would require EU nationals wishing to take up employment in the UK to obtain a work permit in order to do so, and is in principle compatible with different approaches to EU nationals in non-work categories (such as the self-employed, the self-sufficient, and students), including continued free movement for those categories. There are precedents for a differentiated approach on these lines: for example, as set out in paragraphs 20 to 24, Bulgarian and Romanian nationals were subject to a work permit system from 2007 to 2014, and a work permit system currently applies to Croatian nationals, who are nonetheless free to take up residence in the UK as students, self-sufficient persons or self-employed persons.¹⁰⁰
90. A work permit model could, alternatively, also be part of a wider set of immigration rules restricting EU nationals' ability to take up residence in the UK. This is the approach that the UK takes in respect of non-EU nationals. For example, non-EU nationals wishing to take up residence in the UK as a self-employed person need to meet the criteria of the Tier 1 (Entrepreneur) visa; and there is no dedicated route for self-sufficient non-EU nationals to settle in the UK—the nearest equivalent is the Tier 1 (Investor) visa, which requires investment of £2m or more in the UK.¹⁰¹
91. It follows that although much of the focus below is on EU immigration for work—principally because the vast majority of EU nationals arriving in the UK are coming to work—some of the most significant policy choices facing the Government will be about how to treat EU nationals in non-work categories and about the terms and conditions of residence for EU nationals as a whole—in other words, whether they should continue to receive treatment on a par with UK nationals, or whether their terms and conditions of residence should be brought closer into line with those of non-EU nationals, for example in respect of access to public funds. Jonathan Portes made a related point:

“There is a huge difference between coming here as a European citizen, which for most practical purposes means you have the rights of a UK citizen, and coming here even as a high-skilled worker with a work

99 Financial Times, *UK work permits at heart of Brexit immigration plan* (16 January 2017): <https://www.ft.com/content/031d6ae6-dbf2-11e6-9d7c-be108f1c1dce> [accessed 22 February 2017]

100 Subject to obtaining the relevant registration certificates from the Home Office, see Home Office, *Guidance for nationals of Croatia on obtaining permission to work in the UK* (March 2016): https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/506081/Croatia_Guidance_for_nationals_of_Croatia_on_obtaining_permission_to_work_in_the_UK_Mar_16_KP_2.pdf [accessed 22 February 2017]

101 [Q 94](#)

permit of some sort. Your long-term prospects, integration into wider society and rights are different.”¹⁰²

Free movement with an emergency brake

Background

92. An ‘emergency brake’ model can take different guises. In the ‘New Settlement for the United Kingdom’, agreed by the European Council in February 2016, ahead of the UK’s referendum, the then Prime Minister secured agreement to the creation of an ‘emergency brake’ that would have temporarily restricted EU nationals’ access to in-work benefits—permitting what might otherwise have been deemed a breach of the principle that the free movement of persons requires equal treatment of EU nationals compared to those of the host State.
93. 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 EU, it would seek to amend Regulation 492/2011 on the free movement of workers to introduce an “alert and safeguard mechanism” (or emergency brake), to respond to “situations of inflow of workers from other Member States of an exceptional magnitude over an extended period of time”. 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 been responsible for authorising the application of this emergency brake, and its use would have been limited to a period of seven years.¹⁰³ The Commission’s undertaking lapsed upon the UK voting to leave the European Union.
94. In the aftermath of the referendum David Cameron was, however, reported to have considered seeking a different ‘emergency brake’ on EU migration as part of his renegotiation, namely one that would have allowed the UK to restrict the number of EU citizens moving to the UK in certain circumstances.¹⁰⁴
95. Precedents for provisions of this nature—also known as ‘safeguard’ clauses—can be found in the European Economic Area (EEA) agreement and in Acts of Accession of new Member States to the European Union. The 2005 Act of Accession of Bulgaria and Romania to the European Union, 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 or foresaw “serious labour market disturbances”.

102 [Q 13](#)

103 For further analysis, see European Union Committee, *The EU referendum and EU reform* (9th Report, Session 2015–16, HL Paper 122), paras 199–215

104 Financial Times, *Cameron pins Brexit on EU failure to grant UK brake on migration* (29 June 2016): <https://www.ft.com/content/3901dd48-3cee-11e6-9f2c-36b487ebd80a> [accessed 22 January 2017]; Huffington Post, *Iain Duncan Smith: Germany blocked UK plans for Emergency Brake on Migration*, (10 May 2016): http://www.huffingtonpost.co.uk/entry/iain-duncan-smith-germany-eu-renegotiation_uk_573190e0e4b05c31e5727b44 [accessed 22 February 2017]

96. Spain invoked that safeguard clause with regard to Romanian workers in July 2011.¹⁰⁵ The Spanish decision was subject to authorisation by the European Commission, and the Commission's Decision¹⁰⁶ to authorise Spain's action was itself open to review by the Council—with any Member State being entitled to request that the Council amend or annul the Commission's Decision (by qualified majority vote) within two working weeks.

Box 2: The EEA Agreement

Iceland, Liechtenstein and Norway participate in the EU's Single Market by virtue of the European Economic Area Agreement between the EU and the European Free Trade Association (EFTA).

Switzerland, which is a member of EFTA, is not a signatory to the EEA Agreement but has signed a series of bilateral agreements with the EU.

The aims of the EEA Agreement are: to guarantee the free movement of persons, goods, services and capital; to provide equal conditions of competition; and, to abolish discrimination on the grounds of nationality in all 31 EEA States—the EU 28 plus the three participating EFTA States.

By virtue of the Agreement, for example, the Citizens Directive 2004/38/EC applies throughout the EEA States so that nationals of Iceland, Liechtenstein and Norway enjoy the same free movement rights as those of EU citizens when they work and reside in an EU Member State. Similarly, nationals of EU States enjoy EU rights in the three EFTA States—subject to sectoral adaptations in the case of Liechtenstein.

The EEA Agreement includes a number of Protocols and 22 Annexes that set out the substantive rules that regulate the internal market operating within the EU and the EFTA states. Adherence by the EFTA States to the principles of EU law operating within the Single Market is policed in the three States by the EFTA Court and the EFTA Surveillance Authority.

The EFTA Court is mainly competent to deal with infringement actions brought by the EFTA Surveillance Authority against an EFTA State with regard to the implementation, application or interpretation of EEA law, for giving advisory opinions to courts in the EFTA States on the interpretation of EEA rules, and for appeals concerning decisions taken by the EFTA Surveillance Authority.

The EEA Joint Committee is a forum comprising the ambassadors of the EEA EFTA States and representatives of the European External Action Service (representing the European Union). It typically meets six to eight times a year and takes decisions by consensus on the incorporation of EU legislation into the EEA Agreement.

The EEA Council is a forum comprising the foreign ministers of the EEA EFTA States and the foreign minister of the rotating EU Council Presidency. It meets twice a year and provides political impetus for the development of the EEA Agreement.

Source: *The European Free Trade Association, The European Free Trade Association: <http://www.efta.int/about-efta/european-free-trade-association> [accessed 1 March 2017]*

- 105 European Commission, Press Release: 'The Commission accepts that Spain can temporarily restrict the free movement of Romanian workers' (24 January 2017): http://europa.eu/rapid/press-release_IP-11-960_en.htm?locale=enhttp://europa.eu/rapid/press-release_MEMO-11-554_en.htm [accessed 28 February 2017]
- 106 Commission Decision 2011/503/EU of 11 August 2011 authorising Spain to temporarily suspend the application of Articles 1–6 of Regulation No 492/2011 on freedom of movement for workers within the Union with regard to Romanian workers (OJ L 207, 12 August 2011, pp 22–24). This was extended by Commission Decision 2012/831/EU of 20 December 2012 (OJ L 356, 22 December 2012, pp 90–92).

97. 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”. Such measures are subject to conditions and procedures found in Article 113 of the EEA agreement, and “shall be restricted with regard to their scope and duration to what is strictly necessary in order to remedy the situation”. Safeguard measures adopted on this basis are subject to “consultations” in the EEA Joint Committee, “with a view to finding a commonly acceptable solution”.¹⁰⁷
98. 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 until 1 January 1998, notwithstanding the EEA agreement’s provisions on the free movement of persons. This arrangement was reflected in Protocol 15 of the EEA Agreement (on Transitional Periods on the Free Movement of Persons).¹⁰⁸ The regime was not itself based on Article 112 EEA, but instead appears to have been designed to avoid the need to invoke Article 112: the EEA Council declared that in reviewing the transitional measures provided for in Protocol 15, “account should be taken of the elements which ... might justify the taking of safeguard measures as provided for in Article 112 of the EEA Agreement”, and that the Contracting Parties “shall in case of difficulties endeavour to find a solution which allows Liechtenstein to avoid having recourse to safeguard measures”.¹⁰⁹
99. After the expiry of Protocol 15 of the EEA Agreement, the Contracting Parties came to an arrangement known as ‘Sectoral Adaptations’, under which the free movement of persons applies to Liechtenstein in principle, but EEA citizens wishing to take up residence in Liechtenstein have to obtain a residence permit, and such permits are subject to quotas. These arrangements are reviewed every five years, with the next review due before May 2019. The European Commission concluded in 2015 that Liechtenstein’s “specific geographic 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.¹¹⁰
100. These precedents have led to reports that a time-limited ‘emergency brake’ on the free movement of persons has been one of the options under consideration in European capitals and within Government, not least because the temporary nature of an emergency brake would in principle be compatible with a high

107 [Article 113](#) of the EEA agreement provides that any safeguard measures taken “shall be the subject of consultations in the EEA Joint Committee every three months from the date of their adoption with a view to their abolition before the date of expiry envisaged, or to the limitation of their scope of application”. In addition, each Contracting Party to the EEA Agreement is entitled to request at any time that the EEA Joint Committee review a safeguard measure. [Article 114](#) provides that if a safeguard measure taken by a Contracting Party “creates an imbalance between the rights and obligations” under the Agreement, any other Contracting Party may take “such proportionate rebalancing measures as are strictly necessary to remedy the imbalance.”

108 Protocol 15, Article 5(2), [EEA Agreement](#)

109 [EEA Council Decision No.1/95](#), Declaration on p.26

110 European Commission, [COM \(2015\) 411](#), Communication from the Commission to the Council and the European Parliament, Liechtenstein Sectoral Adaptations—Review, 28 August 2015

degree of access to the Single Market.¹¹¹ We canvassed our witnesses' views on whether such an approach could provide a way of delivering 'control' over immigration from the EU.

Witnesses' views

101. Marley Morris of the IPPR suggested that an emergency brake system “would give Ministers some control over immigration because if there were evidence of real pressures in the labour market or pressures on public services, they could say ‘We want to use the brake’. They could use it for a certain period and restrict migration for that period”.¹¹² He suggested that a brake could be triggered by the sorts of circumstances envisaged in the ‘New Settlement’ in February 2016. He noted that there would have to be agreement on how long such a brake could remain in place, but that the seven-year period negotiated by the then Prime Minister could offer a starting point for negotiators.¹¹³
102. Mr Morris envisaged that for an emergency brake to work in practice, it would have to be linked to “some kind of registration system for all incoming EU nationals in the UK ... perhaps a bit like the worker registration scheme for A8 migrants after 2004”.¹¹⁴ He envisaged that any quantitative restriction would be enforced in the labour market, by employers, rather than at the border.¹¹⁵ Madeleine Sumption, Director of the Migration Observatory at Oxford University, noted that there was “some uncertainty” over how a quantitative limit on the number of EU citizens who could join the UK labour market might be implemented, for example whether it would involve a restriction on the issuance of National Insurance numbers, or a requirement for employers to issue a certificate of sponsorship, or some other mechanism.¹¹⁶
103. Ms Sumption also highlighted the significance of the level at which any numerical limit might be set, and the rules on what would happen if the limit were met (for instance, whether a backlog would develop or whether applications would be rejected and require resubmission at a later date). She suggested that if a quantitative limit were set only slightly below the level of demand among EU citizens seeking to work in the UK, the impacts on employers and the labour market “could be relatively small”, while a lower limit could have “more profound” consequences.¹¹⁷
104. The British Chambers of Commerce made the same point, indicating that their stance would depend on the level at which a brake were set: “If it is to achieve a net migration target in line with current Government aspirations, this could be very damaging to business.” They also warned of “a danger

111 The Observer, *Brexit: EU considers migration ‘emergency brake’ for UK for up to seven years* (24 July 2016): <https://www.theguardian.com/world/2016/jul/24/brexit-deal-free-movement-exemption-seven-years> [accessed 22 February 2017]; Financial Times, *UK work permits at heart of Brexit immigration plan* (16 January 2017): <https://www.ft.com/content/031d6ae6-dbf2-11e6-9d7c-be108f1c1dce> [accessed 22 February 2017]

112 [Q 16](#)

113 [Q 16](#)

114 [Q 16](#), [Q 21](#)

115 [Q 16](#)

116 Supplementary written evidence from Madeleine Sumption ([BMP0010](#)). See also Jonathan Portes, ‘The EEA Minus Option: Amending not Ending Free Movement’ (5 July 2016): <http://www.niesr.ac.uk/blog/eea-minus-option-amending-not-ending-free-movement#WK3mXNLYjcs> [accessed 22 February 2017], where he highlights the practical difficulties around using National Insurance numbers to operate this type of system, notably because a significant number of EEA nationals not currently resident in the UK have been issued with an NI number.

