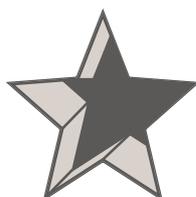




# BEYOND FREE MOVEMENT?

SIX POSSIBLE FUTURES  
FOR THE UK'S EU  
MIGRATION POLICY



Marley Morris

July 2016  
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IDEAS to  
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# CONTENTS

- Summary ..... 3
- Introduction ..... 6
- Option 1: ‘EU freedom of movement’ ..... 8
- Option 2: ‘Freedom of movement of workers’ ..... 10
- Option 3: ‘EU freedom of movement with an emergency brake’ ..... 13
- Option 4: Partial labour market restrictions for EU migrants ..... 16
- Option 5: Comprehensive labour market restrictions on low-skilled  
EU migrants ..... 18
- Option 6: Visa restrictions on EU migrants ..... 21
- Conclusion ..... 24
- References ..... 25

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All errors and omissions remain my own.

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# SUMMARY

In the aftermath of the vote for Brexit, the UK government now faces a profound challenge in securing a new trading arrangement with the EU. The EU has made it clear that the UK cannot have comprehensive single market access without retaining the free movement of people. The greatest difficulty for the UK in the forthcoming Brexit trade negotiations will be the problem of how to find a compromise between protecting the UK economy by securing single market access on the one hand, and responding to public concerns about immigration by changing the current free movement rules on the other – assuming, of course, that such a compromise will be possible.

At this point we cannot know precisely what trade-offs between migration policy and market access the UK will actually be able to make – they will depend on a process of diplomatic negotiation between the UK and the EU. However, progressive policymakers and thinkers need to work out which trade-offs they think would be better than others – and they need to do it soon. Only then can they work out what they think the UK's approach to the negotiations should be.

To help policymakers and thinkers to do that, IPPR has produced two briefing papers. This briefing covers possible options for EU migration. The other (Colebrook 2016)<sup>1</sup> covers options for access to the single market (other than the free movement of people).

These briefings are of course not unique – other organisations have published similar products. However, we hope these are somewhat broader in scope.

That is not to say that our two briefings are exhaustive, either – for both migration policy and single market access, there are almost infinite spectrums of options – but we have tried to set out what we think are the *key* options.

Our consideration of the impacts and implications that each option would have for key areas of policy and the UK economy is informed by two principles that, we believe, should be central to the process of negotiating access to the single market:

- living standards should not be adversely impacted
- voters' expressed desire for the UK to have a greater degree of self-determination under our new arrangements with the EU should be respected.

These briefings do not take a view on which option or options the UK should pursue – they simply set out the pros and cons. We have set out IPPR's initial views on the *best* options in a separate blog.<sup>2</sup>

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1 <http://www.ippr.org/publications/a-progressive-brexit>

2 <http://www.ippr.org/blog/what-new-deal-should-we-strike-with-the-eu>

This briefing explores some of the options available to the government on EU migration policy as it enters the Brexit negotiations. Our focus is on the arrangements for future prospective EU migrants, rather than EU nationals already in the UK. We assess six different options and discuss how the EU might respond in the negotiations. There is of course no guarantee that a compromise between the UK and the EU is possible – but the options set out here comprise some of the most plausible scenarios for EU migration that the UK could discuss with the EU as part of the Brexit negotiations.

## KEY FINDINGS

The forthcoming Brexit negotiations are likely to centre on the trade-off between access to the single market and controlling EU migration. EU leaders have said that once the UK leaves the EU it must uphold free movement of people in order to retain full access to the single market. Achieving a compromise – by putting some limits on free movement and some limits on single market access – will be difficult, but it will nevertheless be a key priority for the UK in the negotiations. This briefing identifies six main options on free movement that the UK government could now pursue.

**TABLE A.1**

### The UK government's six main options on free movement

Option	Summary
<b>1. Free movement</b>	The UK maintains the status quo – EU migrants are free to live, work and study in UK
<b>2. Free movement for workers</b>	Free movement continues for EU migrant workers – but economic EU migrants must have a job offer before migrating to the UK
<b>3. Free movement with emergency brake</b>	Free movement rules are maintained – but with safeguard measures to restrict migration when there is evidence of sustained excessive flows or evidence of social and economic pressures
<b>4. Partial labour market restrictions for EU migrants</b>	Some limits on EU migrant workers through work permits – more liberal than rules for non-EU migrants – but free movement rules continue for students, family members and retirees
<b>5. Comprehensive labour market restrictions for EU migrants</b>	Comprehensive limits on EU migrant workers through work permits – equivalent to the current rules for non-EU migrants – but free movement rules continue for students, family members and retirees
<b>6. Visa restrictions for EU migrants</b>	Complete end of free movement – EU migrants subject to visa policy, and new points-based stream introduced for both EU and non-EU workers

We then assess the six options using five different criteria:

- impact on the economy
- the degree to which public concerns are addressed
- effect on migration pressures on wages and public services
- the ease with which the reform could be implemented
- the reform's impact on UK citizens living in EU countries.

We also assess how this option might impact on the degree of single market access the EU will be willing to grant the UK as part of the Brexit negotiations.

