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JUNE 2017

# Building the Post-Brexit Immigration System

## An analysis of shortages, scenarios and choices

Independent analysis by the Migration Policy Institute, with practitioner insights from Fragomen LLP on behalf of the Recruitment & Employment Confederation



Recruitment &  
Employment  
Confederation

## REC FOREWORD

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Immigration has contributed to the political, social and economic success of the UK throughout our history. However, Brexit will determine a new phase in the UK's approach to immigration. The Recruitment & Employment Confederation (REC) is a leading commentator on the UK labour market, which is why we commissioned this comprehensive and insightful analysis into how EU nationals currently participate in our labour market, and how this may change post-Brexit.

We make the following recommendations based on the political reality that the government will be seeking to restore public confidence in our immigration system and the extensive evidence presented in this report:

### Recommendations

#### Agree a sensible settlement for those EU nationals already working in the UK (and, in turn, UK nationals based in other EU states):

1. The evidence presented in this report highlights that the vast majority of EU nationals residing in the UK come here to work. Their relative youth means they will be an ongoing and important source of labour as the UK's population ages. We should protect this potentially vulnerable workforce by seeking an early agreement on their future.
2. Practical necessity means that the cut-off date for a new immigration system (that is when applications by EU nationals coming to the UK for work will not be considered under the current free movement of labour rules) will have to be the date the UK finally leaves the EU, rather than backdating this.
3. Any EU national with a UK National Insurance number and currently in work should be given an ongoing right to reside and work in the UK. They are actively contributing to the labour market, are a source of tax revenue for government and are consumers of products and services.

#### To help ensure clarity, a transitional immigration system should be introduced:

4. Brexit is an unparalleled opportunity to assess the relative strengths and weaknesses of the UK immigration system, and design a future system for a modern twenty-first-century economy. In doing so, we should build on what already works rather than start from scratch.
5. A proposed transitional system should be outlined in an Immigration Bill as soon after the general election as possible.
6. This interim system will allow time for extensive consultation with business and the general public, enabling government to accurately assess the needs of the UK economy. This national conversation should start as soon as a new immigration bill is announced.
7. To ensure there is clarity for business, we propose the government develops a roadmap for its immigration policy to 2022, that is the full term of this parliament.

#### Focus on speed, cost and predictability (the hallmarks of a good immigration system) in designing the new system:

8. The Resident Labour Market Test is not achieving its stated aim of helping businesses find talent from within the UK. Fewer countries are now using such tests and we too should no longer require employers to advertise roles with Jobcentre Plus.
9. So as not to unduly penalise small and medium-sized businesses, we should significantly reduce the immigration skills charge for SMEs.

10. A system which allows businesses and their representatives to designate certificates of sponsorship without the need for a visa would be a cheaper and more workable approach than civil servants trying to manage and inspect all UK employers and individual migrants seeking the right to work.

### **We need an immigration policy that recognises and supports low-, medium- and high-skilled jobs in the UK:**

11. EU nationals currently make up 7 per cent of the total UK workforce, but the percentages differ greatly by sector, occupation and region. To avoid a trade-off between sectors or regions, the new immigration system should be based on a clear understanding of need.
12. This differentiated approach should include the ability for employers to continue to use EU nationals to fill a role when UK candidates are not available and while potential candidates from the UK are trained up and better supported into work.
13. A jobseeker visa would be useful for higher-skilled roles where employers have talent shortages and difficulty in attracting people from the UK.
14. Employer-sponsored visas have been shown to be successful in helping manage demand in other countries, such as Australia and New Zealand, and should be investigated further, especially for lower- and mid-skilled roles.

### **With record levels of employment, a new immigration system must take into account the need for the UK to retain its flexible labour market:**

15. To facilitate an evidence-based approach to immigration policy, there needs to be a focus on improving the data collection for temporary work-based migration. It is our view that the temporary labour market will be disproportionately impacted by a change in EU migration.
16. To create deeper understanding of the temporary labour market, we want to see improved use of real-time vacancy data, and better mapping and integration of HMRC and DWP datasets – this will also support the government's transformation strategy.
17. A temporary work visa that supports the self-employed, freelancers and smaller businesses to flourish should be introduced, learning the lessons from schemes such as those in Germany and the Netherlands. The validity of the approach can then be evaluated within the interim system, before any final decision is taken.

### **The future immigration system must be evidence-led and free from day-to-day political pressure:**

18. The strong reputation enjoyed by the Migration Advisory Committee is largely due to their independence. Ultimately though the MAC can only deliver work commissioned by Ministers, there is an inherent risk that narrowly drawn questions will be asked, limiting the scope for the MAC to provide comprehensive advice that works for the economy. There will always be a trade-off between immigration and economic policies but such matters should be open to full scrutiny before advice is provided, given the importance of the topic. Putting the questions to Parliament for approval, perhaps by way of a statutory instrument, would provide that scrutiny.
19. The Migration Advisory Committee (MAC) role should be enhanced and its independence and new enhanced role should be cemented in the Immigration Bill.
20. The MAC and government should use data and evidence from businesses to inform its approach – we recommend a new business forum is instituted as a sub-committee to the MAC, with a specific role to help inform, design and evaluate immigration policy.
21. Independent economic and labour market analysis from sources including the Bank of England, the Low Pay Commission and business experts must be sought to inform next steps and should be the basis of decisions made by the MAC.

The research for this report was funded by the Recruitment & Employment Confederation (REC).



The quantitative and qualitative analysis was carried out by the Migration Policy Institute (MPI).



Fragomen LLP convened the focus group, provided expert practitioner insights and policy advice, and wrote the chapter on the UK labour market (Appendix II).



The foreword and recommendations are the work of the REC alone and based on the evidence in this report.

#### **MPI TEAM:**

**Meghan Benton**, Senior Policy Analyst  
**Jeanne Batalova**, Senior Policy Analyst  
**Kate Hooper**, Associate Policy Analyst  
**Szilvia Altorjai**, Research Intern

#### **FRAGOMEN TEAM:**

**Ian Robinson**, Partner  
**Azeem Mohiuddin**, Manager (Solicitor)

#### **ACKNOWLEDGEMENTS**

We would like to thank the industry representatives who participated in the focus group which so helpfully informed this report. We are also grateful to Demetrios G. Papademetriou, Will Somerville and Michelle Mittelstadt of MPI; and Elizabeth Collett of MPI Europe, for their thoughtful comments and valuable feedback.

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## EXECUTIVE SUMMARY

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Despite a huge amount of commentary and debate before and after Article 50 was triggered, we have only caught a glimpse of the sea change that will be unleashed by the United Kingdom (UK) leaving the European Union (EU). Policymakers are faced with the challenge of meeting overwhelming public pressure to reduce EU migration numbers while negotiating a mutually beneficial exit and trade deal. It is clear that the stakes are enormous for the UK economy, employers, and UK and EU workers themselves.

The UK's exit from the EU will have a sizeable impact on UK businesses. Although EU nationals make up only 7 per cent of the workforce, they are highly concentrated in particular sectors, occupations and regions. For instance, a third of workers in manufacturing of food products are EU nationals. But the risks are not only economic. If not handled carefully, the process of confirming the status of current EU nationals could create a significant unauthorised population among those EU nationals who do not meet the criteria or cut-off date, further jeopardising public confidence and creating an enforcement headache.

Building an immigration system that is fit for purpose depends on better understanding of the risks and opportunities that Brexit offers for the labour market. This report provides original data analysis of EU workers in the labour market and their concentration across sectors and regions. It synthesises the literature on key sectors that employ EU nationals and analyses the prospects for these sectors after Brexit, drawing on insights from business representatives and experts. And it outlines the policy options for a future EU immigration system, including any transitional arrangements.<sup>1</sup>

### KEY FINDINGS

#### EU population

- The EU population represents close to 6 per cent of the UK population, but 7 per cent – or 2.2 million – of the labour force.
- The EU population is more likely to be in work than the native population (81 per cent versus 75 per cent employment rate).
- Over half of EU nationals (not counting Irish nationals), or nearly 1.7 million people, would not qualify for permanent residence under current rules.

