

HOME AFFAIRS COMMITTEE

Immigration Inquiry

SUMMARY OF OPTIONS FOR IMMIGRATION REFORM FOR EEA CITIZENS

Introduction

This note contains a summary of options for the way the UK might reform or control immigration from EEA countries after it leaves the EU. It only applies to new arrivals, as Parliament and the Government have made clear that EU citizens who are already here should retain their existing rights.

A number of proposals for possible systems have been put forward by a variety of commentators, some in evidence to the Committee. This note sets out the Committee's summary of the main elements of a range of immigration controls, including both new reforms and retaining existing free movement arrangements, and also options for different approaches in different parts of the country. We acknowledge that there may well be other possible options beyond the ones set out here, and variations on the ones we have included; and that other options may emerge as the Brexit process continues.

Changes to immigration rules and the extent of changes to free movement are likely to affect the level of access to the single market the UK will be able to secure in the Brexit negotiations and the Free Trade Agreement. This note does not consider those trade-offs.

Any arrangements the UK sets for EU citizens are likely to be reciprocated for British citizens wanting to live or work elsewhere in Europe. This note does not consider the options for British citizens.

The Committee has not yet considered the merits or otherwise of different options nor have we considered their viability. We are holding an inquiry into whether it is possible to build a new consensus on immigration. This summary note is simply to inform discussion and public debate as part of our inquiry.

Possible options for immigration reform

1. Extending the existing system for non-EEA nationals to EEA nationals

The existing visa system for non-EEA nationals could be extended to cover EEA nationals. The non-EEA visa system covers visitors, those wishing to come to the UK to work or study and those arriving for purposes of family reunion.

Visitors

Some non-EEA nationalities wishing to enter the UK as a visitor (i.e. for leisure or business purposes) require a Standard Visitor visa which lasts for up to six months. Over 50 non-EEA nationalities are exempt from this requirement (such as the USA and Australia) and several others are eligible for an electronic visa waiver (such as the UAE and Qatar).

Most proposals for immigration reform have assumed that EEA nationals would still enjoy visa-free travel to the UK and vice versa. Should a visa system be introduced for EEA visitors it would apply to around 35 million arrivals each year. The UK would also need to consider the impact of the EU applying a visa system to British citizens wanting to travel on the continent.

Study and work

The UK's visa system for non-EEA nationals seeking to work or study in the UK is based on five 'Tiers'. Under the Tier system those wishing to enter the UK must have an offer from a licensed sponsor, or be a high net worth individual, or possess exceptional talent. Entrants are allowed to bring their family members with them provided minimal financial criteria are met.

Students (**Tier 4**) must have been offered a place on a course from a licensed provider, have appropriate English language skills and have enough money to pay for the course and support themselves. There is currently no cap on the number of international students who can study in the UK.

To work in the UK, unless they are possessed of exceptional talent, highly skilled, a high-net-worth investor, or a graduate entrepreneur (Tier 1), the majority of non-EEA workers will apply under **Tier 2**. They will require a job offer from a licensed sponsor which pays above a minimum threshold (rates from April 2017 are: £30,000 for experienced workers; and £20,800 for the first three years for 'new entrants', such as graduates and people under 25) and must meet a number of other criteria including a minimum level of competency in English and sufficient funds to prove they can support themselves in the UK. The Government uses the salary threshold as a means of restricting non-EEA work-related migration to 'highly skilled workers'.

There are a number of permitted routes under Tier 2. These include graduates switching from a student visa, intra-company transfers and a general visa. The number of general visas are capped at 20,700 and positions are subject to a Resident Labour Market Test or must be on the Shortage Occupation List. Jobs on the Shortage Occupations List (such as nurses) are exempt from the salary threshold but are included in the general visa cap. The cap is rarely met, though business groups would argue that this is as much to do with the bureaucracy of the system as any lack of demand. People cannot change jobs unless the new employer and the new job also meet the sponsorship and visa requirements. Enforcement is the responsibility of employers.

If the non-EEA system was extended to EEA nationals the Government would need to consider the size of cap (if required) for highly skilled EEA nationals and whether it would wish to include some low-skilled labour. A number of sectors such as hospitality, construction and agriculture have a high dependency on low-paid EEA migrant labour.

Critics of extending the non-EEA system to EEA nationals argue that it does not allow for migrant labour to fill low-paid jobs.