TABLE A.2

## Summary of key pros and cons, against key criteria (and likely trade-offs in terms of trade) of each option

Option	Summary of key pros & cons	Economy	Public concerns	Migration pressures	Implementation	UK citizens abroad	Negotiation: single market access
<b>1. Freedom of movement</b>	Free movement has clear economic benefits – including net positive contribution to public finances – but no change to rules is not politically tenable and will continue to contribute to local migration pressures						Comprehensive access very likely
<b>2. Freedom of movement of workers</b>	Requiring prospective EU migrant workers to have a job offer before moving to the UK could in part address public concerns about contribution, but would be very difficult to enforce						Comprehensive access somewhat unlikely
<b>3. Freedom of movement with emergency brake</b>	An emergency brake on EU migration could help to limit the impacts of migration and address concerns during periods of particularly high pressure, but the effectiveness of the brake would depend on the details of the rules guiding its application						Comprehensive access somewhat unlikely
<b>4. Partial labour market restrictions on EU migrants</b>	Placing labour market restrictions on EU migrants could help to address public concerns about uncontrolled migration and low-skilled workers, but could have damaging impacts for sectors reliant on EU migrant workers						Comprehensive access unlikely
<b>5. Comprehensive labour market restrictions on EU migrants</b>	Placing the same labour market restriction on EU workers that currently exist for non-EU workers could help to address public concerns and migration pressures by bringing down overall numbers, but would have very damaging impacts for sectors reliant on EU migrant workers and could lead to a significant rise in irregular migration						Comprehensive access very unlikely
<b>6. Visa restrictions on EU migrants</b>	A points-based system that treats EU and non-EU migrants equally would match with the message of Vote Leave in the referendum campaign and, if sufficiently liberal, could have a positive economic effect by increasing the number of non-EU skilled workers; but a visa policy could be difficult to enforce (particularly with respect to the Northern Ireland border) and would probably make it much harder for UK citizens to live and work in EU countries						Comprehensive access extremely unlikely

## Key

Clear positive

Somewhat positive

Somewhat negative

Clear negative

# INTRODUCTION

## EU MIGRATION POLICY

There are two key post-Brexit immigration questions that the government must resolve. The first concerns the status of **EU citizens already settled in the UK**, and the related status of **UK citizens in the rest of the EU**. Once Article 50 is invoked, the ‘divorce proceedings’ with the EU will include negotiations on the rights of EU citizens in the UK and UK citizens abroad. It is in the UK and the EU’s mutual interests to safeguard these rights; the alternative would be morally dubious, diplomatically damaging, and administratively cumbersome.

To reassure EU citizens currently living in the UK, **IPPR has called for the government to pass emergency legislation to safeguard the rights of EU migrants by granting Indefinite Leave to Remain to all those habitually resident and with a legal right to reside** (Kibasi 2016). This will settle the concerns of EU migrants in the UK and increase the likelihood of the other 27 EU governments agreeing to reciprocal protections for UK citizens living in their countries during the Brexit negotiations. In our forthcoming report on citizenship, we discuss further proposals for securing the rights of EU migrants, including allowing all EU permanent residents and under-18s within the UK education system to register as British citizens (Murray 2016 forthcoming).

The second question relates to the **policies for future EU migrants to the UK** (as well as future UK emigrants to the EU). This will depend on the negotiations about the UK’s future trade relationship with the EU. EU leaders have suggested these will take place separately from the Article 50 negotiations, because they are about the EU’s future relationship with the UK rather than the process of withdrawal.

In this briefing, we focus on the negotiations about **future EU migration**. The central trade-off is between immigration controls on EU citizens coming to the UK and the level of single market access the UK is to retain after Brexit. It is already clear from most EU leaders that such a trade-off exists: the UK is very unlikely to be able to secure full access to the single market *and* controls on EU immigration, because the EU regards freedom of movement as a cornerstone of the single market. In particular, the UK’s passporting rights – which allow firms in the UK to engage in financial services activities in the rest of the European Economic Area (EEA) without needing to be established in any other EEA country – would be at risk if the UK ended freedom of movement. (Accompanying this paper is a separate briefing (Colebrook 2016)<sup>3</sup> that focuses on the other horn of the Brexit dilemma: the options for the UK’s access to the rest of the single market, excepting freedom of movement.)

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3 <http://www.ippr.org/publications/a-progressive-brexit>

However, there remains a possibility that there is a compromise position that allows the UK to put some limits on freedom of movement in return for some reciprocal limits on the UK's access to the single market. This briefing discusses some of the options for the government on EU migration policy as it enters into the negotiations on the UK's future relationship with the EU, exploring what deal on immigration might be a suitable compromise for the UK and the EU.

We do not assess every possible permutation – our list is not entirely comprehensive – but instead we explore a selection of the main plausible options for a post-Brexit migration policy, ranging from continuing free movement in its current form to a points-based system that treats EU and non-EU migrants equally. (In the annex we set out a table of possibilities for curbing free movement, in order to illustrate the range of permutations for EU migration policy open to the government.) We discuss each option in turn, assessing what might be negotiated in return and what might be the pros and cons of adopting such a policy. There are six main criteria we assess for each option: the feasibility for the Brexit negotiations; the impact on the economy; the degree to which public concerns are addressed; the effect on migration pressures on wages and public services; the ease by which the reform could be implemented; and the impact on UK citizens living in EU countries.

# OPTION 1

## ‘EU FREEDOM OF MOVEMENT’

STATUS QUO OPTION: EU MIGRANTS FREE TO LIVE, WORK AND STUDY IN UK

### WHAT DOES IT MEAN?

One option for the government is to continue free movement with the EU in its current form. Under this scenario, there would be no change to the current rules for admitting EU citizens to the UK. The 2004 Citizens’ Directive sets out the details of the current free movement rules<sup>4</sup> – it states that any EU citizen has a right to reside in another member state if they are either (Kennedy 2011):

- a worker or self-employed person
- a jobseeker
- a student
- self-sufficient
- a resident for under three months
- a permanent resident – that is, they have lived legally and continuously in the member state for at least five years
- a family member of someone with a right to reside.