#### Occupations

- EU nationals are more likely than British workers to work in low-skilled jobs ('elementary occupations') such as cleaners or agricultural workers (representing 15 per cent of these jobs).<sup>2</sup> They are also overrepresented in jobs that require some training and experience, such as process operatives (33 per cent), cleaning and housekeeping managers (18 per cent), and mobile machine drivers and operatives (15 per cent).
- Among high-skilled occupations, EU nationals comprise 14 per cent of natural and social science professionals – a category which includes biochemists and chemical scientists – and over 10 per cent of managers of hotels and restaurants, legal professionals, and finance managers/directors.

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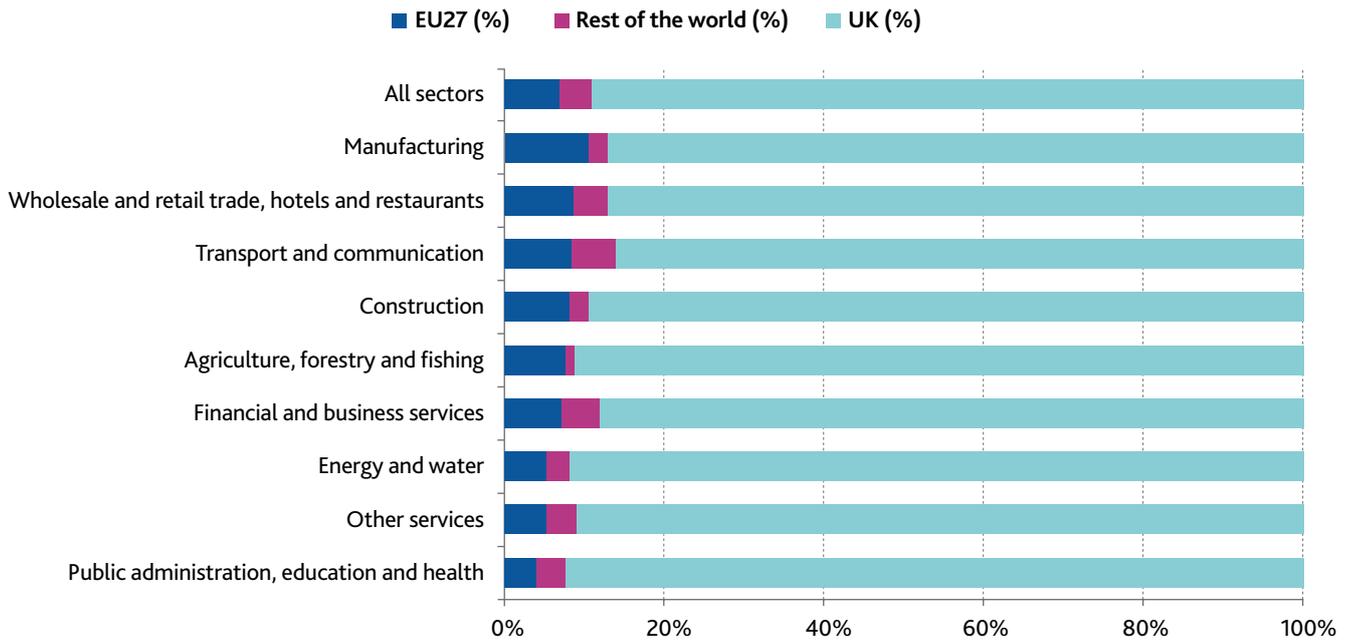
1 The report is based on detailed quantitative analysis of the Annual Population Survey and Labour Force Survey; case studies on key sectors that employ EU nationals (based on desk research and a focus group of industry representatives from academia, construction, retail, recruitment and science). Because of limitations in some quarter data releases, our analysis focuses on the EU27 rather than the broader EEA.

2 There is no uniform way to categorise jobs into low-, middle- and high-skilled. Appendix I explains the definitions used in this report.

## Sectors

- Relative to their share of the total UK workforce (7 per cent), EU nationals are overrepresented in a number of sectors: manufacturing (11 per cent, or 319,300 workers), wholesale and retail trade, hotels and restaurants (9 per cent, or 520,100), transport and communication (9 per cent, or 243,300), construction (8 per cent, or 192,400), and agriculture (8 per cent, or 27,800) (see Figure 1).

**Figure 1: Top UK labour market sectors by share of EU workers (ages 16 and older), 2016<sup>3</sup>**



Notes: EU includes all 27 Member States of the European Union, except the UK. Industry groups are based on the Standard Industrial Classification (SIC) 2007. Source: Authors' tabulation of ONS, Labour Force Survey (LFS) January–December 2016.

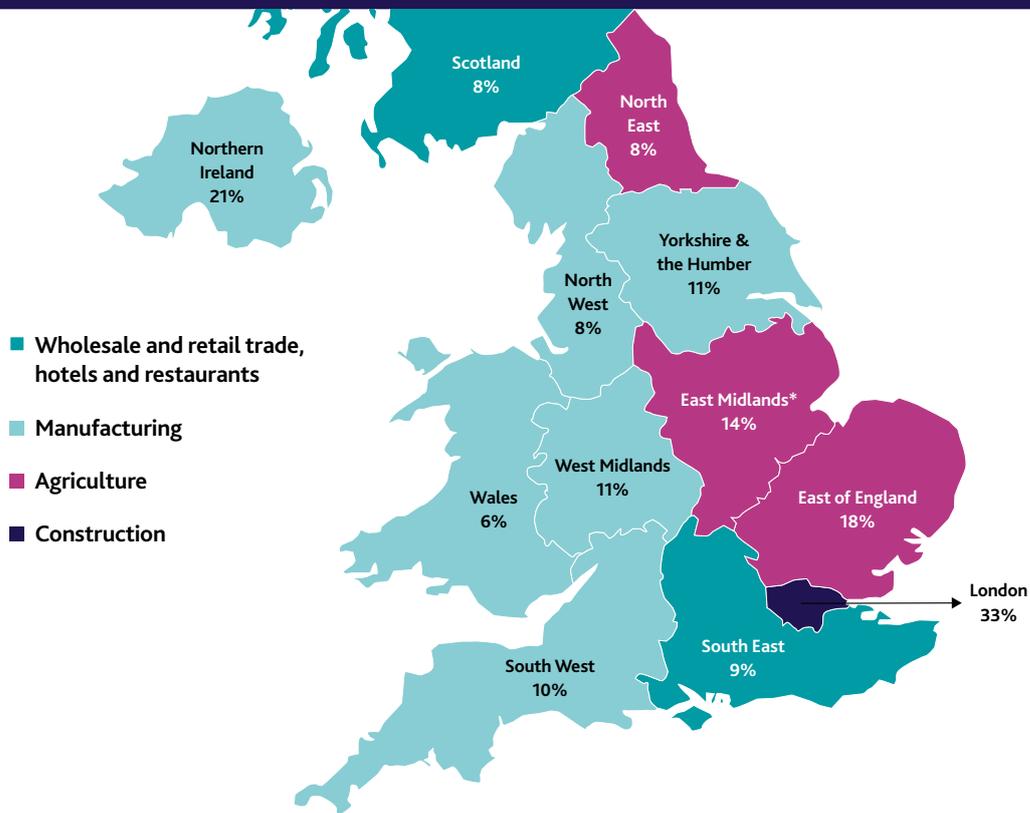
- More detailed industry data show that EU nationals make up a much higher share of workers in manufacturing of food products (33 per cent, or 116,400 workers), domestic workers (26 per cent, or 15,700 workers), accommodation (19 per cent, or 73,600 workers), warehousing (18 per cent, or 64,900 workers), and building and landscape activities (14 per cent, or 90,100 workers).

<sup>3</sup> 'Wholesale and retail trade, hotels and restaurants' includes wholesale and retail trade; accommodation and food service activities; and repair of motor vehicles and motorcycles. 'Financial and business services' includes financial and insurance activities; legal, professional, scientific and technical activities; real estate; and administrative and support services. 'Transport and communication' includes transportation and storage; and information and communication. 'Public administration, education and health' includes public administration and defence; compulsory social security; education; and human health and social work activities. 'Energy and water' includes mining and quarrying; electricity and gas; water supply, sewerage and waste management. 'Other services' include arts, entertainment and recreation; activities of household as employers; and other services.