117 Supplementary written evidence from Madeleine Sumption ([BMP0010](#))

that you do not do a good job of differentiating between different types of immigration”.¹¹⁸ The Institute of Directors told us they “could potentially support freedom of movement with an emergency brake, but it depends on how that emergency brake acts in practice”, for example whether it would work on a regional or national basis, and whether systemically important sectors such as healthcare could continue to recruit from overseas as necessary.¹¹⁹

105. The NFU expressed concern around how much notice employers would receive: “Our concern would be whether there would be a two-year warning on a brake, or 12 months, or whether it would be weeks.”¹²⁰ NHS Employers echoed this concern, indicating they would want to know “whether it was a handbrake being applied, or a slightly gentler brake in terms of a warning to the sector”.¹²¹
106. The Government emphasised the significance of the level at which any brake might be set: “If you set it at a very high level, then it would be irrelevant.” A brake set at a low level, on the other hand, could have unintended consequences: “You could have the situation at the start of the year where some employers might think, ‘If we reach the brake level, we may not be able to employ someone’. It might precipitate more people looking to employ people from the EU”.¹²² Mr Goodwill told us that, while he could see “a number of drawbacks” to a brake, the UK did already operate a cap¹²³ as part of the immigration regime for non-EU workers, which he judged “works reasonably well—not because of the intrinsic way that a brake might work but because the level at which it has been set has had a negligible impact”.¹²⁴
107. Mr Morris envisaged that the operation of an emergency brake post-Brexit would require “some kind of independent adjudication body that was independent of both the UK and the EU which could decide whether some use of the brake was acceptable in particular circumstances”.¹²⁵ He suggested that an independent arbitration system to resolve disputes over any future UK-EU treaty was likely to be needed in any event, and that the adjudication mechanism he had in mind could be built into that system.¹²⁶ Stephen Booth of Open Europe noted that, under the ‘New Settlement’, “the European Commission and the European Court of Justice would [have been] the arbiters.” He predicted that was “not going to be a workable situation in the new relationship”.¹²⁷
108. Our witnesses were divided over whether the EU-27 would be receptive to the idea of the UK operating an emergency brake or safeguard clause. Mr Morris suggested there were “two main reasons why this proposal is most likely to see a potential compromise”: first, that an emergency brake would be “temporary”, and second, that it would “involve some evidence

118 [Q 31](#)

119 [Q 31](#)

120 [Q 38](#)

121 [Q 83](#)

122 [Q 69](#)

123 The annual cap of 20,700 on main applicants under Tier 2 (General)—see para 124.

124 [Q 69](#)

125 [Q 16](#)

126 [Q 17](#). On this issue see also Annex A on dispute resolution mechanisms in the Government’s White Paper, [Cm 9417](#).

127 [Q 80](#)

base”.¹²⁸ In his view, the temporary nature of an emergency brake would mean that “it did not amount to a fundamental undermining of the principle of free movement” and would therefore be compatible with a high degree of access to the Single Market.¹²⁹ Furthermore, having to provide evidence of pressures from migration “would make the European Commission and the other institutions far more comfortable with such a deal”. He noted that the European Commission had “already accepted, in the past year, the principle that there are these very high levels of migration to the UK, so there is something to go on”.¹³⁰

109. Zsolt Darvas, Senior Fellow at Bruegel, told us he could “well imagine safeguard clauses in the immigration treaty between the UK and the European Union”.¹³¹ He noted that many treaties included safeguard clauses, and that Cyprus had in 2013 used a safeguard clause in the TFEU¹³² to introduce restrictions on the free movement of capital, “on grounds of public policy or public security”. He argued there should be “very clear reasons spelled out in the treaty for when [safeguard clauses] can be triggered”, and that any treaty should specify “the exact conditions that have to be met in order for them to be activated”.¹³³
110. Stephen Booth suggested that the usefulness of a safeguard clause would depend on the relationship that the UK and the EU struck: “If, for example, the UK says, ‘We are going to go for quite a flexible and open starting point, in which we presume quite a lot of free movement, but we reserve the right to stop it’, that might be a safeguard clause you could describe.”¹³⁴
111. Camino Mortera-Martinez, of the Centre for European Reform, judged that a brake “would be very unlikely to be offered”. This was because, first, “an emergency brake is embedded against a wider free movement background” which the UK Government appeared to have set itself against; and second, “because any emergency brake—be it the one in the EEA treaty or the one that Spain triggered in 2011—is temporary and has to be justified”. She “struggled to see how the UK could even justify triggering this brake on the basis of economic considerations, because there is no evidence”.¹³⁵ Lord Green of Deddington, Chairman of Migration Watch UK, told us he did “not think that this is negotiable”, and argued that it was in any event “not worth having if it is only temporary”.¹³⁶

Free movement with a job offer

Background

112. In August 2015, Rt Hon Theresa May MP, then Home Secretary, wrote in *The Sunday Times*:

“Reducing net EU migration need not mean undermining the principle of free movement. When it was first enshrined, free movement meant the freedom to move to a job, not the freedom to cross borders to look

128 [Q 17](#)

129 [Q 17](#)

130 [Q 17](#)

131 [Q 80](#)

132 Article 65(1b), [Treaty on the Functioning of the European Union](#)

133 [Q 80](#)

134 [Q 80](#)

135 [Q 80](#)

136 [Q 17](#)

for work or claim benefits. Yet last year, four out of 10 EU migrants, 63,000 people, came here with no definite job whatsoever.”¹³⁷

More recently, the current Home Secretary, Rt Hon Amber Rudd MP, has suggested that EU nationals arriving in the UK to look for work “might be an area we would want to look at”.¹³⁸

113. In the year ending June 2016, an estimated 82,000 EU nationals arrived in the UK looking for work—43% of the total number of EU immigrants. This was the highest estimate recorded, and a statistically significant increase of 21,000 compared with the previous year.¹³⁹ In principle, then, restricting EU migration to those individuals that have a job offer before arriving in the UK could affect a meaningful proportion of those arriving from the EU.
114. This has led some to suggest that a light-touch work permit system, under which any EU citizen with a job offer in the UK would qualify for a work permit, could provide a way of reconciling the UK’s objectives on control of immigration from the EU and access to the Single Market.¹⁴⁰ We present below our witnesses’ views on whether restricting free movement for workers to those with a prior job offer could provide a way of delivering ‘control’ over immigration from the EU.

Witnesses’ views

115. A number of employers’ organisations told us they would support restricting free movement of persons to individuals with a job offer in the UK. The British Chambers of Commerce described it as “the most appealing” of the options, because it would allow businesses “to access the skills they want”, a view echoed by the CBI and the Institute of Directors.¹⁴¹ The NFU told us retaining the free movement of workers with a job offer was “by far and away our preferred option”.¹⁴² NHS Employers said that this arrangement was in their view the “most proportionate and sensible” of the options.¹⁴³
116. The British Chambers of Commerce drew our attention to the enforcement of a job offer requirement, suggesting that “given the flexibility that [this system] might offer to businesses, there could be a trade-off where businesses take a role in enforcement”.¹⁴⁴ They warned that “businesses would be concerned if the Home Office were to do it, given the bureaucracy that might result from that.”¹⁴⁵

137 Theresa May MP, ‘A borderless EU harms everyone but the gangs that sell false dreams’, *The Sunday Times* (29 August 2015): http://www.thesundaytimes.co.uk/sto/news/world_news/article1600014.ece [accessed 22 February 2017]

138 Oral evidence taken before the House of Commons Home Affairs Committee, 31 January 2017 (Session 2016–17), [Q 326](#) (Theresa May MP)

139 ONS, *Quarterly Migration Statistics* (1 December 2016): <https://www.ons.gov.uk/peoplepopulationandcommunity/populationandmigration/internationalmigration/bulletins/migrationstatisticsquarterlyreport/dec2016> [accessed 22 February 2017]

140 See for example *Financial Times*, ‘William Hague backs work visas for EU citizens after Brexit’ (13 January 2017): <https://www.ft.com/content/9114eeb0-d91c-11e6-944b-e7eb37a6aa8e> [accessed 22 February 2017] though note that Lord Hague’s proposal also involves scaling back EU nationals’ access to welfare support (public funds).

141 [Q 31](#)

142 [Q 38](#)

143 [Q 38](#)

144 [Q 31](#)

145 [Q 31](#)

117. Madeleine Sumption, Director of the Migration Observatory at Oxford University, also considered how such a requirement might be implemented, asking “at what point the worker would have to demonstrate that they have a job offer, to whom, and using what documentation”.¹⁴⁶ She emphasised that details such as whether any job would qualify (regardless of hours or level of pay), and the rules applying to the self-employed, “could significantly affect the impacts of the policy and the number of people who qualified under it”.¹⁴⁷
118. Ms Sumption also drew attention to the implications of operating such a system against the backdrop of visa-free travel for EU citizens: “It would still presumably be possible for workers to come to the UK to look for work but return home and re-enter with a job offer.”¹⁴⁸ She judged that “as a result, this option probably represents the smallest departure from the status quo”. A similar verdict was reached by Jonathan Portes.¹⁴⁹
119. The Trades Union Congress (TUC) warned of possible “unintended consequences” from introducing a job offer requirement: “We would be worried about any expansion in the number of employment agencies recruiting solely outside of the UK, therefore not giving the opportunity to local people to apply for jobs”. They too judged that the introduction of a job offer requirement was “unlikely to make an enormous difference to the numbers”.¹⁵⁰ Migration Watch UK also suggested that a job offer requirement “would be a boon for employment agencies”, and that it “would be unlikely to have any significant effect on numbers”.¹⁵¹

Work permits

Background

120. The ‘job offer’ model described above is ultimately a variant of a work permit system. Under a work permit system, an EU national wishing to take up employment in the UK would require a work permit. A work permit system can be more or less restrictive, depending on the criteria for obtaining a work permit and the processes that individuals and employers have to follow (which may include paying fees). As we noted earlier, a work permit system would in principle be compatible with a range of different approaches—again more or less restrictive—to EU immigration for other purposes (study, self-sufficient persons, and so on).
121. The UK has experience of operating work permit systems in respect of EU nationals: the system of transitional controls on free movement that the UK currently applies to Croatian nationals, and that which it applied to Bulgarian and Romanian nationals from 2007 to 2014 (see paragraphs 19–23) were work permit systems, which applied to employees only. Nationals from those countries falling into other categories, such as students, self-sufficient persons and the self-employed, were able to exercise full free movement rights from the outset.

146 Supplementary written evidence from Madeleine Sumption ([BMP0010](#))

147 Supplementary written evidence from Madeleine Sumption ([BMP0010](#))

148 *Ibid.*

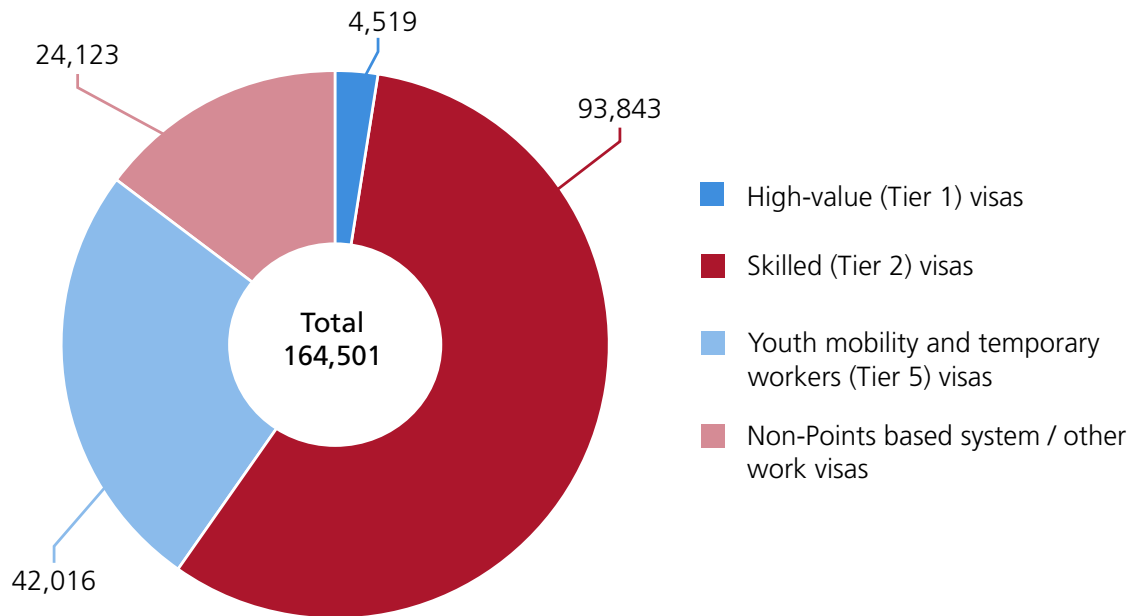
149 Supplementary written evidence from Madeleine Sumption ([BMP0010](#)), and Jonathan Portes, *The EEA Minus Option: Amending not Ending Free Movement* (5 July 2016): <http://www.niesr.ac.uk/blog/eea-minus-option-amending-not-ending-free-movement#.WK3oitLyjcs> [accessed 22 February 2017]

150 [Q 25](#)

151 [Q 21](#)

122. The UK also has experience of operating work permit systems in respect of non-EU nationals,¹⁵² for whom it currently operates an elaborate system of work visas¹⁵³ (or permits)—the ‘Points Based System’ (PBS). The numbers of visas issued under the PBS in the year ending September 2016 are shown in Figure 7.