These rules do not entail absolute free movement: they allow for some controls on EU migration. For instance, free movement can currently be restricted on grounds of public security, public policy or public health (though any restrictions have to be proportionate and individually assessed). Furthermore, EU citizens who have been in the UK for more than three months and less than five years lose their right to reside in the UK if they are economically inactive and not capable of supporting themselves.<sup>5</sup> However, the rules do mean that a large majority of EU migrants are free to live, work and study in the UK, and cannot be removed once they are here.

### WHAT SINGLE MARKET ACCESS MIGHT BE NEGOTIATED IN RETURN?

It is very likely that the EU would offer comprehensive single market access if the UK were to accept freedom of movement in its current form. This is because freedom of movement is a fundamental pillar of the single market – one of the EU’s ‘four freedoms’ – and so accepting free movement is an intrinsic part of agreeing single market access.

The UK could try to secure this arrangement by joining the European Economic Area (EEA), an area that maintains the four freedoms of the single market and has all EU countries as well as Norway, Iceland and

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4 [http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32004L0038R\(01\)](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32004L0038R(01))

5 Assuming they have no family members with a right to reside.

Liechtenstein as members. However, to be a member of the EEA the UK would still have to pay into the EU budget and follow EU regulations in a number of areas, without having any say over policy.

### WHAT WOULD BE THE PROS AND CONS?

- **Economy:** *clear positive*. There are well-evidenced economic benefits to freedom of movement, as it provides a ready supply of young, highly qualified, flexible workers plugging skills shortages and paying taxes. Analysis of the fiscal impacts of EU migration has consistently found that EU migrants make a net positive contribution to the public purse, due to their high employment rates and high qualification levels (Lisenkova and Sanchez-Martinez 2016). One study has found that recent EEA migrants made a net fiscal contribution of around £20 billion between 2001 and 2011. (Dustmann and Frattini 2014).
- **Public concerns:** *clear negative*. A significant driving force behind the vote to leave the European Union was the widespread public dissatisfaction with the current freedom of movement arrangements. Public concerns about free movement were directed at the pressure it can place on public services, the downward effects it can have on wages, and EU migrants' access to welfare. Moreover, the prime minister's renegotiation deal agreed in February – which aimed to address the latter concern and secured temporary restrictions on in-work benefits for EU migrants – is no longer valid, as it was predicated on a vote to remain. The status quo on freedom of movement therefore does not currently seem politically tenable.
- **Migration pressures:** *somewhat negative*. If free movement continues in its current form, there are likely to be continued pressures on local services in some regions and wages in some sectors. However, the government could take domestic steps to manage these pressures – for instance, by reintroducing a migration impacts fund or by taking steps to limit undercutting by extending and enforcing the rights of temporary agency workers.
- **Implementation:** *clear positive*. As there would be no further changes to the current immigration system, the government would not face any new challenges with implementing policy on freedom of movement.
- **UK citizens abroad:** *clear positive*. Under this agreement, UK citizens would retain full free movement rights to live, work, study and retire in the EU.

## **OPTION 2**

# **‘FREEDOM OF MOVEMENT OF WORKERS’**

FREE MOVEMENT CONTINUES FOR EU MIGRANT WORKERS; ECONOMIC EU MIGRANTS MUST HAVE A JOB OFFER BEFORE MIGRATING TO THE UK

### **WHAT DOES IT MEAN?**

Some Leave and Remain supporters have argued that while EU free movement in its current form is problematic, a stripped-down version – consisting only of the free movement of workers – would be acceptable to the public. The original statement of freedom of movement contained in the 1957 treaty of Rome centred on the free movement of labour, calling for the abolition of discrimination between workers across the member states of the European Economic Community. Over time, further changes – including treaties, secondary legislation and decisions by the European Court of Justice – expanded the free movement rules to other groups beyond workers, such as jobseekers, students and individuals who are self-sufficient. In particular, the Maastricht treaty introduced the concept of EU citizenship, whereby all EU nationals – including non-workers – are granted certain free movement rights by virtue of their citizenship of an EU member state.

In light of the current rules, the UK could propose a deal including the free movement of workers within the EU without the free movement of EU jobseekers. Under this alternative, EU migrants would not have a right to reside in the UK if they arrived in the UK without a job offer and did not have a right to reside on another basis separate to their jobseeker status (for instance as a student or a self-sufficient person). This could be enforced through restrictions on access to work unless EU migrants show evidence that they have received a job offer before coming to the UK (by, for instance, restricting national insurance numbers, as Jonathan Portes (2016) has suggested, or by requiring employers to check the location of EU citizens before hiring) and through limits on access to the welfare system (by changing the ‘right to reside’ test for welfare so that EU jobseekers are barred from claiming all benefits).

### **WHAT SINGLE MARKET ACCESS MIGHT BE NEGOTIATED IN RETURN?**

An arrangement that included only the free movement of workers – and not the free movement of all EU citizens – will be challenging to negotiate in return for comprehensive single market access. It would clearly not be possible from within the EEA, because the EEA is signed up to the 2004 Citizens’ Directive, which guarantees the free movement rights of EU citizens, including jobseekers.