### Regions

- The proportion of EU workers by region varies considerably, with London (about 17 per cent), Northern Ireland (9 per cent) and the East of England (7 per cent) among the most reliant areas.
- Different regions rely more heavily on specific industries. For instance, a fifth of manufacturing workers in Northern Ireland are EU nationals, as are nearly a fifth of the East of England’s agricultural workers (see Map 1). But over 40,000 EU nationals also work in manufacturing in the East Midlands and East of England, respectively.
- Close to 17 per cent of workers in London are EU nationals, and London is reliant on EU nationals across a number of industries. A third of its construction workers are EU nationals, as are over a fifth of its hospitality/wholesale and retail trade and manufacturing workers. In absolute numbers, the financial and business service sector is the largest employer of EU workers (191,400).

**Map 1: Top industry of employment of EU workers in terms of their share (%) in the industry workforce, by region, 2016**



\* Manufacturing in the East Midlands has a roughly similar share of EU migrant workers (14 per cent).  
 Source: Authors’ tabulation of ONS, Labour Force Survey January–December 2016 data.

## Future scenarios for key sectors

The sectors that rely on EU nationals include:

- **sectors characterised by seasonal, temporary or remote jobs**, which native-born workers can find unappealing because of their lack of stability (such as agriculture, and to some extent hospitality);
- **sectors characterised by jobs seen as undesirable by local workers** because they are low-paid or seen as low-status (such as retail or social care);
- **sectors with high numbers of skilled tradespeople** where – because of strong vocational training elsewhere in Europe – EU workers may have the edge over local workers (such as construction);
- **sectors where shortages are growing** because insufficient local workers are being trained, meaning that supply is not keeping pace with demand (such as health and education);
- **sectors that compete on a global stage**, where the UK (and London in particular) have historically acted as a magnet because of the full package of benefits to individuals with specialist skills or high net worth (such as higher education and finance);
- **future growth sectors** that rely both on swift access to flexible labour (in the form of freelancers or at least short hiring periods), global collaboration and interdependencies with other high-value clusters (such as higher education, technology or fintech, and finance).

Whether this reliance on EU workers will translate into structural, long-term labour and skills shortages will depend on sectors' readiness and ability to adapt their business model, and investments and planning in education and training. In the short term, the future labour supply and employers' response will be shaped by a host of uncertainties, chief among them the UK's EU exit and/or transition deal, and what happens to the current EU population.

In the immediate term, the UK labour market faces three potential challenges post-Brexit:

1. **retaining its competitive edge** in highly globalised sectors such as higher education, finance and digital technology (tech) that rely both on an immigration system that can bring in specialist skills and an ecosystem that attracts high-value individuals;
2. **softening the landing for sectors that rely heavily on EU workers**, such as agriculture, manufacturing, hospitality, and construction – particularly where these concentrations are especially high in certain subsectors and regions; and
3. **maintaining flexibility** both in sectors that rely on their ability to 'flex' on a seasonal basis (such as agriculture or hospitality) and in sectors where freelancers, self-employment and temporary labour are at the root of their business model, ranging from construction to tech and, to some extent, even higher education.

Designing a post-Brexit immigration system for EU nationals will be an enormous undertaking, and at this stage, there are few details on what this system will look like. By far the least costly and disruptive approach would be to draw on the UK's existing architecture. The government must balance protecting the post-Brexit economy, shaping the future labour force and restoring public trust in the ability to manage migration, against practical requirements of minimising bureaucratic overload and rising enforcement costs, and, of course, the outcome of negotiations with Brussels.

The UK's exit from the European Union offers an historic opportunity to build a well-managed immigration system. But this cannot happen in Whitehall alone. The task of crafting post-Brexit immigration policies must be as thoughtful, collaborative and evidence-based as possible.

Looking ahead, the UK government should prioritise:

1. **Clarity surrounding the negotiations and next steps** to avoid uncertainty and instability. Even if it is not possible to outline exactly what the system will look like in the long run, a clear roadmap for the duration of the next parliament could help reassure major sectors that large-scale labour and skills shortages will not arise from one day to the next.
2. **Experimentation and evidence** to get a better sense of who is here and current labour needs. The current dearth of high-quality data on the EU population, especially those who move on a temporary basis, means that official statistics are likely to underestimate the extent of the UK's reliance on EU workers. Working to better share and integrate data across government agencies would be an important step.
3. **Independent advice** to help the government design a flexible and responsive system. The role of independent bodies such as the MAC and Low Pay Commission will become more important to help the government design a system that is flexible to the needs of particular sectors. Additional reviews on streamlining the hurdles and bottlenecks in the non-EU migration system could help in this regard.
4. **Consultation and engagement with the private sector and the public** to ensure their 'buy-in'. Engaging employers – for instance through a representative business advisory group – in designing the system (rather than consulting after the fact) will help give employers confidence. Likewise, the government should create institutions for deep public engagement and encourage a national dialogue to help the public see this new immigration system as 'theirs'.

In the foreword, the REC have developed a set of recommendations for policymakers to consider. These are their work alone but are based on the evidence presented in this report.

# I. INTRODUCTION

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Countless reports have been produced on the possible impact of Brexit since the June 2016 referendum on leaving the European Union. A host of different immigration policy proposals – from free movement with an ‘emergency brake’, to reciprocal sector-specific quotas, to an Australian-style points-based system – have been put forward. Because of considerable uncertainty around Brexit, in recent months the tone of some reports has escalated to almost apocalyptic. Amidst the horse-trading and mud-slinging, there has been little time for thoughtful evidence-gathering and analysis, or to consult employers, civil society and the wider public on what they want from a post-Brexit immigration policy.

This report seeks to step back from the noise and deliver a balanced, comprehensive, evidence-based overview of the current situation and what the key decisions will be through the Brexit negotiations and the years to follow. It looks in depth at how and why different sectors rely on EU workers, what the prospects are for these sectors to adapt to a reduced labour supply and how different policies could meet these needs. With the timeline for developing policy proposals narrowing, and hundreds of complex legislative and policy details competing for the attention of overburdened civil servants, there is an urgent need for rigorous, thoughtful analysis of how Brexit is likely to affect the economy and labour market.

The report is based on detailed quantitative analysis of the Annual Population Survey and Labour Force Survey to uncover the regional and sectoral concentrations of EU nationals; case studies on key sectors to analyse the factors behind this reliance on EU nationals (drawing on a focus group with sectoral representatives);<sup>4</sup> scenario planning on the prospects for these sectors to adapt to a more diminished EU labour supply in the years to come; and policy analysis of the available options and key decisions required both in the process of transition and in designing a future immigration policy that meets the needs of the public, employers and government.

# II. QUANTITATIVE ANALYSIS: EU NATIONALS IN THE UK LABOUR MARKET

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European Economic Area (EEA) nationals and their non-EEA national family members have had the right to live, work and study in the United Kingdom (UK) since it first joined the European Economic Community on 1 January 1973. However, it is only since European expansion to Eastern Europe that EU workers have begun to play a substantial role in the UK labour market.<sup>5</sup>

In the aftermath of the referendum, the future of the 3.6 million EU nationals already present in the UK became highly politicised. But politicians’ interest in this population goes beyond being simple leverage in the forthcoming negotiations. Over the course of the last decade, EU migrants, who came mostly for employment reasons, have settled in various parts of the country where they filled jobs across the skills spectrum. The demographics of this population are also worth considering. Most EU migrants are of working age or children,<sup>6</sup> which means that they represent a valuable source of young workers – and taxpayers – for an ageing UK society.

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4 Fragomen LLP and the Migration Policy Institute convened a focus group on 7 March 2017 with representatives from the construction, retail, higher education, recruitment and science sectors, at Fragomen’s offices in London. Participants included staff from professional bodies, trade associations and staffing agencies.

5 Since EU nationals and EEA nationals (which include EU nationals plus nationals of Liechtenstein, Norway, Switzerland and Iceland) have the same status in the UK labour market, these groups are often referred to interchangeably. Our analysis focuses on the EU27 since it is based on Labour Force Survey data which in some quarters includes only EU27 workers. Where we are referring to the larger group of EEA nationals (either because of data or legal technicalities) we make this clear, but in practice they are a very small group.