The non-EEA Tier system does include a provision for low-skilled labour (**Tier 3**) but it has never been used due to demand being met by arrivals from the EU. It was envisaged that Tier 3 would help employers of lower-skilled workers fill temporary labour shortages. Arrivals under the Tier would have required a sponsor, be allowed to stay for no more than 12 months and would not be able to apply for leave to remain or permanent residency.

Family

UK citizens and long-term residents applying to bring a non-EEA partner or spouse to live with them in the UK must meet a minimum income requirement of £18,600 per year before tax (a threshold recommended by the Migration Advisory Committee). For applicants who are also bringing dependent children the threshold rises by £3,800 for one child and £2,400 for each additional child. Those applying to enter the UK may also be required to pass a pre-entry English language test and a second test two years after entering the UK.

2. Points-based system

Under a points-based system a state admits migrants on the basis of whether they meet a points threshold. Points are awarded to applicants for fulfilling desirable criteria and, as long as the threshold is met, the applicant is entitled to enter the country.

A foreign national would be entitled to come to the UK if they met the points threshold. There is usually no quota and a job offer is not required but points-based systems do generally reflect skills shortages. Depending on its design, such a scheme could be less (or more) restrictive than the current system for non-EEA nationals. The UK's system for non-EEA nationals is loosely based on a points system but it has additional restrictions such as a minimum salary threshold, a cap on numbers and the requirement of a job offer.

A points-based system would be likely to require the UK to enhance its border controls for EU nationals, who would require visas for long-term residence in the UK. Students and family members could be excluded from the points system and apply as non-EEA nationals do already. There could also be scope for continuing existing employer sponsorship routes alongside a points-based system.

Without imposing further restrictions, a points-based system would not in itself prevent EEA nationals from taking low-skilled jobs once they are admitted.

3. Continue with free movement of labour

The UK could continue with existing free movement arrangements without any changes at all. Some suggestions have been made of other ways to manage the impact of migration, for example stronger labour market enforcement to prevent wage

undercutting, more support for housing and public services in areas with higher levels of migration, and measures to promote integration.

It would also be possible to continue with the same broad framework for free movement but with some adjustments to the way it is implemented.

3.1 Use of other kinds of registration, restrictions on benefits or border controls

The UK could allow EU citizens to come to work but require them to register with local authorities, as some EU countries already do.

It could prevent EU citizens accessing means-tested benefits or tax credits for five years, as applies for non-EU citizens.

It could introduce different restrictions on, for example, people with criminal records.

3.2 Emergency Brake

Articles 112 and 113 of the EEA agreement include safeguard measures that allow these states to stop immigration in the event of severe social, economic, or environmental need. If the UK joined the EEA post-Brexit, it would be legally possible for it to invoke the safeguard measures and implement a temporary emergency brake on EEA immigration in certain sectors or locations – provided that the UK could prove that wages were being undercut in these sectors/locations by EEA migration. Emergency brake measures are also meant to be temporary and subject to regular review.

Former Prime Minister David Cameron unsuccessfully sought ‘emergency brake’ measures in relation to freedom of movement during his EU negotiations in the lead-up to the referendum.

It is also theoretically possible that the UK could attempt to negotiate powers to limit immigration by remaining in the EEA. Liechtenstein negotiated a permanent amendment to the EEA agreement that allow it to limit free movement unless workers have a job offer. It offers only a few dozen residency permits a year and has powers to rescind them (although Liechtenstein is a tiny state compared with the UK).

4. Free travel but restrictions on movement to work

The UK could continue to allow EEA nationals to move freely to the UK, but require people to obtain work permits in order to take up employment. The Government would decide whether working in the UK could lead to residency, as well as determining the conditions for access to benefits. The work permit system could operate in a variety of ways:

<p>A. Work permit scheme with the same conditions as the current Tier 2 visa arrangements for non-EEA citizens</p>

<p>Details as outlined above. It would mean no low-skilled EU migration and a cap on high skilled EU migration.</p>

B. Work permit scheme like Tier 2 but more generous than for non-EEA citizens

To reflect historic European relationships, geographic proximity and in exchange for better access to the single market, the work permit scheme could be more generous for EEA workers, including a lower salary threshold or a wider shortage occupation list or a separate, higher cap. It could also be based on a points system in which points are awarded to applicants for fulfilling desirable criteria and, provided the points threshold is met, the applicant would be entitled to access the labour market.

The Government could also consider extending such a scheme to nationals of Commonwealth countries.