Instead, the UK could try to negotiate a set of bilateral agreements with the EU, including one on the free movement of labour, but this would be difficult to achieve. While Switzerland has negotiated a series of bilateral agreements, including an agreement on freedom of movement, the trade deal with Switzerland is not simply restricted to workers: it grants residency rights to EU citizens, including jobseekers.<sup>6</sup> In any case, the current bilateral agreements between the EU and Switzerland do not include a comprehensive deal on free movement of services. Finally, Switzerland's recent referendum decision to impose quotas on EU migrants has jeopardised a number of their other bilateral trade deals, which reinforces the challenging trade-off between controls on EU flows and single market access.

### WHAT WOULD BE THE PROS AND CONS?

- **Economy:** *somewhat positive*. Restricting free movement to those with a job offer would not have a significant impact on sectors reliant on EU labour, because employers would still be able to recruit workers directly from abroad and offer employment contracts if they were in need of EU workers. On the other hand, this change would undermine the flexibility of EU migration and limit the opportunities for migrants to look for work once they have arrived in the UK, which would create additional barriers for employers looking for EU migrant labour.
- **Public concerns:** *somewhat negative*. Our research with the public suggests that many concerns about immigration are focused not simply on numbers but about contribution – participants in our focus groups before the referendum felt that EU migrants should be welcomed only if they were going to contribute to the UK economy (Morris 2016). Restricting freedom of movement so that it only applies to individuals with a job offer would therefore reflect a significant dimension of public concern about EU migration. It could also see a slight reduction in EU migration, given that it would make it more cumbersome for EU migrants to find work in the UK and given that, in the past two years, between 50,000 and 80,000 EU citizens have migrated to the UK without a definite job to go to (between one-quarter and one-third of the total number of EU immigrants) (ONS 2016).

But limiting free movement so that it no longer applies to jobseekers would not give the UK full control over its immigration system, which was a key promise of the Leave campaign. Neither would it give the government leverage to reduce low-skilled EU migration, as free movement of labour would still have to apply to workers of all skill levels. Most EU migrants are in employment, so flows would not necessarily be reduced significantly. This reform to free movement would therefore only partially address public concerns.

- **Migration pressures:** *somewhat negative*. As EU migrants would continue to have the right to work in the UK under this proposal, migration pressures on public services and on wages would be unlikely to fall significantly. This change, however, could have some impact: it would make it more difficult for employers to hire

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<sup>6</sup> [https://www.sem.admin.ch/sem/en/home/themen/fza\\_schweiz-eu-efta.html](https://www.sem.admin.ch/sem/en/home/themen/fza_schweiz-eu-efta.html). See also: <http://www.eures.ch/en/jobsch/services/FAQ/>

EU migrants, so could increase the incentive for them to invest in skills for UK workers. This could reduce downward pressures on wages. The extra restrictions for jobseekers could also discourage churn – as migrants stop coming to the UK for temporary periods to look for work – which could reduce pressures on services in some communities.

- **Implementation:** *clear negative*. It would be very difficult to effectively implement restrictions on EU migrants coming to the UK without a job offer. The most straightforward way of enforcing these rules is by only granting national insurance (NI) numbers to individuals applying from abroad with a job offer in the UK. However, assuming visa-free travel continues, this could be easily circumvented by EU migrants travelling to the UK, securing job offers, and returning to their home country to apply for NI numbers (Portes 2016). The government could ask employers to check the status of EU nationals before hiring, but it would be very challenging for employers to determine whether EU migrant job applicants were purely coming to the UK to look for work or were in the country for other reasons (such as with family members or visitors).

Alternatively, a new system of residence cards for EU migrants could be introduced and enforced via the property market, along the lines of the government's recent introduction of 'right to rent' checks requiring landlords to check the immigration status of their tenants. However, a new system of EU migrant residence cards is likely to be administratively very cumbersome and expensive. Moreover, evidence from the 'right to rent' pilot suggests widespread confusion – as well as the potential for discrimination – among landlords responsible for monitoring the immigration status of their tenants (JCWI 2015).

Finally, the government could also impose restrictions on benefits for jobseekers – but jobseekers already face restrictions to many benefits (including universal credit, which will encompass a number of the main non-contributory benefits) under the current rules. The danger is, therefore, that through ineffective implementation, the policy would become nearly indistinguishable from the current system of free movement.

- **UK citizens abroad:** *somewhat positive*. Assuming a reciprocal deal on free movement, UK citizens with job offers would be free to migrate to any EU member state. However, some of their rights – for instance to claim unemployment benefits – would be pared back.

## OPTION 3

# ‘EU FREEDOM OF MOVEMENT WITH AN EMERGENCY BRAKE’

FREE MOVEMENT RULES MAINTAINED; MEASURES TO RESTRICT MIGRATION TO SAFEGUARD AGAINST SUSTAINED EXCESSIVE FLOWS OR SOCIAL AND ECONOMIC PRESSURES

### WHAT DOES IT MEAN?

The prime minister’s original intention in his February EU renegotiation was to secure an ‘emergency brake’ on EU migration to the UK – that is, a mechanism that allows the UK government to restrict the number of EU citizens migrating to the UK if there are sustained, excessive EU flows. Ultimately, the prime minister decided to focus his renegotiation efforts on an emergency brake on in-work benefits for EU migrants – rather than on flows or access to the labour market – because he realised that he would not be able to agree direct restrictions on freedom of movement with his EU counterparts.