6 About one in five European Union (EU) nationals are children under 18, and nearly half of A8 migrants (nationals of Eastern European countries that joined in 2004) are young adults (18–34). Authors’ tabulations of Office for National Statistics (ONS), Labour Force Survey (LFS) data for October–December 2016.

Inevitably, some groups of resident EU nationals are more likely to be affected by Brexit than others. Furthermore, Brexit's impact will vary by economic sector and region, as EU migrant workers have a varying presence across industries and regions. This section explores which EU nationals are likely to stay and who might face difficulty in qualifying for permanent residence, and which sectors and regions will be most affected.

## EU POPULATION

Between 2005 and 2016, the number of resident EU nationals tripled from 1.2 million<sup>7</sup> to 3.6 million,<sup>8</sup> now equivalent to close to 6 per cent of the UK population. The upward trend followed EU enlargement to Eastern Europe – first the accession of ten countries (including Poland, Latvia and Lithuania), and then the accession of Bulgaria and Romania. But as Table 1 illustrates, while Eastern Europeans have in many ways been the face of recent movements, Ireland has historically contributed the greatest share of EU nationals in the UK.<sup>9</sup>

**Table 1: Top five countries of origin for EU nationals in the UK, 2005 and 2016**

2005		2016	
Republic of Ireland	367,000	Poland	1,007,000
Poland	137,000	Republic of Ireland	345,000
France	104,000	Romania	311,000
Italy	95,000	Italy	252,000
Germany	89,000	Portugal	223,000

Sources: Data for 2005 are from ONS, 'Non-British population in the United Kingdom, excluding some residents in communal establishments, by sex, by nationality, January 2005 to December 2005,' last updated 17 July 2015; data for 2016 are from Migration Observatory, 'Article 50: Shades of grey, or black and white?' 22 March 2017, <http://www.migrationobservatory.ox.ac.uk/resources/commentaries/article-50-shades-of-grey-or-black-and-white/>.

Thus far, the EU workforce has been highly responsive to external shocks such as the global economic crisis and UK recession. While there was not a statistically significant fall in net migration in the year ending September 2016 from the EU, emigration increased among A8 nationals (that is, those from Poland, Hungary, Latvia, Lithuania, Estonia, Czech Republic, Slovakia and Slovenia). This uptick is likely rooted in a combination of factors, including uncertainty around whether EU nationals will gain the right to stay and the devaluation of the British pound since June 2016.<sup>10</sup>

## Who will be likely to stay after Brexit?

A number of groups of EU nationals are likely to be eligible to stay, including permanent residents and those who have acquired British citizenship.<sup>11</sup> According to EU law, EU nationals (and their family members) who have lived in a country for a continuous period of five years are automatically deemed to hold permanent residence if they have met certain requirements (see Appendix II for a full list of conditions). Since November 2015, obtaining

7 ONS, 'Annual Population Survey – Statistical Bulletin: Population of the UK by country of birth and nationality 2015,' 25 August 2016, <https://www.ons.gov.uk/peoplepopulationandcommunity/populationandmigration/internationalmigration/datasets/populationoftheunitedkingdombycountryofbirthandnationality> Additionally, an estimated 20,000–30,000 nationals of Norway, Lichtenstein, Iceland, and Switzerland resided in the UK in 2016. They are often included in the estimates of the population potentially affected by Brexit.

8 ONS, LFS, January–December 2016 data.

9 Poland overtook Ireland as the biggest country of origin for EU nationals in 2007. ONS, 'Annual Population Survey – Statistical Bulletin: Population of the UK by country of birth and nationality 2015.'

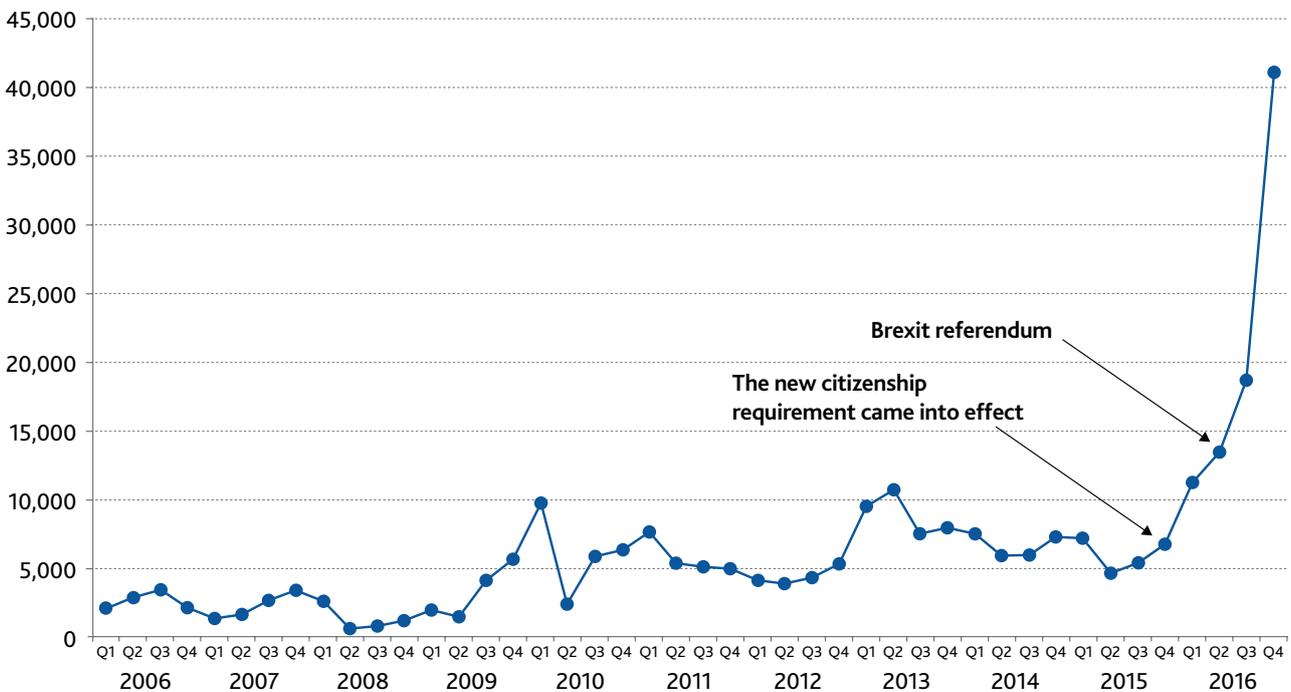
10 At the Fragomen-MPI focus group, representatives from the construction, retail, higher education and recruitment sectors all highlighted the fact that numbers have gone down in their sector. MPI/Fragomen focus group meeting, London, 7 March 2017.

11 EEA nationals (and Swiss nationals) are eligible for permanent residence after five years of residency (see Appendix II), which is a specific status for EEA nationals (as part of the UK's membership of the EU) and governed by EEA regulations. Once the UK leaves the EU, this status will no longer apply; thus, it will need to create an equivalent Indefinite Leave to Remain status for EEA nationals in the UK (for example, extending this five-year requirement to all EEA nationals resident in the UK before Brexit). British Future, Report of the Inquiry into securing the status of EEA+ nationals in the UK (London: British Future, 2016), [http://www.britishfuture.org/wp-content/uploads/2016/12/EUNationalsReport.Final\\_12.12.16.pdf](http://www.britishfuture.org/wp-content/uploads/2016/12/EUNationalsReport.Final_12.12.16.pdf).

a permanent residency card, while not essential for working and living in the UK under the EU law, became a condition for acquiring British citizenship.<sup>12</sup> The new citizenship eligibility requirement<sup>13</sup> raised incentives to register – and these incentives have become even greater in the context of uncertainty about what will happen to settled EU populations post-Brexit. The UK and Irish governments have also stated their intentions to maintain the Common Travel Area arrangements that allow their citizens to travel freely and reside in the other country.<sup>14</sup>

Signs already point to an increase in applications for permanent residence by EU nationals, who may be seeking to secure their own status (or that of their families) before the UK leaves the EU. Between 2010 and 2015, the Home Office reviewed an average of 29,000 permanent residence applications per year from EEA nationals and their families. There was a major uptick between 2015 and 2016 (from 27,300 to 92,300), which in part is attributable to the new citizenship requirement (see Figure 2). However, it is unlikely that this new requirement is the only explanation; nearly half of the total 65,200 grants in 2016 were issued in the last quarter.