Figure 7: Work-related visas, year ending September 2016



Source: Home Office Immigration Statistics July to September 2016

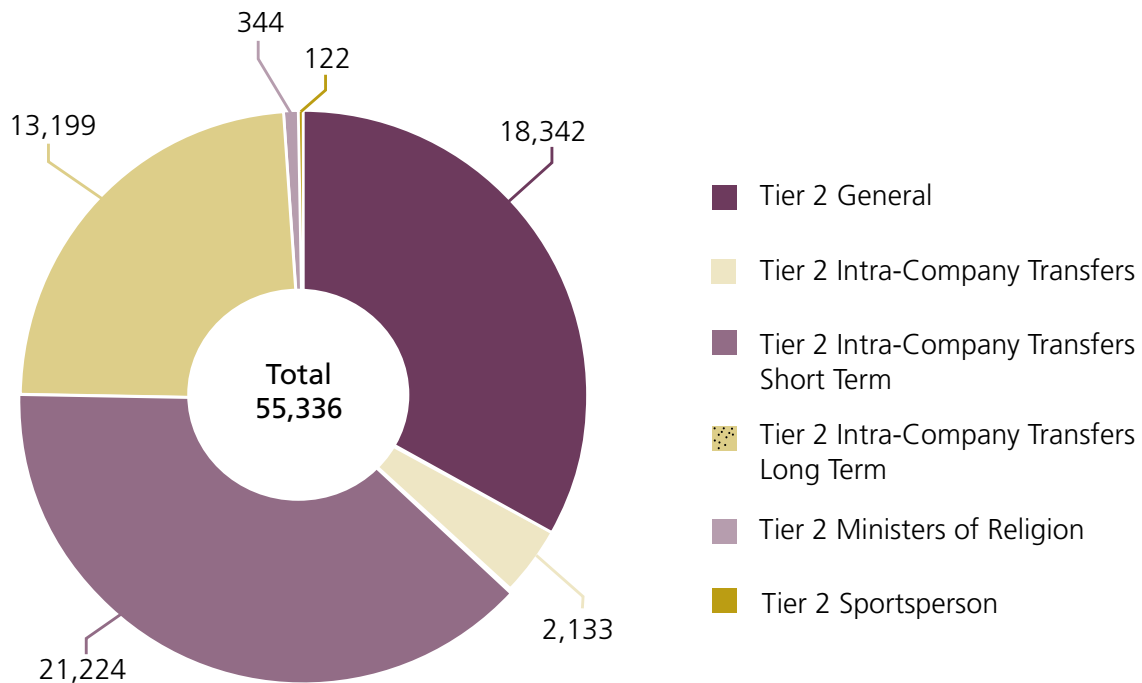
123. Tier 2, under which the majority of work-related visas are issued under the PBS, is itself made up of four routes: Tier 2 (General), Tier 2 (Intra Company Transfers), Tier 2 (Minister of Religion) and Tier 2 (Sportsperson). The number of visas issued to ‘main applicants’ (as opposed to their dependants) under each category in the year ending September 2016 is shown in Figure 8. The most-used route was 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. Professor Alan Manning, Chair of the Migration Advisory Committee, told us that the ICT route was currently “very heavily dominated by a few users, which are essentially Indian IT servicing companies”.¹⁵⁴ Main applicants admitted to the UK under Tier 2 are entitled to bring dependants. Neither main applicants nor their dependants are entitled to have recourse to public funds (meaning that, with some limited exceptions, they are not able to claim most benefits, tax credits or housing assistance provided by the state).

152 Technically this category covers all foreign nationals except EEA and Swiss nationals, but the term ‘non-EU’ is used here for simplicity.

153 Home Office, ‘Work Visas’: <https://www.gov.uk/browse/visas-immigration/work-visas> [accessed 28 February 2017]

154 Q 87

Figure 8: Main applicant visas for skilled work, year ending September 2016



Source: Home Office Immigration Statistics July to September 2016

124. 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 requirements¹⁵⁵). In 2015, 90% of Tier 2 General applications were made under the RLMT route.¹⁵⁶

125. Jobs on the Shortage Occupation List (SOL) 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). Each year two SOLs are published: a UK list that applies to the entire United Kingdom (including Scotland) and a Scotland list that applies only to jobs in Scotland. In 2015, the top 5 occupations using the SOL accounted for over 50% of applications. These were: medical practitioners (19%), design and development engineers (12%), secondary education teaching professionals

155 See Home Office, Immigration Rules Appendix J: codes of practice for skilled work, 3 January 2017: <https://www.gov.uk/guidance/immigration-rules/immigration-rules-appendix-j-codes-of-practice-for-skilled-work> [accessed 28 February 2017]

156 Professor Sir David Metcalf, Chair of the Migration Advisory Committee and London School of Economics, *Work Immigration and the Labour Market*, slide 17, (June 2016): https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/541805/MAC_presentation-immigrationandlabourmarket.pdf [accessed 22 February 2017]

(10%), chefs (8%) and civil engineers (6%).¹⁵⁷ Nurses were added to the SOL in 2016.

Witnesses' views

A preferential work permit system?

126. If the UK were in future to adopt a work permit system for all EU nationals seeking to take up employment, the Government would initially have to decide whether that system should treat EU nationals preferentially relative to non-EU nationals (to whom the system described in paragraphs 122–125 currently applies).
127. The CBI argued that “trade and movement of labour are frequently linked together, and linked with your closest neighbours, which is why it is important and sensible to have a preferential system for EU migrants”.¹⁵⁸ Stephen Booth suggested that “given the huge number of people, both EU citizens in the UK and vice versa, and the geographical proximity, there is an argument for saying, ‘This is a different relationship’”.¹⁵⁹
128. By contrast, Migration Watch UK suggested that EU migration for work should be brought into the UK’s existing work permit scheme for non-EU nationals.¹⁶⁰ Lord Green of Deddington argued that by restricting work permits to skilled workers, as the UK’s non-EU work permit system partly does, net migration from the European Union could be reduced “by something of the order of 100,000 a year”.¹⁶¹ He suggested that “we cannot and should not go on with a very large inflow of people coming to work in low-skilled jobs because of the implications for our population which are very severe”.¹⁶²
129. During the referendum campaign, the Leave campaign also advocated a system that “welcomes people to the UK based on the skills they have, not the passport they hold”—implicitly advocating a system that did not afford preferential treatment to EU nationals.¹⁶³

Applying the Points Based System to EU nationals: general implications

130. The employers’ organisations from whom we took evidence were uniformly opposed to the prospect of applying the UK’s current Points Based System to EU nationals. The CBI took the view that the non-EU system was “problematic for skilled workers, as it takes a long time; and it does not allow for the sorts of non-graduate labour that we need”.¹⁶⁴ The Institute of Directors told us:

“The current UK system for non-EU migration is governed by 13 different Acts of Parliament, involving 10,000 pages of guidance, and

157 Professor Sir David Metcalf, Chair of the Migration Advisory Committee and London School of Economics, *Work Immigration and the Labour Market*, slide 11, (June 2016): https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/541805/MAC_presentation-immigrationandlabourmarket.pdf [accessed 22 February 2017]

158 [Q 34](#)

159 [Q 82](#)

160 Supplementary written evidence from Migration Watch UK ([BMP0006](#))

161 [Q 18](#)

162 [Q 19](#)

163 Vote Leave Take Control, *Why Vote Leave*: http://www.voteleavetakecontrol.org/why_vote_leave.html [accessed 28 February 2017]

164 [Q 33](#)

has 1,400 different categories of immigrant. Visa applications typically take between three and eight months to process. The forms that an employer must fill out typically comprise about 100 questions and 85 pages for a visa. It is very time-consuming and onerous, particularly for our smaller members”.¹⁶⁵

The British Chambers of Commerce argued that “businesses are generally struggling with the current Tier 2 system for non-EU workers, because of the bureaucracy, the cost and the time it takes to navigate that system”, and said it was the model they “would be most likely to dismiss out of hand”.¹⁶⁶

131. The NFU said they would have “many concerns about a straight application of the non-EEA approach” to EU nationals.¹⁶⁷ NHS Employers also argued that “if there is to be a single system ... it should not be the present non-EEA system applied to everybody”.¹⁶⁸ They told us that their recent experience of non-EU recruitment had “not been a positive one”, and that until nurses were added to the Shortage Occupation List, “the competition for Tier 2 permits was very fierce ... social care and health organisations were losing out to other organisations that, in effect, paid more wages”.¹⁶⁹
132. The British Chambers of Commerce told us that the Tier 2 non-EU system was “riddled with complexity”, and “very difficult for small and medium-sized businesses to use”.¹⁷⁰ Marley Morris of the IPPR also suggested that SMEs would “really struggle” with a non-EU work permit system for EU nationals, because they have hitherto been “able to recruit very easily from the EU, and many have not registered as a Tier 2 sponsor ... it is a whole new bureaucratic process for them”.¹⁷¹
133. In contrast, the Government judged that the UK’s non-EEA immigration system was “very effective”, and that systems were working well, such that “it may be that some aspects of those non-EEA systems could be applicable to EU citizens”.¹⁷²

Applying the Points Based System to EU nationals: sectoral implications

134. Marley Morris of the IPPR suggested that if the UK were to apply the PBS to EU migrant workers, the “sheer extent of those restrictions” would be “quite extraordinary”. He added that it would have “quite a sizeable impact” on sectors that have come to rely on EU workers but where the jobs on offer generally do not meet the requirements of the non-EU system.¹⁷³
135. Both Marley Morris and Madeleine Sumption drew our attention to research¹⁷⁴ by Oxford University’s Migration Observatory on the number of jobs in different sectors that would meet the criteria for work visas for

165 [Q 32](#)

166 [Q 31](#)

167 [Q 40](#)

168 [Q 49](#)

169 [Q 39](#), [Q 47](#)

170 [Q 32](#)

171 [Q 21](#)

172 [Q 69](#)

173 [Q 18](#)

174 Migration Observatory, University of Oxford, *Potential Implications of Admission Criteria for EU Nationals Coming to the UK* (2 May 2016): <http://www.migrationobservatory.ox.ac.uk/resources/reports/potential-implications-of-admission-criteria-for-eu-nationals-coming-to-the-uk> [accessed 22 February 2017]

non-EU citizens.¹⁷⁵ According to that research, skills-based selection criteria would affect employers' ability to sponsor EU workers in some industries much more than others. Some of the occupations and industries in which employers have relied most on workers from EU countries in recent years are those in which the smallest shares of jobs are currently eligible for non-EU work visas. For example, the 'distribution, hotels and restaurants' industry category is the largest employer of EU-born workers, but only 6% of all employees in that sector were in graduate jobs paying at least £20,000 in 2015.¹⁷⁶

136. The potential for labour shortages in specific sectors if EU nationals were to be subject to the PBS was raised by employers' organisations. The British Chambers of Commerce told us that there was "a crucial distinction" between skills shortages and labour shortages: "A lot of the angst in the business community is in lower-skilled opportunities and jobs that are currently filled by EU workers". They went on to argue that there "needs to be a system for allowing migration to fill those jobs; otherwise some of those industries and sectors will be at risk".¹⁷⁷ The Institute of Directors also warned that "certain sectors are at risk of a simple labour shortage", which was "not a skills issue but a numbers issue, and it could have knock-on effects on the supply line and the cost to consumers and to businesses".¹⁷⁸ The CBI said that many sectors "currently face skill shortages" in respect of skilled jobs, and "labour shortages" in respect of non-graduate labour.¹⁷⁹
137. The NFU warned that sectors such as horticulture "will shrink ... to the size of the workforce". They raised similar concerns about food processors and manufacturers, suggesting that "for them, labour is on red alert too".¹⁸⁰
138. NHS Employers told us that they had seen "a growth in EU nationals joining our workforce" in recent years, particularly as trained nurses—with the number of NHS nurses from the EU doubling from 10,500 three years ago to 22,000 now.¹⁸¹ They also reported that the social care sector had seen "quite significant growth in EU nationals coming in to do the non-diploma, non-degree type roles, so the care assistant-type roles, domiciliary roles in people's homes and in care homes".¹⁸² They warned that, although 92% of the social care workforce and 94% of the NHS workforce were UK nationals, the cost of living in London and the south-east meant that "we are more reliant down here on EU nationals entering our workforce than we are in some other parts of the country". They would face "regional challenges" were they to lose access to that source of labour.¹⁸³
139. Linked to the potential for labour shortages is the question of whether existing stocks of EU nationals in the UK may be able to compensate for restrictions on future flows. Migration Watch UK suggested that "there is no cliff-edge