However, the government could return to the idea of an emergency brake as part of a post-referendum compromise on free movement and access to the single market. The most straightforward way for this brake to work would be through restricting EU migrants’ access to the labour market, rather than through border controls, because the former would be easier to administer for a temporary period.

There are various nuances with respect to how the emergency brake could work in practice. The brake could be applied in particular circumstances: for instance, if the level of net EU migration meets a certain quota, if there is clear evidence of downward pressure on wages in particular sectors, or if the proportion of EU migrants in a local area reaches a certain level. The brake could also have different effects: it could restrict access to work through a straightforward cap, through putting limits in place on the basis of skill or qualification level, or through limits on workers in certain sectors or occupations (or a mixture of all three).

### WHAT SINGLE MARKET ACCESS MIGHT BE NEGOTIATED IN RETURN?

It is unlikely that EU leaders would agree to an emergency brake on free movement alongside full access to the single market in the aftermath of Brexit, given that they were opposed to the idea before the UK’s referendum. But a potential compromise should not be ruled out. The fact that the emergency brake is *temporary* – and so only limits free movement on a short-term basis under certain conditions – might increase the likelihood of a deal, just as the prime minister’s emergency

brake on benefits secured support within the European council because it was seen as merely a temporary derogation from the fundamental principle of freedom of movement.

Some Brexit supporters have argued that non-EU countries that have signed the EEA agreement – such as Norway, Iceland and Liechtenstein – already have an emergency brake on migration flows, and so the UK would be able to implement an emergency brake if it joins the EEA after leaving the EU.

However, it might be difficult to make use of an emergency brake on immigration from within the EEA. In the text of the EEA agreement, the emergency brake is described as a ‘safeguard measure’, which can be implemented unilaterally only if a country faces ‘serious economic, societal or environmental difficulties of a sectorial or regional nature liable to persist’.<sup>7</sup> Before taking any such safeguard measures, an EEA member must notify the rest of the EEA, consult with them, and then (unless the consultation concludes or there are exception circumstances) wait for a notice period of one month. The country must then meet with its EEA counterparts every three months to monitor the safeguard measures. Finally, and most importantly, the agreement makes clear that the safeguard measures should not, either in scope or duration, go beyond what is necessary to remedy the relevant difficulties, and if measures taken create an ‘imbalance between the rights and obligations under this Agreement’ then the other EEA members are entitled to take reciprocal measures. In practice, then, if the UK were to rejoin the EEA and make use of the emergency brake to restrict migration flows without adequate justification, this would most likely lead the EU to impose reciprocal restrictions on single market access.

Proponents of an EEA-style agreement with the UK have argued that Liechtenstein has used the brake in the past, and has now negotiated its own opt-outs from freedom of movement, allowing it to impose controls on migration from other EEA countries (Leave Alliance 2016). However, although Liechtenstein was able to apply the brake and negotiate further permanent opt-outs to free movement as part of the EEA agreement, this is due to its ‘specific geographical situation’ – that is, its size (with a population of 37,000), location between Austria and Switzerland (meaning it is at particular risk of extremely high EU flows), and foreign-born population (around one-third of all residents) (Pelkmans and Böhler 2013). This does not rule out the possibility of the UK being able to make use of the EEA’s ‘safeguard measures’ or – more ambitiously – the UK successfully negotiating an additional opt-out with a bespoke emergency brake from within the EEA, but it does suggest that this will be very challenging.

### WHAT WOULD BE THE PROS AND CONS?

- **Economy:** *somewhat positive*. With an emergency brake, the UK government would in principle be able to continue free movement most of the time – and so reap the economic benefits discussed in option 1 – but would be able to impose restrictions where there is evidence

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<sup>7</sup> <http://www.efta.int/media/documents/legal-texts/eea/the-eea-agreement/Main%20Text%20of%20the%20Agreement/EEAagreement.pdf>

of clear economic pressures. However, in practice, depending on the system decided upon, there is a risk that the government would take action to restrict free movement in just those periods when there is a clear demand for migrant labour – as this is when there are likely to be high inflows and subsequent pressures. This could consequently limit the options of employers at just the moment they need to rely on an additional supply for labour from the EU.

- **Public concerns:** *somewhat positive*. An emergency brake could allow the UK to have greater control over migration flows from the EU, in certain circumstances. As the UK has had very high inflows of EU citizens in recent years – by far the highest in the EU apart from Germany (Morris 2016) – there is a potential justification for applying safeguard measures when appropriate. Controlling immigration in these cases would go some way to addressing public concerns. This would, however, still fall short of the reforms that the Leave campaign proposed before the referendum – notably the suggestion that the UK could implement an ‘Australian-style’ points-based system for both EU and non-EU nationals after Brexit.
- **Migration pressures:** *somewhat positive*. Restricting migration in circumstances where pressures are very high could help to limit these pressures on public services and wages. If designed well, the brake could be suitably targeted to limit these pressures. However, as the brake would only be temporary – and probably set at a reasonably high bar – it is unlikely that they could be eliminated completely.
- **Implementation:** *somewhat positive*. Applying an emergency brake should be feasible using labour market controls, as these could be modelled on the transitional labour market arrangements used by EU member states in the periods after the A8 and A2 accession.<sup>8</sup> No additional border checks or visa requirements would be necessary. Instead the brake could be implemented by introducing restrictions on the right to work and enforced through strict fines to migrant workers and employers involved in illegal work. There is, however, still a risk that EU migrants would engage in illegal work during the period when the emergency brake is applied: because EU migrants would still be able to easily enter the UK; because there would probably be sustained employer demand; and because the temporariness of the brake might cause some confusion among employers and migrant workers.
- **UK citizens abroad:** *somewhat positive*. If this arrangement were agreed, free movement for UK citizens would continue as before, though there is a small possibility that the EU would implement a reciprocal emergency brake to slow UK emigration in the event of a large surge.