**Figure 2: Quarterly decisions\* on permanent residence applications by EEA nationals and their family members, 2006–2016**



\*Decisions refer to grants or refusals but exclude invalid applications. The source data do not distinguish between nationals of EU versus non-EU countries that are part of the EEA. Family members of EEA nationals could be of any nationality, including countries outside of the EU or EEA. The increase in 2010 likely reflects the fact that the first cohort of A8 nationals qualified for permanent residence at this time; likewise the increase in 2013 for the first cohort of A2 nationals.

Source: Home Office, Immigration Statistics, 'European Economic Area Tables, Table ee\_02 Grant and Refusal of Residence Documentation (excluding Worker Registration Scheme) to EEA Nationals and Their Family Members, by Country of Nationality', 1 December 2016, <http://qna.files.parliament.uk/qna-attachments/658713/original/eea-q3-2016-tables.xlsx>.

12 GOV.UK, 'Prove Your Right to Live in the UK as an EU Citizen', updated 27 March, 2017, [www.gov.uk/eea-registration-certificate/permanent-residence](http://www.gov.uk/eea-registration-certificate/permanent-residence); GOV.UK, 'Become a British Citizen', updated 29 March, 2017, [www.gov.uk/becoming-a-british-citizen/check-if-you-can-apply](http://www.gov.uk/becoming-a-british-citizen/check-if-you-can-apply).

13 After 12 November 2015, European Economic Area (EEA) citizens who wished to become UK citizens had to apply for a certificate of permanent residence first.

14 House of Lords, European Union Committee, Brexit: UK-Irish relations, 6th Report of Session 2016-17, HL Paper 76, 12 December 2016, [www.publications.parliament.uk/pa/ld201617/ldselect/ldcom/76/76.pdf](http://www.publications.parliament.uk/pa/ld201617/ldselect/ldcom/76/76.pdf).

Only 16 per cent of the total EU-born population are UK citizens. Those born in EU14 countries, who represent a longer-term migrant population in the UK, are three times more likely to have UK citizenship (24 per cent) than those from the newer A10 countries (8 per cent).<sup>15</sup> And many EU citizens live in mixed-status families, where their spouse, parent or child may be a British citizen.<sup>16</sup> There are approximately 1.1 million children with at least one parent who is an EU national; of them, more than half have a UK parent as well (see Table 2).

**Table 2: Share of children (under age 16 or 16–18 in full-time education), by nationality of their parents (%), Q4 2016**

	Number	Share of the total (%)
<b>Children (under 16 or 16–18 in full-time education)</b>	<b>13,905,366</b>	<b>100.0</b>
Live in a family of only UK nationals	11,551,427	83.1
Live in a family of only EU27 nationals	526,940	3.8
Live in a family of mixed UK and EU27 nationals	598,516	4.3
Live in a family of only non-EU nationals	265,659	1.9
Live in a family of mixed UK and non-EU nationals	805,327	5.8
Live in a family of other mixed nationalities	157,497	1.1

Notes: Children are those who are younger than age 16 or aged 16–18 in full-time education and never married. Foster children and children who live with someone other than their parents are excluded.

Source: Authors' tabulation of ONS, LFS October–December 2016 data.

## Who is likely to face difficulties in gaining permanent resident status post-Brexit?

Most EU nationals have neither UK citizenship nor permanent residence cards.<sup>17</sup> Current requirements for permanent residents would exclude 52 per cent of all EU nationals (not counting Irish nationals), or nearly 1.7 million people (see Table 3). Moreover, a large proportion of recent applicants for permanent residence are being turned down because of difficulties evidencing their status under EU law throughout the relevant five-year period (in particular, where there is a requirement to have comprehensive sickness insurance).<sup>18</sup>

**Table 3: Number and share of EU nationals\* by years of UK residency, Q4 2016**

	Number	Share of the total (%)
<b>Total</b>	<b>3,245,200</b>	<b>100.0</b>
0 to 3 years	1,244,000	38.3
4 to 5 years	444,400	13.7
6 to 10 years	850,800	26.2
11 or more	706,000	21.8

\* Irish nationals are excluded.

Note: EU nationals with dual nationalities cannot be captured by the data.

Source: Authors' tabulation of ONS, LFS October–December 2016 data.

15 Authors' tabulations of LFS – October–December 2016 data. The onerous and complex application process for both permanent residence cards and citizenship, coupled with large numbers of potential applicants, represent a significant bureaucratic challenge. See Migration Observatory, 'Here today, gone tomorrow? The status of EU citizens already living in the UK', Migration Observatory commentary, 3 August 2016, [www.migrationobservatory.ox.ac.uk/resources/commentaries/today-gone-tomorrow-status-eu-citizens-already-living-uk/](http://www.migrationobservatory.ox.ac.uk/resources/commentaries/today-gone-tomorrow-status-eu-citizens-already-living-uk/). A10 countries comprise both the A8 (Poland, Hungary, Latvia, Lithuania, Estonia, Czech Republic, Slovakia and Slovenia) and A2 (Bulgaria and Romania). EU14 refers to Western European countries.

16 There are different citizenship requirements for EU nationals who have a British-citizen spouse or civil partner, who are more likely to be eligible to stay than single EU nationals or those married to other nationals. GOV.UK, 'Become a British Citizen if Your Spouse is a British Citizen', updated 29 March 2017, [www.gov.uk/becoming-a-british-citizen/if-your-spouse-is-a-british-citizen](http://www.gov.uk/becoming-a-british-citizen/if-your-spouse-is-a-british-citizen).

17 Family members could be nationals of the countries outside of the EU or EEA.

18 The government's messaging on this requirement has been somewhat mixed. For instance, the Home Office insisted in early March that it would not deport EU students if they did not have private healthcare, even though a German PhD student had been told she was at risk of removal. See Lisa O'Carroll, 'EU Students Told Health Insurance "A Technicality" after German Woman Threatened with Removal', The Guardian, 7 March 2017, <https://www.theguardian.com/uk-news/2017/mar/07/uk-tells-eu-students-it-will-not-deport-them-for-lacking-health-insurance>. In a written parliamentary answer on 27 March, Baroness Williams of Trafford said it was 'longstanding practice' not to remove EU citizens for this requirement. House of Lords, 'Free Movement of People: Written Question – HL5917, 27 March 2017, <http://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Lords/2017-03-08/HL5917/>.

It is also important to keep in mind that the right of free movement is connected to the EU national's engagement in the host country's economy or education system (that is, employment, self-employment, study or residency based on being financially self-sufficient).<sup>19</sup> Coupled with the requirement for five years of residence, this means that recent migrants, persons with interrupted history of work and residence, as well as students and the self-employed are likely to face more difficulties in documenting their eligibility for permanent residence status. Refusal rates are also likely to increase.

### Box 1: Data sources, definitions and limitations

This report uses a number of data sources which were collected and administered by the Office for National Statistics and the Home Office, among others. This includes Labour Force Survey (LFS) data and Long-term International Migration (LTIM) data, which is based on the International Passenger Survey (IPS). However, different data are collected for different purposes and thus are not directly comparable or complementary.

The absence of a population register in the UK means that the data on temporary migration is limited and unreliable. Relying on the LFS and LTIM is likely to significantly underplay the extent of temporary and seasonal migration. The IPS undercounts temporary migration as it is based on people who are moving for a year or more, and the LFS's household-based data undercounts migrants who do not live in a household. This undercount is likely to affect certain sectors in particular, such as agriculture and domestic workers, but it may also underestimate the size of the EU workforce as a whole. See Appendix I for more detail.