175 [Q 9](#)

176 Migration Observatory, University of Oxford, *Potential Implications of Admission Criteria for EU Nationals Coming to the UK* (2 May 2016): <http://www.migrationobservatory.ox.ac.uk/resources/reports/potential-implications-of-admission-criteria-for-eu-nationals-coming-to-the-uk> [accessed 22 February 2017]

177 [Q 30](#)

178 [Q 30](#)

179 [Q 30](#)

180 [Q 40](#)

181 [QQ 42–43](#)

182 [Q 43](#)

183 [Q 47](#)

as far as employers are concerned”, because “EU migrants in low-paid jobs who arrived in 2004 are still here”. They argued that it was a “reasonable assumption that the existing labour force will decline slowly rather than quickly and that would help to give time for employers to adjust”.¹⁸⁴ Marley Morris of the IPPR, on the other hand, noted that there was “limited data on the churn of EU migration”, and that employer groups reported “very high levels of churn in sectors such as hotels and restaurants”. He warned that “if we were going to impose a new system, it would affect new people coming in, and if there is lots of churn in the system in the form of short-term migration, that is going to have a big impact”.¹⁸⁵

Applying the Points Based System to EU nationals: sectoral exemptions

140. A number of witnesses raised the prospect that a future work permit scheme for EU nationals could include special arrangements for specific sectors. Open Europe noted that there “might have to be special routes for certain sectors of the economy”, while Madeleine Sumption suggested there “may be some exceptions if the Government decided they wanted to facilitate low-skilled migration into particular sectors like agriculture, social care or whatever”.¹⁸⁶ The British Chambers of Commerce argued that a scheme to allow “the key sectors of agriculture, hospitality and care to access those workers is crucial”, warning that those industries were “under pressure with the increase in the National Living Wage”, and that “further restrictions to the labour pool they can access, and the potential for them to drive up wages, could have a knock-on impact on prices”.¹⁸⁷
141. Migration Watch UK told us that the scheme they were proposing was in principle “adjustable in the light of the evidence if there is a clear case of a need for low-skilled workers that cannot be met by British workers”.¹⁸⁸ Possible adjustments could include a seasonal agricultural workers scheme (SAWS), a shortage occupation list, and a youth mobility scheme, all of which exist, or have in the past existed, as part of the UK’s non-EU immigration system.¹⁸⁹ Migration Watch acknowledged that any “transitional arrangements” of this nature would mean that the “100,000 figure [the reduction in net migration from the EU they estimate their scheme would deliver] would be lower”.¹⁹⁰
142. The Government seemed open to the idea of a sectoral approach, noting that “different models may apply to different types of worker and different types of people”, and that the UK already operates “shortage occupation lists and resident [labour] market tests for non-EU [nationals] and that is one aspect

184 [Q 18](#)

185 [Q 20](#)

186 [Q 80](#) and [Q 11](#)

187 [Q 31](#)

188 [Q 18](#)

189 [Q 18](#). The Seasonal Agricultural Workers Schemes allowed fruit and vegetable growers to employ migrant workers as seasonal workers. The last such scheme applied to Bulgarian and Romanian workers, who were eligible to come to the UK for up to six months at a time, subject to an annual quota of 21,250 SAWS participants. The scheme closed at the end of 2013, ahead of the lifting of transitional labour market controls on Bulgarian and Romanian nationals from 1 January 2014. Prior to 2007, the SAWS was open to non-EEA nationals. It was restricted to EU2 nationals in 2007 with a view to phasing it out as the EEA labour market accessible by the horticultural sector expanded. For further details, see: Rt Hon Mark Harper, Written Ministerial Statement on the Seasonal Agricultural Workers Scheme and the Food Processing Sectors Based Scheme, 12 September 2013: <https://www.gov.uk/government/speeches/seasonal-agricultural-workers-scheme-and-the-food-processing-sectors-based-scheme> [accessed 1 March 2017]

190 [Q 19](#)

that may be relevant”.¹⁹¹ Mr Goodwill explicitly cited a seasonal agricultural workers scheme as “one model that might be worthy of consideration”, suggesting that “as that is short term [that is. migrants stay for less than 12 months], that does not affect net migration and has less impact on local communities”.¹⁹²

143. Jonathan Portes warned that “fine-tuning often feels like a good idea, but it is more difficult to manage”. He identified a trade-off:

“Do we try to create a system that responds in individual sectors to the different priorities the Government are trying to meet, potentially at the cost of having a system that is very complicated and may be more difficult to enforce because the Home Office would have to police the boundaries between different categories and manage sub-quotas of people?”¹⁹³

Non-work categories

144. As noted above, an important aspect of any future immigration arrangements for EU nationals will be how non-work categories—such as students, self-sufficient persons, retirees and the self-employed—are regulated.
145. We heard conflicting views of how straightforward it would be to retain free movement—or something close to it—for EU nationals in non-work categories. Madeleine Sumption suggested that “if some people are authorised to work and others are not, you need a way of distinguishing between them; otherwise in principle everyone could say, ‘I am one of those people authorised to work’, and there is no verification process.”¹⁹⁴ Professor Manning, Chair of the Migration Advisory Committee, made a similar point:

“It is very important to have an immigration system that you have an overall view of, rather than think of each route as a self-contained silo, because we have seen some evidence that if, for example, you make entry into the UK harder through one route, those people who would like to come to the UK move over to another route ... you have to make sure in any system ... that these are legitimate students, and that a self-sufficient person is a legitimate self-sufficient person. You have to have some verification, so in a sense there has to be some degree of control and of checking that they are what they claim to be. I am not quite sure whether that is exactly free movement anymore.”¹⁹⁵

146. Jonathan Portes, on the other hand, did not see “any particular problem with retaining free movement for, say, economically self-sufficient people at the same time as saying we are going to end the free movement of workers”.¹⁹⁶ He argued that “ending free movement will in practice be enforced in the workplace”, and envisaged that in practice, the UK would “still allow people who are economically self-sufficient to come here and do pretty much what they want.”¹⁹⁷

191 [Q 69](#)

192 [Q 75](#)

193 [Q 2](#)

194 [Q 9](#)

195 [Q 31](#)

196 [Q 9](#)

197 [Q 9](#)

147. Migration Watch UK proposed that a work permit system for EU nationals who have been offered highly skilled jobs should operate alongside “continued free movement for European tourists, students, the financially self-sufficient, business visitors and genuine marriage partners”,¹⁹⁸ but also envisaged that EU students should be treated analogously to non-EU students once in the UK.¹⁹⁹ Marley Morris of the IPPR observed that the latter would “obviously not be free movement of students or family members in quite the same way as now—there would have to be restrictions across all those different groups, not just workers, if you were to implement a system like that”.²⁰⁰

Access to public funds

148. As described in Chapter 1, the free movement of persons encompasses not only the right to live, work, or study in another EU Member State, subject to certain conditions, but the right to equal treatment compared to nationals of the host State. Dismantling free movement rules therefore has implications not only for EU nationals’ right to be admitted to the UK, and their right to reside in the UK for different purposes, but potentially also for their right to access public funds, including the benefits system. As noted above, non-EU nationals and their dependants in the UK may not access public funds (with limited exceptions) unless and until they obtain permanent residency (known as Indefinite Leave to Remain).
149. Some of our witnesses anticipated that this aspect of the current free movement arrangements was likely to change post-Brexit. Stephen Booth observed: “At the moment, we treat EU citizens for some purposes effectively as UK citizens ... For non-EU citizens, we say, ‘You have to be here for five years before you have those rights’. That is an area where it makes a lot of sense to look at parity between EU and non-EU”.²⁰¹ Jonathan Portes anticipated that EU nationals were likely to face the same rules as non-EU nationals in future: “Presumably we will say that people cannot claim until they have established permanent residence”.²⁰²
150. Mr Goodwill seemed again to envisage that the continuing entitlement of EU citizens to access public funds would form part of negotiations with the EU: “While we are discussing people’s rights or the ability to come here and work, quite aside from that is the ability of people to claim in-work or indeed out-of-work benefits. That is something else we would need to discuss”. He predicted there would be “reciprocal agreements, for example on access to healthcare”.²⁰³ He also suggested that whether or not access to in-work benefits such as housing benefit and tax credits was available “makes a big difference to the attractiveness of UK low-paid, low-skilled jobs”.²⁰⁴
151. A number of witnesses highlighted the significance of the ‘equal treatment’ dimension of free movement for EU nationals in non-work categories. This included Mr Goodwill, who suggested that in respect of EU students, the “sticking point” was likely to be “how they engage with our existing system of tuition fees and loans, rather than necessarily the immigration system”,

198 Supplementary written evidence from Migration Watch UK ([BMP0006](#)), para 1

199 [Q 19](#)

200 [Q 19](#)

201 [Q 82](#)

202 [Q 9](#)

203 [QQ 73–74](#)

204 *Ibid.*

bearing in mind that even under the non-EU system, the UK has not placed a limit on the number of students that may be admitted to the UK.²⁰⁵

Enforcement

152. The question of who would enforce any new arrangements was raised by a number of our witnesses, especially employers' organisations. Madeleine Sumption noted that employers would need a way to understand who had work authorisation and who did not; and workers would need to be able to document that they were complying with the rules.²⁰⁶ She predicted that any new system that significantly restricted the right of EU citizens to work in the UK "would come with enforcement challenges, just as is currently the case for non-EU citizens."²⁰⁷
153. NHS Employers drew attention to the "balance between what the employer has to do and what the state has to do", and advocated minimising "the burden on employers, large or small, in terms of that enforcement."²⁰⁸ The Institute of Directors echoed this, noting that "in recent years, we have seen efforts by Government to control immigration by placing the onus on employers". They pointed to "landlords having to do background or immigration checks before renting out a home, and employers having to do similar assessments of the paperwork they are given", and argued that "the Home Office is inherently better placed to assess such paperwork, because it has expertise in this area".²⁰⁹
154. Jonathan Portes warned that any departure from the current system would be "an absolutely huge challenge" for the Home Office, who currently "do not have to worry about Europeans" from an immigration point of view.²¹⁰ He argued that it would be "very important that the Government give the Home Office the resources it needs—people, systems and time—to make any new system work." But he also emphasised that it would be important to design from the outset a system "not just on the basis of what is seen to be politically acceptable or desirable but on the basis of what can be enforced given the available resources".²¹¹ In his view there would be "a very strong premium in designing any new system to make sure it is light-touch, non-bureaucratic, non-intrusive, does not require visiting every employer in the country and does not require employers to wade through huge numbers of forms so they have to call a helpline for it to be interpreted".²¹²
155. The Airport Operators' Association drew our attention to the current 'soft border' regime for EEA and Swiss nationals, focused on the verification of identity, contrasting it with the 'hard border' regime faced by nationals of other countries, who are subject to additional questioning by Border Force officers regarding the purpose of their visit. They suggested that "if EEA and Swiss nationals were to be subject to full border checks, this would be highly disruptive for passengers, airlines and airports alike". They also

205 [Q 69](#)

206 Supplementary written evidence from Madeleine Sumption ([BMP0010](#))

207 *Ibid.*

208 [Q 38](#)

209 [Q 32](#). See also [Q 31](#).

210 See also para 122 of European Union Committee, *Brexit: acquired rights* (10th Report, Session 2016–17, HL Paper 82) with regard to the challenge of requiring EU nationals resident in the UK to apply for Indefinite Leave to Remain.

211 [Q 10](#)

212 [Q 10](#)

anticipated that a ‘hard border’ regime for EEA and Swiss visitors “would require Border Force to commit significantly more resources to processing these travellers”, commenting that even if significant new resources were allocated, “queuing times for European visitors would still almost double”.²¹³ The current Key Performance Indicators regime stipulates maximum waiting times of 25 minutes for EU/EEA and Swiss citizens and 45 minutes for all other nationalities.