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8 A8 = Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia, Slovenia.  
A2 = Romania, Bulgaria.

# OPTION 4

## PARTIAL LABOUR MARKET RESTRICTIONS FOR EU MIGRANTS

SOME LIMITS THROUGH WORK PERMITS; MORE LIBERAL THAN RULES FOR NON-EU MIGRANTS; FREE MOVEMENT RULES CONTINUE FOR STUDENTS, FAMILY MEMBERS AND RETIREES

### WHAT DOES IT MEAN?

The UK could decide to restrict economic EU migration through labour market controls, while retaining free movement for other groups. EU migrants would need work permits in order to take up employment in the UK but would be free to come to the UK to study, retire or join family.

Under this proposal, restrictions would take place purely upon entry into the labour market, rather than through border controls. EU migrants wanting to work in the UK would have to apply for a work permit. Only those migrants applying for jobs with the requisite skill level would be successful. However, in other respects freedom of movement would continue as it does now: there would be no new restrictions at the border, and EU migrants would be free to move to the UK to study, retire or join family members. Jobseekers would also be free to move to the UK to look for work, but would not be entitled to welfare benefits and would not be eligible to get a work permit for employment in jobs below a certain skill level.

These restrictions for EU migrants would be more relaxed than the equivalent rules for non-EU workers. (Option 5 sets out a similar policy but one that would treat EU and non-EU migrants in the same way.) The rules for granting work permits could vary according to sector, depending on employer demand. They would be somewhat similar to the transitional controls put in place by the government for Romanian and Bulgarian workers in the seven-year period after the accession of Romania and Bulgaria to the EU in 2007, which limited low-skilled work to quota-based schemes in the agriculture and food processing industries (alongside further restrictions for skilled workers).

### WHAT SINGLE MARKET ACCESS MIGHT BE NEGOTIATED IN RETURN?

The UK could offer such a policy to the EU as part of the Brexit negotiations, but it is unlikely that this would be enough to secure comprehensive access to the single market akin to the UK's current terms. Instead, this immigration

proposal is more likely to lead to a limited deal on single market access, including the loss of passporting rights.

### WHAT WOULD BE THE PROS AND CONS?

- **Economy:** *somewhat negative*. Labour market restrictions would be damaging for employers in sectors reliant on the flow of flexible low- or semi-skilled EU workers, such as agriculture, food processing, construction and hospitality. Given that freedom of movement has been in place for more than 40 years – and has become particularly important for these sectors since the A8 accession in 2004 – EU migrants are now integral to the UK economy. But some of the negative effects of restricting EU workers could be ameliorated if the rules introduced were not too severe or were sector specific.
- **Public concerns:** *somewhat positive*. This proposal would give the government much greater control over flows than it does at present – a key issue for the public. It would also target low-skilled migration, which is often the focal point of public concern. Yet this policy would still give EU workers an advantage over non-EU workers in the immigration system. Given that Leave campaigners previously argued that the current free movement rules discriminated against non-EU migrants, because they give EU migrants an unfair advantage over their non-EU counterparts, this option could also be seen as discriminatory by the public. It could prove particularly unpopular with some non-EU migrants and their families.
- **Migration pressures:** *somewhat positive*. Reducing low-skilled migration could limit its effects on public services and wage depression, but under this policy overall net migration would probably remain high and so pressures would in all likelihood continue.
- **Implementation:** *somewhat positive*. This option is similar to previous transitional labour market controls on eastern European nationals, which were implementable in the past (in both the UK and other member states). However, it is likely to result in an increase in illegal working, given that many EU migrants will not be eligible for a work permit but will be able to travel easily to the UK.
- **UK citizens abroad:** *somewhat positive*. Assuming reciprocal arrangements, UK citizens looking for work in the EU would face some more barriers than they do at present. However, British pensioners would still be able to retire in EU countries without additional complications (though their pension rights would likely be more limited).

# OPTION 5

## COMPREHENSIVE LABOUR MARKET RESTRICTIONS ON LOW-SKILLED EU MIGRANTS

COMPREHENSIVE LIMITS THROUGH WORK PERMITS; EQUIVALENT TO THE CURRENT RULES FOR NON-EU MIGRANTS; FREE MOVEMENT RULES CONTINUE FOR STUDENTS, FAMILY MEMBERS AND RETIREES

### WHAT DOES IT MEAN?

One option the government could pursue – one proposed by the pressure group Migration Watch – is to negotiate limits on low-skilled EU migration through a system of work permits as discussed in option 4, but in this case implement the same work restrictions on EU citizens that currently apply for non-EU workers (Migration Watch 2016).

Under the current rules for non-EU economic migrants, only skilled workers can be admitted to the UK. Non-EU nationals can apply for Tier 2 visas if they can find an employer to sponsor them. The employer must offer the migrant a graduate job earning at least £20,800 (due to increase to £30,000 in 2017) and must pass the Resident Labour Market test to prove that no UK (or EEA) resident can do the job instead. From April 2017, they must also pay the Immigration Skills Charge – a cost of £1,000 per Tier 2 migrant employee per year. There is a cap of 20,700 Tier 2 applications per year. Non-EU migrants are also required to speak adequate English and must pay visa fees and the healthcare surcharge as part of the application process. Finally, in order to settle, non-EU migrants must earn at least £35,000 per year. For jobs on the ‘shortage occupation list’ – a list of jobs for which there are serious shortages – the Resident Labour Market test and the £35,000 requirement do not apply. Together, these rules are among the most stringent in the developed world and mean that many skilled workers from outside the EU are unable to get a visa to work in the UK.