## EU LABOUR FORCE

EU nationals represent a significant slice of the UK labour force. There were approximately 2.2 million EU nationals employed in the UK labour market in 2016.<sup>20</sup> They made up 7 per cent of the total 31.6 million UK labour force. Since 2000, there has been a significant upward trend in the number of EU workers (in part due to new countries joining the EU, see Figure 3). As described earlier, EU migration has been highly sensitive to the economic conditions in the UK.<sup>21</sup>

While some EU nationals are children, college and university students, or retirees, the overwhelming majority are of working age and have come for jobs. Sixty-four per cent of all immigrants arriving in the UK for work were EU citizens.<sup>22</sup> About 63 per cent of EU citizens who moved to the UK for work-related reasons reported they had a definite job.<sup>23</sup> EU nationals are also more likely to be in work. In the last quarter of 2016 the employment rate of EU nationals was the highest recorded since 2000, at close to 81 per cent. The overall UK employment rate in the last quarter of 2016 stood at 75 per cent. Importantly, from mid-2006 on, EU nationals have had higher rates of employment than UK nationals.<sup>24</sup>

19 European Commission, 'Free Movement – EU Nationals', accessed 3 April 2017, <http://ec.europa.eu/social/main.jsp?catId=457>.

20 ONS, 'Table EMP06: Employment levels by nationality: People aged 16 and over (not seasonally adjusted)', Labour Force Survey, 15 February 2017, <https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/datasets/employmentbycountryofbirthandnationalityemp06>

21 Following the onset of the recession in 2007, there was a sharp decline in arrival and an uptick in departures among EU nationals from the UK. The number of EU workers remained flat during 2008 and 2009 and then began climbing in early 2010. Despite a short-term halt during the recession, in mid-2010 EU workers outnumbered non-EU nationals; their numbers continued to grow rapidly nearly every year since.

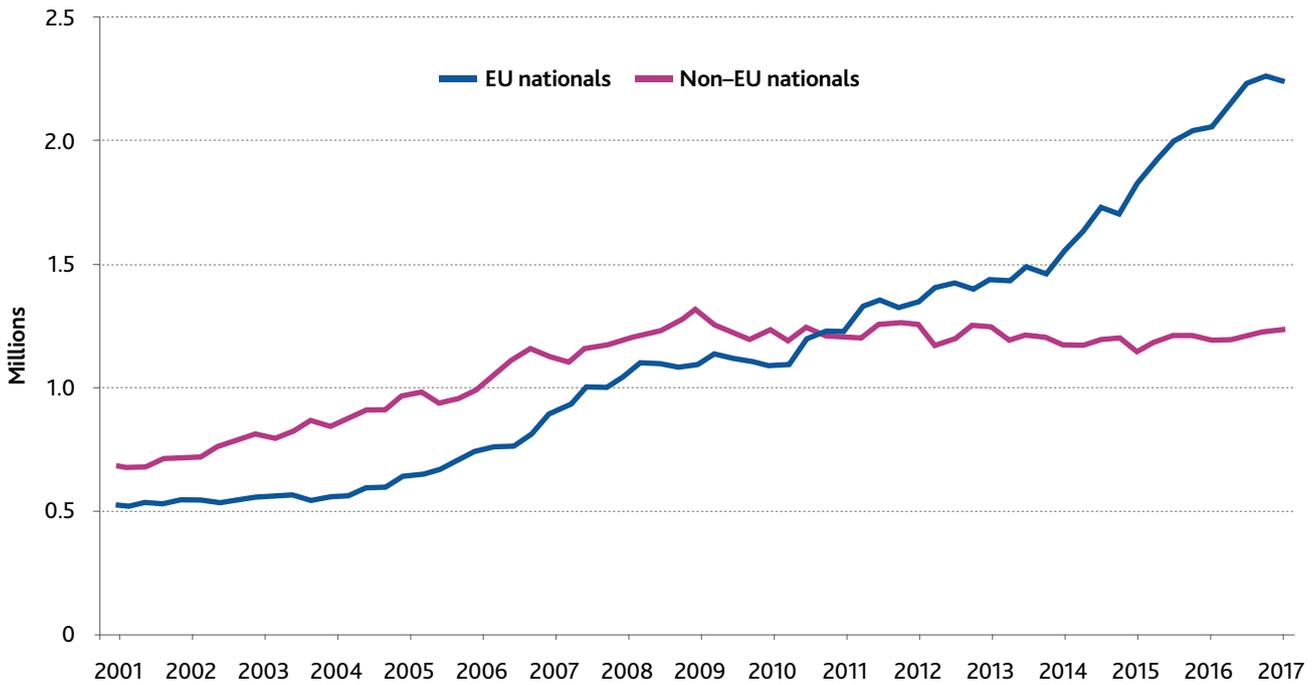
22 Additionally, 24 per cent were non-EU citizens and 12 per cent were returning British citizens. See ONS – Statistical Bulletin, *Migration Statistics Quarterly Report: February 2017* (London: ONS, 2017), [www.ons.gov.uk/peoplepopulationandcommunity/populationandmigration/internationalmigration/bulletins/migrationstatisticsquarterlyreport/feb2017](http://www.ons.gov.uk/peoplepopulationandcommunity/populationandmigration/internationalmigration/bulletins/migrationstatisticsquarterlyreport/feb2017).

23 In the year ending September 2016, 249,000 EU citizens arrived in the UK, out of which 180,000 EU citizens arrived for work; see ONS, *Migration Statistics Quarterly Report: February 2017*. The share of those arriving with a definite job among EU14 nationals was 70 per cent. It was somewhat lower for nationals from A8 (51 per cent) and A2 (61 per cent) because they tend to work in temporary or seasonal jobs and thus may be less likely to have a job offer at the time of arrival.

24 Nationals of A10 countries (Eastern European countries that joined in 2004 or 2007) tend to have higher employment rates (82 per cent in Q4 2016) than those from EU14 (77 per cent) or UK nationals (75 per cent).

However, this growth began to reverse or at least dramatically slowed in the first quarter following the referendum. In contrast, the size of the non-EU workforce remained relatively flat, at about 1.1–1.2 million. As described on page 17, the attractiveness of the UK (given uncertainties around Brexit and the devaluation of the pound) appears to have already made the country less appealing to new and prospective EU workers.

**Figure 3: Employed adults by nationality, Q4 2000 to Q4 2016**



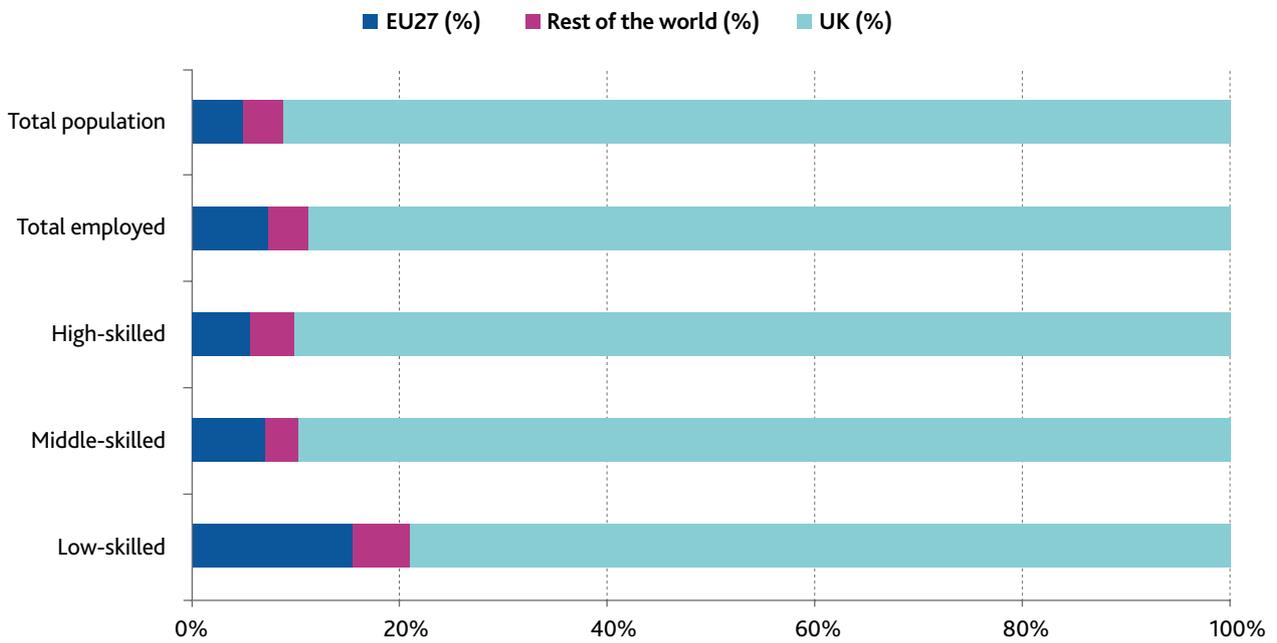
Source: ONS, LFS, 'UK labour market: February 2017, Table EMP06: Employment levels by nationality: People ages 16 and over (not seasonally adjusted)', accessed 15 February 2017, [www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/datasets/employmentbycountryofbirthandnationalityemp06](http://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/datasets/employmentbycountryofbirthandnationalityemp06).