Reciprocity

156. As we noted in Chapter 1, the age profile of UK citizens who are long-term residents of other EU countries suggests that the largest group within that cohort are likely to be working in the EU, while the next-largest cohort are likely to be retired or nearing retirement. We asked our witnesses to comment on the implications that different options for regulating EU immigration in future might have for UK nationals wishing to move in the opposite direction.
157. Madeleine Sumption emphasised that whether UK citizens would face exactly the same requirements in the EU as the UK imposed on EU citizens in the UK would depend on whether the EU adopted bespoke arrangements for UK nationals (perhaps as the result of a negotiation with the UK), or whether it chose to treat them as third-country nationals subject to EU law and/or each Member State’s generic immigration policies towards non-EU citizens.²¹⁴ Subject to that caveat, she anticipated that “an emergency brake with a relatively high quantitative limit would be expected to have a more limited impact on UK citizens moving to other EU countries than a full work permit system in which UK citizens had to meet the same criteria as non-EU citizens”.²¹⁵
158. Mr Goodwill envisaged that UK nationals would be subject to bespoke arrangements: “Whatever agreement we have with the European Union will be a two-way agreement. It will apply to EU citizens wishing to come and work here, and there will be parallel negotiations about British people who want to live, work or study in the European Union”.²¹⁶
159. Zsolt Darvas, Senior Fellow at Bruegel, predicted that “the EU-27 would be open to full labour mobility with the UK. That is very obvious ... from the statements made by many Heads of State. It is the UK that wishes to restrict immigration and ... one of the principles will be symmetry.”²¹⁷
160. Migration Watch UK anticipated that “whatever is agreed is likely to be reciprocal”, and suggested that “reciprocity in relation to work permits does not strike us as being a particular problem”.²¹⁸ Marley Morris of the IPPR questioned whether a strictly reciprocal arrangement such as that envisaged by Migration Watch would appeal to the EU-27: “All those [UK] retirees can move abroad to Spain or France, but it does not benefit these many eastern European and western European migrant workers who want to come to the UK.”²¹⁹

213 Written evidence from the Airport Operators Association ([BMP0007](#)), paras 16–19

214 Supplementary written evidence from Madeleine Sumption ([BMP0010](#))

215 Supplementary written evidence from Madeleine Sumption ([BMP0010](#))

216 [Q 73](#)

217 [Q 80](#)

218 [Q 18](#)

219 [Q 22](#)

Box 3: EU rules on third-country nationals

- Third-country nationals may face visa requirements for entry into EU Member States, including for short-term trips and holidays.²²⁰
- Third-country nationals who seek to reside for longer periods in EU Member States would be subject to EU rules on managed migration, including quotas and EU-preference rules on labour migration. Highly skilled UK professionals, for example, would be required to apply for a Blue Card (the EU's work and residence permit for highly-skilled non-EU nationals),²²¹ or to fall within the scope of intra-corporate transfers,²²² or to fall within criteria for scientific research.²²³ These regimes are more restrictive than EU rights on free movement. There are few rules on low skilled workers, other than seasonal workers,²²⁴ and on the self-employed, so the applicable rules would depend on the domestic immigration law of each Member State.
- Third-country national students wishing to study in the EU would not be granted equal treatment with EU nationals in relation to tuition fees and the right to undertake part-time work.²²⁵
- Third-country nationals who had been resident in an EU Member State for more than five years would be able to apply for the EU long-term residency status.²²⁶
- Third-country nationals legally resident in an EU Member State wishing for their families to join them would have to comply with stricter EU-wide rules on family reunion.²²⁷

Source: Richard Gordon QC and Rowena Moffat, *The Constitution Society, Brexit: The Immediate Consequences* (2016), pp 53–56

220 Regulation 562/2006/EU of 15 March 2006 on the Schengen Borders Code ([OJ L 105](#), 13 April 2006, pp 1–32) (and associated implementation secondary legislation); Regulation 539/2001/EC of 15 March 2001 listing the third countries whose nationals must be in possession of visas and those whose nationals are exempt from that requirement ([OJ L 081](#), 21 March 2001, pp 1–7) and Regulation 810/2009/EC of 13 July 2009 establishing an EU code on visas (and associated implementation directives).([OJ L 243](#), 15 September 2009, pp 1–58)

221 Council Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment ([OJ L 155](#), 18 June 2009, pp 17–29)

222 Council Directive 2014/66/EU of 15 May 2014 on the conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer ([OJ L 157](#), 27 May 2014, pp 1–22)

223 Council Directive 2005/71/EC of 12 October 2005 on a specific procedure for admitting Third Country Nationals for the purposes of scientific research ([OJ L 289](#), 3 November 2005, pp 15–22)

224 Council Directive 2014/36/EU of 26 February 2014 on the conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers ([OJ L 94](#), 28 March 2014, pp 375–390)

225 Council Directive 2004/114/EC of 13 December 2004 on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service ([OJ L 375](#), 23 December 2004, pp 12–18)

226 Council Directive 2003/109/EC of 25 November 2003 concerning the status of Third Country Nationals who are long term residents ([OJ L 16](#), 23 January 2004, pp 44–53)

227 Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification ([OJ L 251](#), 3 October 2003, pp 12–18)

Conclusions

161. **The free movement of persons between the UK and other countries in the EU is set to end automatically when the UK ceases to be a member of the European Union and EU law ceases to apply. The policy question facing the Government, therefore, is what aspects of the free movement of persons, if any, it wishes to see reproduced in any future bilateral agreement with the European Union.**
162. **For practical purposes, the free movement of persons as currently defined in EU law has two main dimensions: the right to entry and residence in another Member State, and the right to equal treatment compared to nationals of the host State. In any future arrangement between the UK and the EU, it would in principle be possible to reproduce elements of one or both dimensions. In this inquiry, we have focused on the immigration dimension, but it is important to emphasise that the equal treatment dimension is no less important, for example for prospective UK retirees in the EU and EU students in the UK.**
163. **Given that almost three-quarters of EU migrants to the UK come to work, or look for work, any new controls may focus on those categories. But any controls placed on EU workers in future are independent from the controls that may be placed on EU nationals in other categories, such as students, self-sufficient persons and retirees. It would in principle be possible to retain something resembling free movement for EU nationals in these other categories—an approach for which there are precedents—or the UK could treat them in the same way it treats non-EU nationals.**
164. **Placing EU students, self-sufficient persons and retirees on the same footing as non-EU nationals in those categories could have significant implications for UK nationals wishing to move in the other direction. At the same time, it is not a given that a strictly reciprocal arrangement for these categories will appeal to the EU-27, bearing in mind that the composition of EU migration to the UK is different from that of UK migration to the EU.**
165. **If the Government were to opt for controls on EU nationals coming to the UK to work, a work permit system seems likely. Such a system could be designed to put EU nationals on the same footing as non-EU nationals, or it could award preferential treatment to EU nationals.**
166. **Employers' organisations were alarmed at the prospect that EU nationals might in future be subject to the UK's non-EU immigration regime, the 'Points Based System'. To do so would disproportionately affect some employers' ability to sponsor EU workers, and could result in labour shortages in some areas, including in publicly-funded sectors such as the NHS and social care, and in horticulture, where the closure of the Seasonal Agricultural Workers Scheme at the end of 2013 was premised on growers having unrestricted access to workers from the EU.**
167. **To mitigate this, the Government may be tempted to consider a work permit system that is restrictive at first glance, but hedged with exemptions for particular sectors and schemes, such as a Seasonal**

Agricultural Workers Scheme. This approach could produce the worst of all worlds, failing to deliver a meaningful reduction in immigration while also proving more onerous and costly for employers, prospective applicants, and those charged with enforcement.

168. **In considering various models for regulating future UK-EU migration, we have not sought to capture the full range of options that may be available, nor to endorse any specific approach, but to set out the implications of different models as we see them. There may be other, better models for managing EU immigration post-Brexit, which we have not considered. Moreover, there may be trade-offs between the level of access to the Single Market that the UK is able to secure in a future Free Trade Agreement and the precise arrangements for future migration between the UK and the EU. Rather than recommending a particular model, therefore, we emphasise that it is vital that the Government should not close off options ahead of any negotiation with the EU-27.**
169. **This said, we note there may be benefits to the UK in offering preferential treatment to EU nationals compared to non-EU nationals in the UK's future immigration regime. That approach could increase the likelihood of securing reciprocal preferential treatment for UK nationals in the EU, and also improve the prospects of achieving the UK's objectives on access to the Single Market.**

CHAPTER 4: EU MIGRATION FOR LOW-SKILLED WORK

Background

170. To the extent that the Government has set out a direction of travel for how it wishes to manage migration of EU nationals in future, that direction of travel seems to consist of three elements: first, that high-skilled immigration will remain welcome; second, that low-skilled immigration is potentially of concern; and third, that the UK should seek to reduce dependency on low-cost migrant labour.
171. The Prime Minister has said that “we will always want immigration, especially high-skilled immigration”,²²⁸ while the Chancellor has said he could not “conceive of any circumstance in which we would want to impede or prevent the flow of highly-skilled, highly-paid people”.²²⁹ On low-skilled immigration, the Prime Minister has made reference to people finding themselves “out of work or on lower wages because of low-skilled immigration”,²³⁰ and to net migration putting “a downward pressure on wages for working class people”.²³¹ The Chancellor has suggested that public concern relates to “people competing for entry-level jobs with people in the UK”,²³² and has highlighted a disparity in qualifications between British and EU nationals: “It is a challenge for somebody who has perhaps been long-term unemployed and excluded from the labour market, and who has very low levels of qualification or educational attainment, to compete with somebody from eastern Europe who perhaps has a degree-level qualification but is seeking to work in an entry-level job.”²³³
172. The Chancellor has also indicated that the Government will seek to make progress against its “long-term objective” of reducing net migration the tens of thousands through “a combination of upskilling in our own population to fill gaps ... and investment of capital, for example in the agricultural and horticultural sectors”. He has suggested that in these sectors “there are steps of automation that can be taken by investing capital but are not taken when access to low-cost labour is available”.²³⁴
173. It will be clear from these quotations that the debate around low-skilled immigration to some extent overlaps with the debate on EU immigration, in part because a significant proportion of EU nationals in the UK are thought to be working in ‘low-skilled’ jobs. In 2013, an estimated 42% of the total

228 Theresa May MP, Speech on The Government’s negotiation objectives for exiting the EU, 17 January 2017: <https://www.gov.uk/government/speeches/the-governments-negotiating-objectives-for-exiting-the-eu-pm-speech> [accessed 28 February 2017]

229 Oral evidence taken before the Treasury Committee, 12 December 2016 (Session 2016–17), [Q 333](#) (Philip Hammond MP)

230 Theresa May MP, Speech to the Conservative Party Conference on Brexit, 2 October 2016: <https://www.politicshome.com/news/uk/political-parties/conservative-party/news/79517/read-full-theresa-maysconservative> [accessed 28 February 2017]

231 Theresa May MP, Speech on The Government’s negotiation objectives for exiting the EU, 17 January 2017: <https://www.gov.uk/government/speeches/the-governments-negotiating-objectives-for-exiting-the-eu-pm-speech> [accessed 28 February 2017]

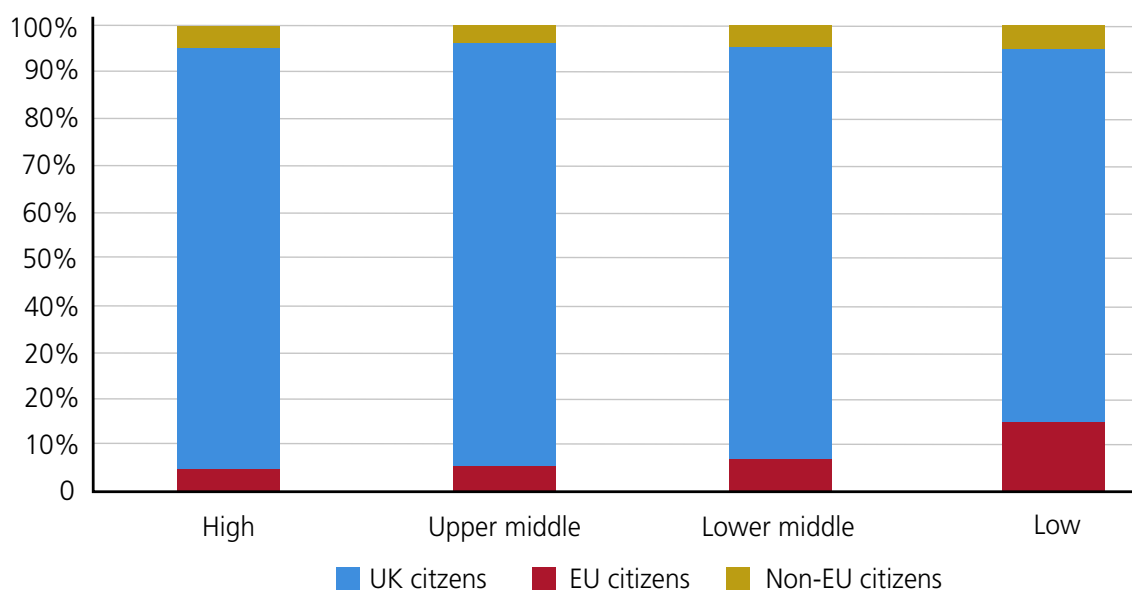
232 Oral Evidence taken before the House of Commons Treasury Committee, 19 October 2016 (Session 2016–17), [Q 60](#) (Philip Hammond MP)

233 Oral evidence taken before the European Union Select Committee, 26 January 2017 (Session 2015–16), [Q 167](#)

234 Oral evidence taken before the House of Commons Treasury Committee, 12 December 2016 (Session 2016–17), [Q 339](#) (Philip Hammond MP)

stock of migrants in low-skilled jobs were born in the EU.²³⁵ That figure had risen to 76% in the year ending September 2016.²³⁶ As shown in Figure 9, EU nationals made up around 5% of those in employment in the ‘high’, ‘upper middle’ and ‘lower middle’ skill categories, but around 15% of those in the ‘low’ skill category in the year ending September 2016.²³⁷ Mr Goodwill told us that “the reason [he] specifically mentioned low-skilled migration in the context of Brexit is that we do not get low-skilled, low-wage people coming from outside the EU. We shut off that particular route as we were members of an EU that was enlarging.”²³⁸

Figure 9: UK nationals, EU nationals, and non-EU nationals in employment by skill level, October 2015 to September 2016



Source: ONS, *Annual Population Survey*

174. In view of how the Government appears to be framing the problem that its future migration policy in respect of EU nationals will seek to address, we sought our witnesses’ views on the links between low-skilled migration, wages, skills and industrial strategy.