Under this proposal, the same restrictive rules would apply for EU migrants looking to work in the UK. But free movement would continue for students, family members and self-sufficient EU migrants (including retirees). As with option 4, restrictions would focus on economic migration, but a much broader range of workers – including all low-skilled as well as some mid- and high-skilled migrants – would face difficulties getting work permits.

## WHAT SINGLE MARKET ACCESS MIGHT BE NEGOTIATED IN RETURN?

If the UK were to curtail all low-skilled EU migration to the UK, this would in effect mean the end of free movement with the EU. It is very unlikely that the EU would offer comprehensive access to the single market in this scenario.

## WHAT WOULD BE THE PROS AND CONS?

- **Economy:** *clear negative*. Restricting low-skilled (and some mid- and high-skilled) migration would have a significantly detrimental effect on employers reliant on EU migrant labour – particularly in sectors such as food processing, agriculture, construction and hospitality. Analysis by the Migration Observatory suggests that in some of these sectors the proportion of employees with the required salary and qualification level is very small: approximately 24 per cent in construction and manufacturing, 6 per cent in distribution, hotels and restaurants, and 4 per cent in agriculture, forestry and fishing (Migration Observatory 2016a). This suggests that the proportion of EU migrants in these sectors who would be admitted under Migration Watch’s rules is very small. It is unlikely that employers in these sectors would be able to easily adapt to such a dramatic cut-off in their labour supply. This could create the need for a new low-skilled migration route, to offset the economic effects of restricting free movement, which could in turn undermine the original purpose of the reform.
- **Public concerns:** *somewhat positive*. This migration system would allow the UK to have greater control over EU migration flows to the UK. Due to the large proportion of EU migrants in low-skilled jobs, Migration Watch has estimated that net migration to the UK could fall by approximately 100,000 if their system were enforced. (This figure – while very approximate – appears broadly in line with other research, including our own analysis of the Labour Force Survey.) Such a policy change might therefore help to address public concerns about immigration. However, it would not be a clear delivery of the ‘Australian-style’ points-based system that Leave campaigners promised – nor would it necessarily bring net migration down to under 100,000, the government’s target – and some of the issues involved in implementation (such as a rise in illegal working) could foment new public anxieties about immigration.
- **Migration pressures:** *somewhat positive*. Significantly reducing low-skilled migration would probably reduce pressures on public services and wages in certain regions and sectors. However, overall net migration would probably remain high – including both EU and non-EU flows – and so pressures would likely continue without additional investment.
- **Implementation:** *somewhat negative*. New controls on low-skilled EU migration without additional controls at the border could force many low-skilled migrants arriving in the UK into illegal work. The consequences for illegal work are likely to be more extreme compared to options 2 and 4, because a sharp, sustained reduction in legal low-skilled migration will create a very high demand from employers previously reliant on EU flows.

- **UK citizens abroad:** *somewhat negative*. Assuming reciprocal arrangements, UK citizens looking for work in the EU would face considerably more barriers than they do at present. However, British pensioners would still be able to retire in EU countries without additional complications (though their pension rights would likely be more limited).

# OPTION 6

## VISA RESTRICTIONS ON EU MIGRANTS

COMPLETE END OF FREE MOVEMENT; EU MIGRANTS SUBJECT TO VISA POLICY; NEW POINTS-BASED STREAM FOR BOTH EU AND NON-EU WORKERS

### WHAT DOES IT MEAN?

The UK could decide to end EU free movement and introduce equivalent visa restrictions on EU and non-EU migration, so that no distinction is made between EU and non-EU citizens.

While there are various models for how to design such an immigration system, the most commonly discussed during the referendum campaign – repeatedly endorsed by the leaders of Vote Leave – was an ‘Australian-style’ points-based system. Based on the Australian system for permanent migration (excluding students), an ‘Australian-style’ points-based system would allow for the following main migration streams:

- **Employer-sponsored stream:** This stream would replace the current Tier 2 visa stream for skilled non-EU migrant workers and would apply to both non-EU and EU migrants. Migrants on this stream would need to be sponsored by an employer looking to fill a highly skilled position, as they do now.
- **Points-based stream:** This would be a new stream for EU and non-EU migrant jobseekers. In order to migrate to the UK under this stream, migrants would have to pass a points-based test that assesses their skills and qualifications, language proficiency, age, and time spent in the UK previously. If they performed strongly on the test, they would be admitted on to the points-based stream. This system would work similarly to the now-defunct Tier 1 general stream, but would apply to both non-EU and EU migrants.
- **Family stream:** This stream would be for migrants seeking to move to the UK for family reasons and would operate as now, with the exception that EU migrants seeking to reunite with family members in the UK would also have to apply through the family route.
- **Humanitarian stream:** This stream would replace the current Gateway Protection Programme and Syrian Vulnerable Persons Resettlement Programme and would operate in a similar way to now.