## OCCUPATIONS AND INDUSTRIES OF EMPLOYMENT OF EU WORKERS

### Occupations

EU migrants in the UK tend to cluster in specific occupations. These patterns seem to be at least partially the result of the immigrant networks that connect newly arriving friends and family with jobs. EU nationals are employed across the skills spectrum, but are concentrated in lesser-skilled occupations. In the last quarter of 2016, 15 per cent of workers in low-skilled 'elementary occupations' were EU nationals (mostly from A10 countries). EU nationals accounted for 7 per cent of workers in middle-skilled occupations and 6 per cent of those in high-skilled occupations (see Figure 4). For more information on how this report categorises occupation by skill type, see Appendix I.

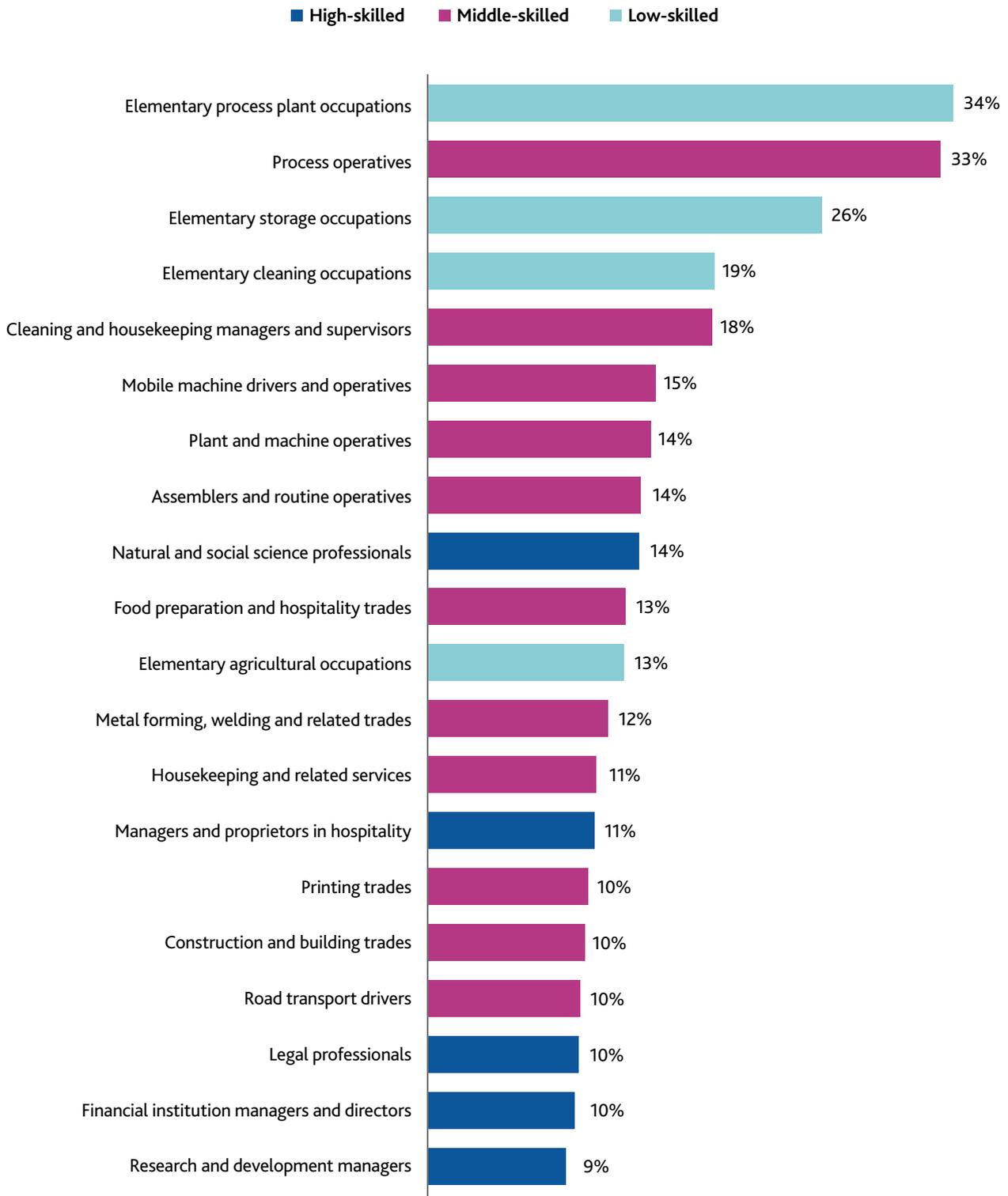
**Figure 4: Nationality of the total UK population, total UK workforce and workers, by occupation skill type (%), Q4 2016**



Source: Authors' tabulation of ONS, LFS, October–December 2016 data.

A detailed analysis of occupation skill type shows a more nuanced picture of EU workers' role in the UK labour market. While a sizeable share of low-skilled 'elementary' occupations employ EU migrants – a third of elementary process plant occupations and a quarter of elementary storage occupations – EU workers are also present in a variety of middle-skilled jobs (for example, process, plant, machine, and assemble operatives and skill trades) and some high-skilled occupations (for example, natural and social scientists and legal professionals) (see Figure 5).

**Figure 5: Share of EU workers by occupation and skill level: top 20 occupations (%), Q4 2016**



Note: Some occupations (for example, conservation and environmental associate professionals) were excluded from the above list because of a small sample size. Source: Authors' tabulation of ONS, LFS, October–December 2016 data.

But even among the low- and middle-skilled occupations, EU workers are concentrated in occupations with shortages reported by employers in annual vacancy surveys. While 23 per cent of all vacancies were hard to fill because employers could not find people with the right skills or expertise, that share was much higher among skilled trades (43 per cent), machine operatives (32 per cent) and professionals (32 per cent), according to the 2015 UK Commission for Employment and Skills' Employer Skills Survey.<sup>25</sup> Another widely reported difficulty among employers is retention, and while only 8 per cent of establishments reported retention difficulties, this share was higher among skilled trade (21 per cent) and elementary occupations (20 per cent).

## Industries

Relative to their share of the total UK workforce (7 per cent), EU nationals are overrepresented in a number of sectors: manufacturing (11 per cent), wholesale and retail trade, hotels and restaurants (9 per cent), transport and communication (9 per cent), and construction (8 per cent) (see Table 4).

**Table 4: Share of EU workers by sector (ages 16 and older) (% and number), 2016**

	All workers	EU27 workers	
		Number	% of all workers
<b>All sectors</b>	<b>31,573,200</b>	<b>2,212,300</b>	<b>7.0</b>
Manufacturing	3,000,500	319,300	10.6
Wholesale and retail trade, hotels and restaurants	5,923,500	520,100	8.8
Transport and communication	2,876,500	243,300	8.5
Construction	2,298,900	192,400	8.4
Agriculture, forestry and fishing	355,600	27,800	7.8
Financial and business services	5,403,300	396,600	7.3
Other services	1,828,200	99,200	5.4
Energy and water	522,300	28,400	5.4
Public administration, education and health	9,364,500	385,100	4.1

*Notes:* EU includes all 27 Member States of the European Union, except the UK. Industry groups are based on the Standard Industrial Classification (SIC) 2007, aggregated sectors. 'Wholesale and retail trade, hotels and restaurants' includes wholesale and retail trade; accommodation and food service activities; and repair of motor vehicles and motorcycles. 'Financial and business services' includes financial and insurance activities; legal, professional, scientific and technical activities; real estate; and administrative and support services. 'Transport and communication' includes transportation and storage; and information and communication. 'Public administration, education and health' includes public administration and defence; compulsory social security; education; and human health and social work activities. 'Energy and water' includes mining and quarrying; electricity and gas; water supply, sewerage and waste management. 'Other services' includes arts, entertainment and recreation; activities of household as employers; and other services.