Witnesses’ views

Definitions

175. It will be clear from the statements by Ministers quoted above that references to “low-skilled” immigration can be misleading. As Madeleine Sumption, Director of Oxford University’s Migration Observatory, told us, the nature of the job is more important than the skill of the individual doing it, because “there are a lot of people who come in who are highly educated, but they

235 Migration Advisory Committee, *Migrants in low-skilled work, Summary Report* (July 2014), p 7 figure 2: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/333083/MAC-Migrants_in_low-skilled_work_Full_report_2014.pdf [accessed 22 February 2017]

236 508,000 EU nationals out of a total of 668,000 migrants in low-skilled jobs. Adding UK nationals, a total of 3,375,000 individuals were in low-skilled employment in the year ending September 2016. Figures from ONS (2 March 2017): <https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/adhocs/006725numberofuknationalseunationalsandnoneunationalsbyskillleveloctober2015toseptember2016uk> [accessed 2 March 2017].

237 The ONS uses the Standard Occupational Classification (SOC) to categorise skill levels.

238 Q 75

are working in low-wage positions”.²³⁹ The TUC made the same point, suggesting that there was “quite a lot of evidence that migrants from Eastern Europe are, on average, doing jobs that are further below their skill capability than domestic workers, although it also applies to a whole range of domestic workers”.²⁴⁰

176. A second point witnesses emphasised was that the salary for a job is an inadequate proxy for skill. The Institute of Directors argued that “the Government must not confuse something like a salary with a skill set”, and warned that “what is defined by policymakers as an unskilled or low-skilled job would often be considered a skilled job by general members of the public”, citing nursing as an example.²⁴¹ NHS Employers cautioned against using “salary and earnings ... as a proxy for economic worth and economic contribution”, noting that “the vast majority of people in our sector are at a disadvantage relative to that, because as public sector employers or social care employers our salaries do not compete”.²⁴² Universities UK warned that “a number of vital professional services staff, lab technicians and language assistants might not meet the [salary] level currently required, and would therefore be restricted from entering universities”.²⁴³
177. Professor Alan Manning, Chair of the Migration Advisory Committee (MAC), told us that when talking about low-skilled work, “the definition of ‘low-skilled’ is that [people] are not tied to a particular sector in the same way that a doctor would be”.²⁴⁴ In their 2014 report on *Migrants in low-skilled work*, the MAC noted that there was “no single objective definition of low-skilled jobs”, but indicated they were mostly using the Standard Occupational Classification produced by the Office for National Statistics.²⁴⁵

Effect of immigration on wages

178. The Minister, Mr Goodwill, told us:

“As part of the Government’s policy of upskilling our economy and encouraging people into work, we do need to look at whether British people who are unemployed, who could do these jobs, need to be given the incentives to take those jobs. Some have argued that the way that immigration has depressed wages in some of the very low-skilled jobs has made those jobs less attractive to British workers.”²⁴⁶

179. We asked our witnesses whether there was evidence to support claims that immigration is depressing wages in low-skilled jobs.²⁴⁷ Professor Manning rehearsed the conclusion of the MAC’s 2014 report on *Migrants in low-skilled work*, that “overall the impacts of migrants on average wages and on the wage distribution ... were modest and tended to be positive at the top of the wage distribution and negative at the bottom”.²⁴⁸ Professor Manning

239 [Q 12](#)

240 [Q 28](#)

241 [Q 30](#)

242 [Q 37](#)

243 Written evidence from Universities UK ([BMP0002](#)), para 43

244 [Q 91](#)

245 Migration Advisory Committee, *Migrants in low-skilled work, Summary Report*, (July 2014), p 5: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/333083/MAC-Migrants_in_low-skilled_work_Full_report_2014.pdf [accessed 22 February 2017]

246 [Q 75](#)

247 See for example [Q 75](#) as well as the quotes in para 171.

248 [Q 89](#)

emphasised that “overall the positive and negative effects were modest, so the word ‘modest’ is quite important”.²⁴⁹ He also noted that:

“Overall, the UK has had a very tough time with real wages ever since the start of the financial crisis. Real wages fell really substantially and by the largest amount since the 1950s. That was spread across the distribution from bottom to top. If you asked which group did least badly, it was workers at the bottom. The reason for that is primarily—and this is one of the other factors that is important—because of the minimum wage and because of the national living wage. Although the studies say that wages at the bottom might have been a little higher in the absence of migration, the estimated size of the impacts are small.”²⁵⁰

180. The TUC noted that “there is some of evidence of [migration] holding down wage levels at the lower end of the economy”, while emphasising that the effect had been “very nugatory”.²⁵¹ The TUC also suggested that looking at averages was not necessarily helpful:

“There are still pockets where low-skilled workers have been brought in from the European Union specifically to undermine terms and conditions in a very particular sector. We would say there are other ways of addressing that than broad-brush approaches to the economy generally.”²⁵²

181. Witnesses identified the self-employed and posted workers²⁵³—which are categories in their own right under EU free movement rules—as meriting further scrutiny in any debate on the effect of migration on wages. Professor Manning emphasised that everything he had said about the evidence “relates to employees”, but that “a lot of the complaints are about self-employed people”, citing builders as an example. He warned that “the data on the earnings of the self-employed is non-existent. If you asked what research has been done on the impact of immigration on the earnings of the self-employed, the answer is zero”.²⁵⁴ The TUC noted that in the construction sector, they had been involved in disputes where migrant workers “were employed through agencies and umbrella companies, and facilitated through a false self-employment route, effectively undercutting [a] national agreement”.²⁵⁵ The TUC also highlighted the Posted Workers Directive, suggesting that:

“The UK operates a system that does not enforce the rate for the job, as decided by collective bargaining, for posted workers. That means that

249 *Ibid.*

250 [Q 89](#)

251 [Q 27](#)

252 *Ibid.*

253 Under EU law, a ‘posted worker’ is an employee who is sent by his or her employer to carry out a service in another EU Member States on a temporary basis. The rules around posted workers are set out in Directive 96/71/EC concerning the posting of workers in the framework of the provision of services ([OJ L 18](#), 21 January 2017, pp 1–6). Those rules have since been supplemented by Directive 2014/67/EU on enforcement of the 1996 Directive ([OJ L 159](#), 28 May 2014, pp 11–31). The Commission has also published a further proposal ([COM/2016/128](#)) that would require posted workers to receive equal pay and working conditions compared to local workers. The Commission’s proposal attracted ‘reasoned opinions’ suggesting that the proposal was in breach of the principle of subsidiarity from 14 chambers of national Parliaments in 11 Member States (the EU8, EU2 and Denmark), thereby triggering the so-called ‘yellow-card’ procedure. The Commission re-examined its proposal, as provided for under that procedure, but decided to maintain it (as opposed to withdrawing or amending it).

254 [Q 90](#)

255 [Q 25](#)

where you have workers brought over from other countries who would be covered by the posted workers directive, their wages tend to be lower than the going rate, for instance in engineering and construction.”²⁵⁶

Effect of reducing migration on wages

182. We also asked our witnesses whether reducing low-skilled immigration could lead to higher wages for resident low-skilled workers. Professor Manning told us: “That would be one of the implications that you might draw from these studies, but do not expect too big a rise, so do not expect that will compensate people for the low wage growth that we have had because of the financial crisis and low productivity growth in the economy as a whole.” He emphasised the need for a sense of perspective and an awareness of other factors influencing wages, such as inflation and productivity growth: “Immigration is just one part of that and maybe not even the most important part.”²⁵⁷
183. The CBI judged that any impact on wages from a reduction in immigration would not be “dramatic”, and expressed concern that “if we believe that immigration is one of the primary causes of slow wage growth, then we are looking slightly in the wrong place”.²⁵⁸ The TUC told us that although a “relatively simple, at-a-stroke way of increasing wages in low-paid sectors ... would be fantastic”, immigration was not the reason for low pay in specific sectors. They instead attributed low pay to “problems of enforcement, the reduction in the strength of trade unions and collective bargaining, and so on”.²⁵⁹
184. The NFU did not expect increased wages to result from a fall in EU immigration.²⁶⁰ NHS Employers also did not expect “changes in the migration system would affect what we pay”, adding that it was “a matter of government policy to restrict what we pay; it has been for the last six years and will be for the next three years.”²⁶¹ In respect of the social care sector, the TUC suggested that unions in the care sector “do not push for increasingly higher wages”, because “the business model operating in social care simply does not provide for that”. In their view, “the solution to how much you pay care workers is the amount of money that goes into social care, not the sources of labour supply”.²⁶²

How employers might respond

185. Employers could respond to reduced availability of EU migrants to fill low-skilled jobs in other ways. Jonathan Portes suggested that responses could be expected to differ a lot from sector to sector, and ranged from “simply shutting down and going out of business”, to higher wages, or investment in labour-saving machinery. He noted that “unemployment in the UK is already pretty low at the moment, so it seems unlikely that the main way employers would adjust ... would be simply by hiring Brits”.²⁶³ He also raised the prospect that wage rises “would presumably in a competitive market be

256 [Q 23](#)

257 [Q 89](#)

258 [Q 33](#)

259 [Q 26](#)

260 [Q 39](#)

261 [Q 39](#)

262 [Q 27](#)

263 [Q 6](#)

passed on to consumers, although employers might have to reduce profits if they were making enough.”²⁶⁴

186. Professor Manning suggested it was important to “ask questions about whether things have to be the way they are”, and that “you might want all sectors to think about having to compete for labour and, if they fail to compete for labour, whether that is a sector where labour is used most productively”.²⁶⁵ Jonathan Portes cited the strawberry sector as an example, which was “quite a lot bigger than it used to be before we had the availability of flexible labour from eastern Europe. There are plenty of other countries that can grow strawberries. That is one possible response”.²⁶⁶
187. The NFU highlighted relocation overseas as another possible response from employers. They told us that their growers “have businesses globally, so if they cannot find the workforce here they will have no choice other than to move those businesses outside the UK”.²⁶⁷ They too cited the strawberry sector, noting that “we are now 50% self-sufficient in strawberries. It is something that we have taken for granted and not realised is a huge success story.”²⁶⁸
188. Like Jonathan Portes, Professor Manning suggested employers might have the option to produce using more or less capital-intensive techniques.²⁶⁹ The feasibility of such investment will vary between sectors. The NFU told us that mechanisation of fruit harvesting was “probably 10 years away”, and that it would take “massive investment” to bring it about.²⁷⁰ The result was that growers with global businesses “will ... move those businesses outside the UK, without the mechanisation and without the workforce”.²⁷¹
189. The prospect of increased costs being passed on in prices paid by consumers was raised by several witnesses.²⁷² Minette Batters, Deputy President of the NFU, told us: “When I hear talk about people paying more for British, it is not something farmers want to see, and it is certainly not something the consumers want to see.”²⁷³ The TUC judged that “there is no automatic relationship between what you pay a worker and the price to the consumer, because it is subject to many other factors”, including how much you can increase productivity and how capitalised the sector can be.²⁷⁴
190. One effect that the Government seems keen to bring about is an increase in investment in the skills of UK workers. Mr Goodwill told us that “the Government are committed to training our own people”, and that “many would suggest that one of the reasons why we have had to rely on labour coming in from the European Union and outside is because we have not had those skills available for our people”.²⁷⁵ He cited the Immigration Skills Charge of £1,000 per Certificate of Sponsorship per year, which employers sponsoring non-EU migrants under Tier 2 will have to pay from April 2017,