C. Work permit scheme similar to the EU system for “transitional controls”

The work permit scheme could be similar to the one the UK operated for Bulgarian and Romanian nationals under transitional controls when they joined the EU. Under that system Bulgarian and Romanian nationals were eligible for ‘skilled’ employment which had satisfied the Resident Labour Market Test (uncapped) and low skilled employment in specific sectors (subject to a quota).

D. Work permits only needed for low skilled work

The Government could waive the requirement for work permits for jobs above a certain salary or skill level and only require people and sponsoring employers to obtain work permits and employer sponsorship for low-skilled work.

E. Work permit scheme “job offer in advance”

The UK could insist that EEA citizens were restricted from accessing the labour market if they had arrived in the UK as jobseekers with no job offer in place. It is not clear how this would work if free movement was maintained for visitors and other groups.

F. Temporary or seasonal work permits

The Government could provide temporary work permits (along the lines of the discontinued Seasonal Agricultural Workers Scheme).

G. Regional work permits

The Government could allow for different regional allocations or decisions on the number of work permits to recognise the variation in regional labour markets. For example, sponsoring employers would need to show that the job was within a particular region. People would not be able to move to a job in another region unless the new job and employer met the work permit and sponsorship rules there. Employers who breached the terms would not be able to sponsor future work permits.

H. Use of limits on issuing National Insurance numbers

The UK could impose limits on the number of National Insurance numbers issued to EEA workers in any given year. EEA nationals could move freely to the UK, but

jobseekers would be prevented from accessing the jobs market if the threshold of NI numbers has been reached.

Under this approach the Government would also have to consider the position of the 1.5 million EEA nationals with NI numbers who do not live in the UK at the moment.

5. Bilateral agreements

The UK could have bespoke arrangements with individual EEA countries on a bilateral basis. This is likely to be the case with the Republic of Ireland, with which the UK already has an existing, separate arrangement known as the Common Travel Area, which the Government has pledged to maintain. The EU's current strong preference is for its third-country partners to apply the same visa conditions to all EU Member States.

Annex: The Government's stated position to date on the key elements of the post-Brexit immigration system

- "The Government are committed to reducing net migration to sustainable levels, which means **the tens of thousands.**" This objective was most recently reiterated in a Written Statement on the MAC Shortage Occupation List., [26 January 2017](#), col 11-12 WS.
- "We will manage our immigration system properly, which means that **free movement to the UK from the European Union cannot continue as before.**" Statement by the Secretary of State for Exiting the European Union, [17 January 2017](#), col 793.
- "We will continue to welcome the brightest and the best, and to ensure that immigration continues to bring benefits in terms of addressing **skills shortages** where they exist." Statement by the Secretary of State for Exiting the European Union, [17 January 2017](#), col 793
- "The precise way in which the government will control the movement of EU nationals to Britain after Brexit is yet to be determined. However, as the PM has said many times in the past, **a points-based system will not work and is not an option.**" Spokesman for the Prime Minister following G20 summit in China, [September 2016](#)
- "Applying **different immigration rules to different parts of the UK** would complicate the immigration system, harming its integrity, and cause difficulties for employers who need the flexibility to deploy their staff across the UK." Secretary of State for the Home Department, [23 January 2017](#), col 3
- I want us to have reached an agreement about our future partnership by the time the 2-year Article 50 process has concluded. From that point onwards, we believe a **phased process of implementation**, in which both Britain and the

EU institutions and member states prepare for the new arrangements that will exist between us will be in our mutual self-interest. [...] This might be about our immigration controls, customs systems or the way in which we co-operate on criminal justice matters.” Prime Minister’s Lancaster House speech, [17 January 2017](#)

- “We want to **guarantee the rights of EU citizens** who are already living in Britain, and the rights of British nationals in other member states, as early as we can.” Prime Minister’s Lancaster House speech, [17 January 2017](#)
- “We will work to deliver a practical solution that allows the **maintenance of the Common Travel Area** with the Republic, while protecting the integrity of the United Kingdom’s immigration system.” Prime Minister’s Lancaster House speech, [17 January 2017](#)
- “We seek a new and equal partnership – between an independent, self-governing, Global Britain and our friends and allies in the EU. Not partial membership of the European Union, associate membership of the European Union, or anything that leaves us half-in, half-out. **We do not seek to adopt a model already enjoyed by other countries.** We do not seek to hold on to bits of membership as we leave.” Prime Minister’s Lancaster House speech, [17 January 2017](#)