How might EU migrants fare under this system compared to the other options discussed? While visa-free travel with the EU would continue, EU migrants would need to get visas to work, study, or reside in the UK for long periods. Migration would be managed through border controls as well as labour market controls (and other measures, such as the government’s

new ‘right to rent’ immigration checks). EU migrants looking to join family or study in the UK would face the same restrictions that non-EU migrants do now – for instance, the minimum income threshold for partner visas or the higher tuition fees rate for non-EU international students. However, the points-based stream could allow for a more liberal system for EU labour migration than option 5. It could also provide more opportunities for non-EU skilled workers to migrate to the UK compared to now, as they would not need a sponsor to employ them as they do under the current system.

### COULD IT BE NEGOTIATED WITH THE EU?

These arrangements entail a full withdrawal from freedom of movement. It is therefore extremely unlikely that the EU would offer comprehensive access to the single market in this scenario.

### WHAT WOULD BE THE PROS AND CONS?

- **Economy:** *somewhat positive*. Ending free movement would place employers reliant on a steady flow of EU migrant labour – particularly in agriculture, food processing, construction and hospitality – in a difficult position. A low-skilled worker route might need to be appended to the points-based system in order to ensure employers reliant on low-skilled EU labour do not lose out.

Points-based systems also often tend to involve more central planning than alternatives, because they rely on government to accurately determine the number of shortages across different professions and effectively design the points-based test to meet the needs of the labour market. Where information on what skills employers need is lacking – or where there is a sudden change in labour market dynamics – points-based systems can be ineffective, particularly compared to the flexible alternative of EU free movement (Migration Observatory 2016b). This problem could be moderated by the inclusion of an employer-sponsored stream, as set out above.

At the same time, a flexible, sensible points-based system could open up new economic opportunities, particularly by liberalising non-EU migration routes. If the government were able to significantly increase the level of skilled migration (and entrepreneurs) to the UK, this could boost productivity, create new job opportunities, and have a net positive effect on the public finances.

- **Public concerns:** *somewhat positive*. Introducing an ‘Australian-style’ points-based system would be a complete fulfilment of the promises of the Leave campaign on immigration, and would give the UK as full control as possible over EU migration flows. However, it is likely that flows would remain high. Typically points-based systems have been introduced in countries such as Canada and Australia with the intention of attracting migration, rather than reducing numbers, because a points-based component allows individuals to immigrate for economic reasons without a job offer beforehand. It is therefore possible that a points-based system could fail to significantly reduce immigration flows – or even result in an overall rise – though this depends on how the points-based test is designed. The system might therefore be a disappointment for voters who supported Leave expecting migration levels to fall significantly.

- **Migration pressures:** *somewhat positive*. Migration flows would probably remain high under a points-based system, which would mean sustained pressures on public services and wages. However, these pressures could be managed more easily than they are now due to greater flexibility to limit flows or impose additional fees. (For example, visa fees would be introduced for EU migrants, which could be used to generate income for a new migration impacts fund.)
- **Implementation:** *somewhat negative*. Imposing visa restrictions on EU migrants would require major logistical changes at the UK borders, because all EU citizens would probably have to be screened more carefully than at present (though visa-free travel would continue). It would also pose an issue for the Northern Ireland border, which could function as a ‘back door’ for migration from the EU if not properly enforced. These rules would also increase the likelihood of irregular migration – that is, EU migrants who come as visitors could overstay and then work illegally in the UK.
- **UK citizens abroad:** *clear negative*. With no agreement with the EU on free movement in place, UK citizens would be subject to national laws on ‘third-country nationals’ – that is, they would be treated as non-EU migrants. In particular, pensioners might find it harder to retire in EU countries, and low-skilled-workers might find it harder to find legal employment in EU countries, as free movement rights would no longer be guaranteed.

# CONCLUSION

In this briefing we have identified six main options for the government on freedom of movement and controls on EU migration as part of its Brexit negotiations with the EU (see table below for summary). Each comes with opportunities as well as significant challenges. At the heart of the negotiations will be an intricate trade-off between access to the single market and controls on EU migration. Just as there were no easy answers on freedom of movement while Britain was a member of the EU, there are no easy answers as it leaves. However, whichever choice the government makes, it is vital that it fully recognises the trade-offs involved, is honest with the public, and makes every effort to safeguard the UK's economic, social and geopolitical interests.

**TABLE B.1**

Option	Economy	Public concerns	Migration pressures	Implementation	UK citizens abroad	Negotiation: single market access
1. Freedom of movement	Clear positive	Somewhat negative	Somewhat negative	Clear positive	Clear positive	Comprehensive access very likely
2. Freedom of movement of workers	Somewhat positive	Somewhat negative	Somewhat negative	Somewhat negative	Somewhat positive	Comprehensive access somewhat unlikely
3. Freedom of movement with emergency brake	Somewhat positive	Somewhat positive	Somewhat positive	Somewhat positive	Somewhat positive	Comprehensive access somewhat unlikely
4. Partial labour market restrictions on EU migrants	Somewhat negative	Somewhat positive	Somewhat positive	Somewhat positive	Somewhat positive	Comprehensive access unlikely
5. Comprehensive labour market restrictions on EU migrants	Somewhat negative	Somewhat positive	Somewhat positive	Somewhat negative	Somewhat negative	Comprehensive access very unlikely
6. Visa restrictions on EU and non-EU migrants	Somewhat positive	Somewhat positive	Somewhat positive	Somewhat negative	Somewhat negative	Comprehensive access extremely unlikely

Key	
Clear positive	Clear positive
Somewhat positive	Somewhat positive
Somewhat negative	Somewhat negative
Clear negative	Clear negative

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