264 *Ibid.*

265 [Q 91](#)

266 [Q 6](#)

267 [Q 38](#)

268 [Q 43](#)

269 [Q 91](#)

270 [Q 38](#)

271 [Q 38](#)

272 See for example [Q 91](#) and [Q 31](#).

273 [Q 44](#)

274 [Q 26](#)

275 [Q 63](#)

and said it had been suggested to the Government that a similar scheme “could apply to the EU”.²⁷⁶

191. The Institute of Directors told us: “The best way to control immigration and reduce employers’ reliance on recruitment from overseas is to increase the supply of British workers with the skills that those employers need.” They advocated “looking holistically at our education system and seeing what needs to be done there to reform and to ensure that we are producing graduates and school leavers with the kind of skills that employers need”.²⁷⁷
192. The Chartered Institute of Personnel and Development have also highlighted what they describe as a “skills mismatch in the graduate labour market”.²⁷⁸ They suggest that while the UK’s higher education sector has expanded rapidly in recent decades, the increase in the number of graduates has not been matched by an increase in high-skilled jobs. They report that in 2010, 58.8% of UK graduates were in non-graduate jobs—and that comparisons across Europe suggested this percentage was exceeded only by Greece and Estonia.²⁷⁹
193. As regards incentives to train resident workers, Professor Manning suggested that one might understand “why an employer might think, ‘I need a trained worker. I have two options. I can train up a British youngster but that costs money and takes some time, or I can bring in a ready-trained worker’”. He emphasised, however, that there was not a sufficiently strong evidence base to judge whether such behaviour was widespread.²⁸⁰
194. Professor Manning highlighted the Department of Health’s request that nurses be placed on the shortage occupation list, and told us the MAC had been concerned that “one of the reasons for the shortage was that some years ago the Department of Health had cut training places for nurses, even though those courses were oversubscribed by residents, so it was partly in some sense a problem of their own making”. He believed that it was not so much that the Department had anticipated that they would be able to call on migrant nurses, but that they were under financial pressure to make economies, and “that is one of the places they decided to make economies”.²⁸¹
195. More broadly, Professor Sir David Metcalf, former Chair of the Migration Advisory Committee, has suggested that “in the public sector, there is a potential trade-off between spending levels and immigration”, arguing that “constraints on public spending often generate greater immigration”. He has cited paramedics, the care sector, science and maths teachers, as well as nurses, as examples.²⁸² Jonathan Portes and Unite made the related point that in the public sector, and notably in the care sector, how employers might respond to a reduction in the supply of EU migrant workers was a question of public policy: “More money, less care, or some combination”.²⁸³

276 [Q 63](#)

277 [Q 30](#)

278 Chartered Institute for Personnel and Development, *Over-qualification and skills mismatch in the graduate labour market* (August 2015) https://www.cipd.co.uk/Images/over-qualification-and-skills-mismatch-graduate-labour-market_tcm18-10231.pdf [accessed 22 February 2017]

279 *Ibid.*, Figure 3.2

280 [Q 93](#)

281 [Q 93](#)

282 Professor David Metcalf, *Work Immigration and the Labour Market*, Section 7 (June 2016): https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/541805/MAC_presentation-immigrationandlabourmarket.pdf [accessed 22 February 2017]

283 [Q 12](#), see also [Q 27](#)

196. As for increasing the supply of resident workers, Professor Manning pointed out that, although UK nationals may not wish to do certain jobs on current terms and conditions, “those are not necessarily so fixed in stone”. He continued: “If you have very demanding work, you have to offer a wage premium to people to do that work, just as you would generally have to offer a premium to get people to work anti-social hours and so on.”²⁸⁴
197. Employers were less confident about the prospect of being able to avoid labour shortages by hiring resident workers. The British Chambers of Commerce argued that “to a certain extent there will always be those [low-skilled] opportunities and, in the context of the highly developed, diverse economy that we have, they are less attractive.” They emphasised the “need to make sure that we can access the labour required”, and warned that “it is going to be very difficult to do that purely through UK workers”.²⁸⁵
198. The NFU noted that businesses growing food and other crops were in “very rural locations”, and questioned whether their workforce needs could be met by resident workers: “In Kent, they need 10,000 workers, and only 600 people are currently unemployed. Will people go from other parts of the country to Kent, to live in these very rural locations and do those jobs?”²⁸⁶ NHS Employers warned that training requirements meant that there was a “lead-in time” for increasing the number of UK nationals able to fill NHS posts such as doctors, nurses and therapists.²⁸⁷

Conclusions

199. **To the extent that the Government has set out a direction of travel for how it wishes to manage migration of EU nationals in future, that vision seems to consist of three elements: first, that high-skilled immigration will remain welcome; second, that low-skilled immigration is potentially of concern; and third, that the UK should seek to reduce dependency on low-cost migrant labour. Each of these elements merits closer scrutiny.**
200. **It is not self-evident to us that migration for high-skilled work should be treated preferentially relative to migration for low-skilled work—not least as the increase in the number of graduates in the UK has not been matched by an increase in high-skilled jobs.**
201. **The Government is making a link between the availability of migrant labour from the EU and the incentive to train or upgrade the skills of resident workers in the UK. The evidence we took suggests that there is not a sufficiently strong evidence base to judge whether that link is robust. Nor is it clear why any such link should exist for low-skilled work but not high-skilled work.**
202. **We note that when it comes to investing in the skills of the resident workforce, successive Governments have not led the way: doctors, teachers and nurses feature prominently among the migrant workers recruited through the Shortage Occupation List. In the case of nurses, the MAC has suggested that this may reflect a failure to invest in training places, and a reluctance to use pay to aid recruitment and**

284 [Q 91](#)

285 [Q 34](#)

286 [Q 41](#)

287 [Q 47](#)

retention. In the public sector, there may thus be a trade-off between spending levels and immigration: reducing immigration in the future may require more public investment upfront. This presents the Government with hard choices—for example, nurses' pay accounted for about one tenth of NHS expenditure in England at the time of the MAC's report in March 2016.

- 203. Reducing EU immigration is unlikely to provide a quick fix for low wages. Indeed, the evidence we took suggests that the effect of migration on wages at the bottom of the wage distribution has been modest, and that other factors such as the National Minimum Wage, National Living Wage and inflation were more significant in driving (or impeding) real wage growth. There does, however, appear to be a case for examining more closely the effect that self-employed EU migrant workers and posted workers may have had on the UK labour market before devising any new, post-Brexit arrangements for EU immigration in these categories or their future equivalents.**
- 204. As for the Government's assumption that resident UK workers will eventually fill the jobs vacated by EU migrant workers, the evidence base to support or refute that assumption is simply not there. The outlook may in any event vary sector by sector, and hinge not only on skills but also on factors such as labour mobility within the UK and the potential effect of incentives such as higher wages. We therefore recommend that the Government focuses on improving its evidence base before further entrenching the skills-based immigration policy that the UK already operates in respect of non-EU nationals.**
- 205. Were the UK to adopt immigration rules for EU nationals that restricted, or indeed choked off, the supply of EU nationals to fill low-skilled jobs, employers' responses would probably vary sector by sector, and it has been beyond the scope of our inquiry to examine those potential responses in detail. But if the Government's ultimate objective is to reduce dependency on low-cost migrant labour, the considerations in play will reach well beyond immigration policy: a reassessment of the Government's industrial strategy, its education and skills policy, and its public spending plans may also be required. We must recognise that crucial sectors of the economy are highly dependent on migrant labour. It is essential that any changes do not endanger the vibrancy of the UK economy, and that any transition to a new equilibrium is phased in gradually over time, as the evidence base available to policy-makers becomes more robust.**

SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS

1. Net long-term migration to the UK by EU nationals has risen sharply since 2004, but until end June 2016, remained lower than net long-term migration to the UK by non-EU nationals. Almost half of EU immigrants arriving in the UK in year ending June 2016 were from ‘old’ Member States, and 72% reported ‘work’ as their reason for immigrating, with the remainder mostly coming to study (13%) or accompany or join family (9%). Migration of UK nationals to other EU countries is smaller in volume, and different in composition, with the age profiles of UK citizens who are long-term residents in other EU countries suggesting that a larger proportion are retired or nearing retirement. (Paragraph 38)
2. The evidence base currently available to policy-makers responsible for devising a future framework for UK-EU migration is incomplete, in some cases insufficiently reliable, and dispersed across a range of sources that are not always directly comparable, for example because some use citizenship while others use country of birth to identify migrants. This is an unsatisfactory basis from which to start developing policy. For example, without data on the turnover of EU migrants, that is to say on how long each person tends to stay in the UK, it is difficult to assess whether the stock of EU nationals already resident in the UK could help mitigate adverse effects, such as labour shortages, that could arise from placing restrictions on new arrivals. Although action is in hand to improve and expand the range and quality of migration data, it is unfortunate that any improved data will not be available in time to inform the decisions of Ministers and officials developing the UK’s initial negotiating position—or those seeking to hold them to account. (Paragraph 39)
3. Different measures of who counts as a migrant can also prove misleading when used in public debate. For example, definitions sometimes include UK nationals, who made up 12% of immigrants in the year ending June 2016. In 2015, UK nationals also made up 40% of the 8.6 million UK residents born outside the UK. Use of the UN-recommended definition of a long-term international migrant may be appropriate for some purposes, but has the potential to skew policy decisions, since it means that some groups of migrants (such as students enrolled on courses of over 12 months’ duration) count towards net migration figures, while others (such as temporary or seasonal workers taking up residence in the UK for less than 12 months) do not. (Paragraph 40)

The UK’s objectives

4. The Government’s primary objective in putting an end to the free movement of persons appears to be restoring sovereignty: ensuring that immigration rules for EU nationals are devised and adopted in the UK. Although it is seeking to bring the policy levers back under national control, how it plans to use those levers to regulate immigration from the EU is less clear. (Paragraph 61)
5. In particular, the Government has thus far stopped short of saying it intends to limit or reduce net migration from the EU, although this can arguably be implied from the ‘tens of thousands’ target for net migration overall. We welcome the indication from the Government that its approach to regulating EU immigration will take into account the needs of the UK economy. (Paragraph 62)

6. Until end June 2016, migration to the UK from outside the EU was consistently higher than EU migration, even though the relevant policy levers are under national control. Restoration of national control over EU migration may or may not, therefore, deliver a reduction in overall net migration. Experience in recent years suggests that sharp fluctuations in net migration are more likely to result from other factors, such as the performance of the UK economy in both absolute and relative terms. (Paragraph 63)
7. We strongly support the Government's intention to protect the entitlements that UK nationals currently enjoy as a result of EU free movement rules, but how realistic that objective is will depend on the precise manner in which the UK proposes to reform the equivalent entitlements enjoyed by EU nationals, especially those looking to come to the UK to work. (Paragraph 64)

Implications for Brexit negotiations

8. Just as the UK and the EU may find themselves negotiating a Free Trade Agreement in reverse—starting from a position of full integration, and seeking to maintain aspects of the status quo while reducing integration in some areas—so on free movement of persons, the UK and EU may find themselves negotiating on which elements of the current arrangements are to be dismantled. (Paragraph 76)
9. At one end of the spectrum of possible outcomes, this could lead to the dismantling of the current arrangements in their entirety, so that EU Member States treat UK nationals in the same way they treat third-country nationals and vice-versa. At the other, it could lead to new, reciprocal and preferential arrangements for UK-EU migration. These may fall short of free movement as it exists today but come close in some or even many respects. (Paragraph 77)
10. The Government has told us that it expects to negotiate with the EU as a bloc on this issue, and seems likely to pursue preferential arrangements for UK-EU migration after the UK has ceased to be a member of the EU. We support this objective. However, it is not self-evident that the negotiation envisaged by the Government will be within the scope of Article 50. Indeed, the precise scope of those negotiations is itself likely to be a matter for negotiation between the UK and the EU-27. Nor is it self-evident that current rules on the free movement of persons can be fully absorbed into UK law in the Great Repeal Bill or a separate immigration bill, since UK nationals' current entitlements require reciprocal commitments from other countries. This raises the prospect that, if negotiations under Article 50 were to conclude without an agreement on this issue, UK nationals would become third-country nationals for the purposes of EU law and the domestic immigration rules of EU member states once the UK leaves the EU. (Paragraph 78)
11. In view of the link between the free movement of persons and access to the Single Market, it is conceivable that new arrangements for future migration between the UK and the EU will not be finalised until the contours of a Free Trade Agreement (FTA) have taken shape, which could take longer than the two years provided for in Article 50 TEU. Transitional arrangements could therefore be required if the UK were to leave the EU while negotiations on an FTA are still underway, or yet to begin. (Paragraph 79)

Dismantling free movement

12. The free movement of persons between the UK and other countries in the EU is set to end automatically when the UK ceases to be a member of the European Union and EU law ceases to apply. The policy question facing the Government, therefore, is what aspects of the free movement of persons, if any, it wishes to see reproduced in any future bilateral agreement with the European Union. (Paragraph 160)
13. For practical purposes, the free movement of persons as currently defined in EU law has two main dimensions: the right to entry and residence in another Member State, and the right to equal treatment compared to nationals of the host State. In any future arrangement between the UK and the EU, it would in principle be possible to reproduce elements of one or both dimensions. In this inquiry, we have focused on the immigration dimension, but it is important to emphasise that the equal treatment dimension is no less important, for example for prospective UK retirees in the EU and EU students in the UK. (Paragraph 161)
14. Given that almost three-quarters of EU migrants to the UK come to work, or look for work, any new controls may focus on those categories. But any controls placed on EU workers in future are independent from the controls that may be placed on EU nationals in other categories, such as students, self-sufficient persons and retirees. It would in principle be possible to retain something resembling free movement for EU nationals in these other categories—an approach for which there are precedents—or the UK could treat them in the same way it treats non-EU nationals. (Paragraph 162)
15. Placing EU students, self-sufficient persons and retirees on the same footing as non-EU nationals in those categories could have significant implications for UK nationals wishing to move in the other direction. At the same time, it is not a given that a strictly reciprocal arrangement for these categories will appeal to the EU-27, bearing in mind that the composition of EU migration to the UK is different from that of UK migration to the EU. (Paragraph 163)
16. If the Government were to opt for controls on EU nationals coming to the UK to work, a work permit system seems likely. Such a system could be designed to put EU nationals on the same footing as non-EU nationals, or it could award preferential treatment to EU nationals. (Paragraph 164)
17. Employers' organisations were alarmed at the prospect that EU nationals might in future be subject to the UK's non-EU immigration regime, the 'Points Based System'. To do so would disproportionately affect some employers' ability to sponsor EU workers, and could result in labour shortages in some areas, including in publicly-funded sectors such as the NHS and social care, and in horticulture, where the closure of the Seasonal Agricultural Workers Scheme at the end of 2013 was premised on growers having unrestricted access to workers from the EU. (Paragraph 165)
18. To mitigate this, the Government may be tempted to consider a work permit system that is restrictive at first glance, but hedged with exemptions for particular sectors and schemes, such as a Seasonal Agricultural Workers Scheme. This approach could produce the worst of all worlds, failing to deliver a meaningful reduction in immigration while also proving more onerous and costly for employers, prospective applicants, and those charged with enforcement. (Paragraph 166)

19. In considering various models for regulating future UK-EU migration, we have not sought to capture the full range of options that may be available, nor to endorse any specific approach, but to set out the implications of different models as we see them. There may be other, better models for managing EU immigration post-Brexit, which we have not considered. Moreover, there may be trade-offs between the level of access to the Single Market that the UK is able to secure in a future Free Trade Agreement and the precise arrangements for future migration between the UK and the EU. Rather than recommending a particular model, therefore, we emphasise that it is vital that the Government should not close off options ahead of any negotiation with the EU-27. (Paragraph 167)
20. This said, we note there may be benefits to the UK in offering preferential treatment to EU nationals compared to non-EU nationals in the UK's future immigration regime. That approach could increase the likelihood of securing reciprocal preferential treatment for UK nationals in the EU, and also improve the prospects of achieving the UK's objectives on access to the Single Market. (Paragraph 168)

EU migration for low-skilled work

21. To the extent that the Government has set out a direction of travel for how it wishes to manage migration of EU nationals in future, that vision seems to consist of three elements: first, that high-skilled immigration will remain welcome; second, that low-skilled immigration is potentially of concern; and third, that the UK should seek to reduce dependency on low-cost migrant labour. Each of these elements merits closer scrutiny. (Paragraph 198)
22. It is not self-evident to us that migration for high-skilled work should be treated preferentially relative to migration for low-skilled work—not least as the increase in the number of graduates in the UK has not been matched by an increase in high-skilled jobs. (Paragraph 199)
23. The Government is making a link between the availability of migrant labour from the EU and the incentive to train or upgrade the skills of resident workers in the UK. The evidence we took suggests that there is not a sufficiently strong evidence base to judge whether that link is robust. Nor is it clear why any such link should exist for low-skilled work but not high-skilled work. (Paragraph 200)
24. We note that when it comes to investing in the skills of the resident workforce, successive Governments have not led the way: doctors, teachers and nurses feature prominently among the migrant workers recruited through the Shortage Occupation List. In the case of nurses, the MAC has suggested that this may reflect a failure to invest in training places, and a reluctance to use pay to aid recruitment and retention. In the public sector, there may thus be a trade-off between spending levels and immigration: reducing immigration in the future may require more public investment upfront. This presents the Government with hard choices—for example, nurses' pay accounted for about one tenth of NHS expenditure in England at the time of the MAC's report in March 2016. (Paragraph 201)

25. Reducing EU immigration is unlikely to provide a quick fix for low wages. Indeed, the evidence we took suggests that the effect of migration on wages at the bottom of the wage distribution has been modest, and that other factors such as the National Minimum Wage, National Living Wage and inflation were more significant in driving (or impeding) real wage growth. There does, however, appear to be a case for examining more closely the effect that self-employed EU migrant workers and posted workers may have had on the UK labour market before devising any new, post-Brexit arrangements for EU immigration in these categories or their future equivalents. (Paragraph 202)
26. As for the Government's assumption that resident UK workers will eventually fill the jobs vacated by EU migrant workers, the evidence base to support or refute that assumption is simply not there. The outlook may in any event vary sector by sector, and hinge not only on skills but also on factors such as labour mobility within the UK and the potential effect of incentives such as higher wages. We therefore recommend that the Government focuses on improving its evidence base before further entrenching the skills-based immigration policy that the UK already operates in respect of non-EU nationals. (Paragraph 203)
27. Were the UK to adopt immigration rules for EU nationals that restricted, or indeed choked off, the supply of EU nationals to fill low-skilled jobs, employers' responses would probably vary sector by sector, and it has been beyond the scope of our inquiry to examine those potential responses in detail. But if the Government's ultimate objective is to reduce dependency on low-cost migrant labour, the considerations in play will reach well beyond immigration policy: a reassessment of the Government's industrial strategy, its education and skills policy, and its public spending plans may also be required. We must recognise that crucial sectors of the economy are highly dependent on migrant labour. It is essential that any changes do not endanger the vibrancy of the UK economy, and that any transition to a new equilibrium is phased in gradually over time, as the evidence base available to policy-makers becomes more robust. (Paragraph 204)

APPENDIX 1: LIST OF MEMBERS AND DECLARATIONS OF INTEREST

Members

Baroness Browning
 Lord Condon
 Lord Condon
 Baroness Janke
 Lord Jay of Ewelme
 Baroness Massey of Darwen
 Lord O'Neill of Clackmannan
 Baroness Pinnock
 Baroness Prashar (Chairman)
 Lord Ribeiro
 Lord Soley
 Lord Watts

Declaration of Interests

Baroness Browning
Chair of the Advisory Committee on Business Appointments

Lord Condon
No relevant interests declared

Lord Cormack
No relevant interests declared

Baroness Janke
No relevant interests declared

Lord Jay of Ewelme
Member, Advisory Council, European Policy Forum
Member, Senior European Experts Group
Patron, Fair Trials International
Trustee (non-executive director), Thomson Reuters Foundations Share Company
Trustee, Magdalen College, Oxford Development Trust

Baroness Massey of Darwen
No relevant interests declared

Lord O'Neill of Clackmannan
No relevant interests declared

Baroness Pinnock
No relevant interests declared

Baroness Prashar (Chairman)
Member, All-Party Parliamentary Group on Migration

Lord Ribeiro
Owner of a farm in Essex

Lord Soley
No relevant interests declared

Lord Watts
No relevant interests declared

The following Members of the European Union Select Committee attended the meeting at which the report was approved

Baroness Armstrong of Hill Top
 Lord Boswell of Aynho (Chairman)
 Baroness Brown of Cambridge
 Baroness Falkner of Margravine
 Lord Green of Hurstpierpoint
 Lord Jay of Ewelme
 Earl of Kinnoull
 Lord Liddle
 Baroness Prashar
 Lord Selkirk of Douglas
 Baroness Suttie
 Lord Trees
 Lord Teverson
 Lord Whitty
 Baroness Wilcox
 Lord Woolmer of Leeds

During consideration of the report the following Members declared an interest:

Baroness Armstrong of Hill Top
Part owner of a property in Spain

Baroness Brown of Cambridge
*Former Vice Chancellor of Aston University
 Honorary Fellow, Murray Edwards College, Cambridge
 Title E Fellow, Churchill College, Cambridge
 Advisor to the Vice Chancellor of Cranfield University on professional salaries*

Lord Green of Hurstpierpoint
President, Institute of Export (IoE); and member of informal advisory group on Brexit and trade, convened by the CEO of the Engineering Employers Federation (EEF)

Earl of Kinnoull
In receipt of EU Subsidy and employing Seasonal Migrant Labour

Baroness Prashar
Member; All-Party Parliamentary Group on Migration

Lord Selkirk of Douglas
Diversified investment portfolio in McinRow & Wood Income Fund managed by Third Party

A full list of Members' interests can be found in the Register of Lords' Interests: <http://www.parliament.uk/mps-lords-and-offices/standards-and-financial-interests/house-of-lords-commissioner-for-standards-/register-of-lords-interests/>

APPENDIX 2: LIST OF WITNESSES

Evidence is published online at <http://www.parliament.uk/movement-of-people-inquiry> and available for inspection at the Parliamentary Archives (020 7219 3074).

Evidence received by the Committee is listed below in chronological order of oral evidence session and alphabetical order. Those witnesses marked with ** gave both oral and written evidence. Those marked with * gave oral evidence and did not submit written evidence. All other witnesses submitted written evidence only.

Oral evidence in chronological order

- | | | |
|----|---|---------------------------------|
| * | Jonathan Portes, Senior Fellow, UK in a Changing Europe | <u>QQ 1-14</u> |
| ** | Madeleine Sumption, Director, Migration Observatory | |
| * | Marley Morris, Research Fellow, Institute for Public Policy Research | <u>QQ 15-29</u> |
| * | Lord Green of Deddington, Migration Watch UK | |
| * | Owen Tudor, Head of European and International Relations, Trade Union Congress | |
| * | John Earls, Head of Research, Unite | |
| * | Marcus Mason, Head of Business, Education and Skills Policy, British Chambers of Commerce | <u>QQ 30-49</u> |
| * | Seamus Nevin, Head of Employment and Skills Policy, Institute of Directors | |
| * | Danny Mortimer, Chief Executive, NHS Employers | |
| ** | Minette Batters, Deputy President, National Farmers' Union | |
| * | Ian Cope, Acting Deputy National Statistician, Population and Public Policy, Office for National Statistics | <u>QQ 50-59</u> |
| * | Paul Vickers, Head of Population Statistics Outputs, Office for National Statistics | |
| * | Robert Goodwill MP, Minister of State for Immigration, Home Office | <u>QQ 60-77</u> |
| * | The Rt Hon David Jones MP, Minister of State, Department for Exiting the European Union | |
| * | Zsolt Darvas, Senior Fellow, Bruegel | <u>QQ 78-95</u> |
| * | Camino Mortera-Martinez, Research Fellow and Brussels Representative, Centre for European Reform | |
| * | Stephen Booth, Acting Director, Open Europe | |
| * | Professor Alan Manning, Chair, Migration Advisory Committee | |

Alphabetical list of all witnesses

	Airport Operators Association	<u>BMP0007</u>
*	British Chambers of Commerce	
*	Bruegel (QQ 78–95)	
	Cancer Research UK	<u>BMP0001</u>
*	Centre for European Reform (QQ 78–95)	
*	Confederation of British Industry (QQ 30–49)	
*	Robert Goodwill MP (QQ 60–77)	
*	Institute for Public Policy Research (QQ 15–29)	
*	Institute of Directors (QQ 30–49)	
*	Jonathan Portes (QQ 1–14)	
*	Rt Hon. David Jones MP (QQ 60–77)	
	Kenneth MacArthur	<u>BMP0009</u>
**	Madeleine Sumption (QQ 1–14)	<u>BMP0010</u>
*	Professor Alan Manning (QQ 78–95)	
**	Migration Watch UK (QQ 15–29)	<u>BMP0006</u>
**	National Farmers' Union (QQ 30–49)	<u>BMP0005</u>
**	NHS Employers (QQ 30–49)	<u>BMP0008</u>
**	Office for National Statistics (QQ 50–59)	<u>BMP0004</u> <u>BMP0013</u>
	Peter Halligan	<u>BMP0012</u>
	Richard Bronk	<u>BMP0003</u>
	Remain in France Together	<u>BMP0011</u>
*	Trades Union Congress (QQ 15–29)	
*	Unite (QQ 15–29)	
	Universities UK	<u>BMP0002</u>