*Source:* Authors' tabulation of ONS, Labour Force Survey January–December 2016 data.

While useful for gaining a general understanding of the EU workers' participation in the UK labour market across all sectors, if one examines industry codes in more detail it is clear that EU nationals make up a much higher share of workers in certain subsectors. These include manufacturing of food products (33 per cent), households as employers,<sup>26</sup> (26 per cent), and accommodation (19 per cent) (see Table 5.2). Other industries with significant presence of EU workers include warehousing and services to buildings/landscape activities.

<sup>25</sup> UK Commission for Employment and Skills, 'UKCES Employer Skills Survey 2015: supplementary documents', updated 26 May 2016, [www.gov.uk/government/publications/ukces-employer-skills-survey-2015-supplementary-documents](http://www.gov.uk/government/publications/ukces-employer-skills-survey-2015-supplementary-documents).

<sup>26</sup> Includes domestic personnel such as maids, cooks, gardeners, caretakers, and babysitters.

**Table 5.1: Top ten sectors (1-digit code) by share of EU workers (ages 16 and older) (% and number), 2016**

	All workers	EU27 workers	
		Number	% of all workers
<b>All sectors</b>	<b>31,573,200</b>	<b>2,212,300</b>	<b>7.0</b>
Households as employers	69,600	18,200	26.1
Accommodation and food services	1,728,000	234,800	13.6
Manufacturing	3,000,500	319,300	10.6
Administrative and support services	1,515,300	149,400	9.9
Transport and storage	1,612,900	156,200	9.7
Construction	2,298,900	192,400	8.4
Agriculture, forestry and fishing	355,600	27,800	7.8
Water supply, sewerage and waste management	220,900	16,700	7.6
Information and communication	1,263,600	87,100	6.9
Professional, scientific and technical	2,285,900	157,200	6.9

Notes: EU includes all 27 EU Member States, except the UK. Industry groups are based on the Standard Industrial Classification (SIC) 2007, 1-digit codes.  
Source: Authors' tabulation of ONS, Labour Force Survey January–December 2016 data.

**Table 5.2: Top ten sectors (2-digit code) by share of EU workers (ages 16 and older) (% and number), 2016**

	All workers	EU27 workers	
		Number	% of all workers
<b>Total</b>	<b>31,573,200</b>	<b>2,212,300</b>	<b>7.0</b>
Manufacture of food products	355,600	116,400	32.7
Domestic personnel	61,600	15,700	25.6
Accommodation	384,300	73,600	19.2
Warehousing and support activities for transport	367,700	64,900	17.6
Manufacture of leather and related products	10,900	1,800	16.6
Services to building and landscape activities	649,400	90,100	13.9
Manufacture of non-metallic mineral products	96,200	12,100	12.6
Waste collection, treatment and disposal	114,000	14,100	12.4
Manufacture of rubber products	132,000	15,900	12.0
Food and beverages	1,343,700	161,200	12.0

Notes: EU includes all 27 EU Member States, except the UK. Industry groups are based on the Standard Industrial Classification (SIC) 2007, 2-digit codes.  
Source: Authors' tabulation of ONS, Labour Force Survey January–December 2016 data.

Some of these more detailed industries (such as 'households as employers', which includes most domestic work) are small in size (although the size of this subsector may appear smaller because of the underestimate of people engaged in this work in the Labour Force Survey).<sup>27</sup> Other sectors represent a large slice of the labour market/ GDP and have reported persistent unfilled vacancies and skills shortages. According to the UK Vacancy Survey (quarterly):<sup>28</sup> 88 per cent of all job vacancies (or 661,000) were in the services sectors, including accommodation and food services (86,000). The next two industries with the largest number of vacancies were manufacturing (53,000) and construction (28,000), and the number of vacancies in these two industries has been on the rise since the November–January 2013 period. Both industries are on the top ten list of sectors with the largest share of EU migrant workers. Employers claimed that 23 per cent of these vacancies were hard to fill because they could

<sup>27</sup> Because of data limitations, the LFS is likely to drastically undercount workers, especially those of migrant background, who work in less formal settings such as 'households as employers' or agriculture.

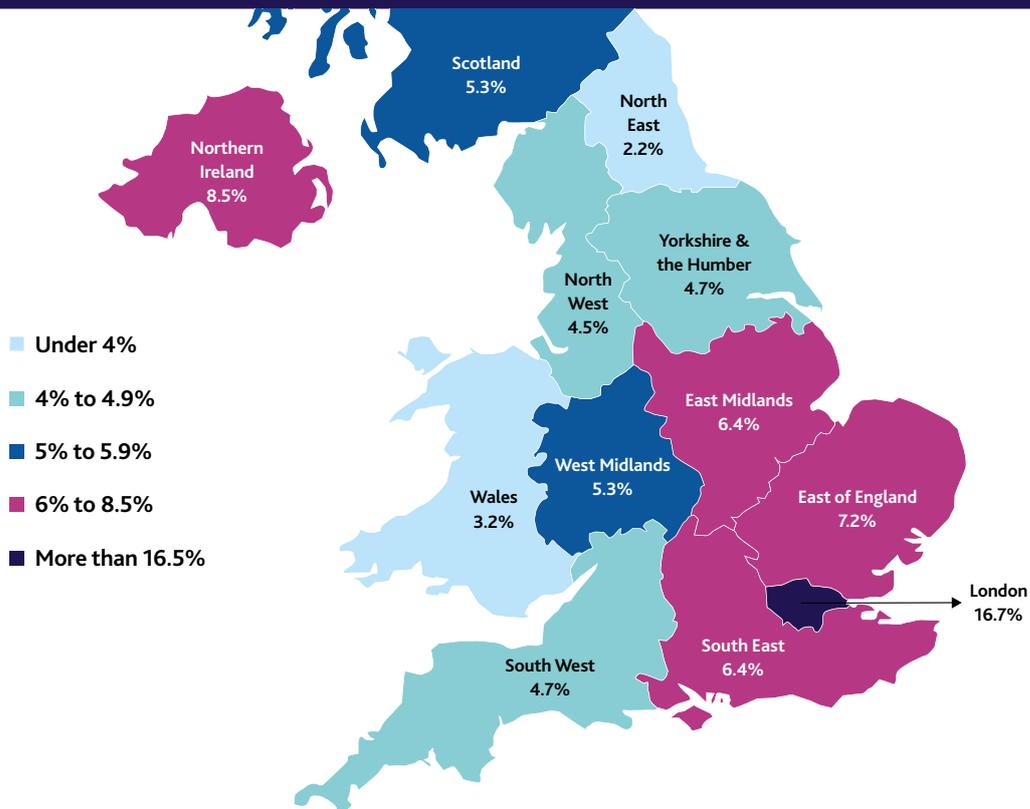
<sup>28</sup> ONS, 'Vacancies by industry', accessed 3 April 2017, [www.ons.gov.uk/employmentandlabourmarket/peoplenotinwork/unemployment/datasets/vacanciesbyindustryvacs02](http://www.ons.gov.uk/employmentandlabourmarket/peoplenotinwork/unemployment/datasets/vacanciesbyindustryvacs02).

not find people with the right skills or expertise (35 per cent in construction; 35 per cent in electricity/gas/water; 31 per cent in transportation and communications; and 30 per cent in manufacturing).

### Regional variation

The role and importance of EU workers varies not only by occupation and sector but also by region, with London being the main hub. Close to 17 per cent of workers in London are EU nationals. Northern Ireland has the second highest share of EU nationals in its workforce (almost 9 per cent), followed by the East of England (7 per cent). In contrast, EU workers account for a small share (about 2 per cent) of workers in the North East (see Map 2).

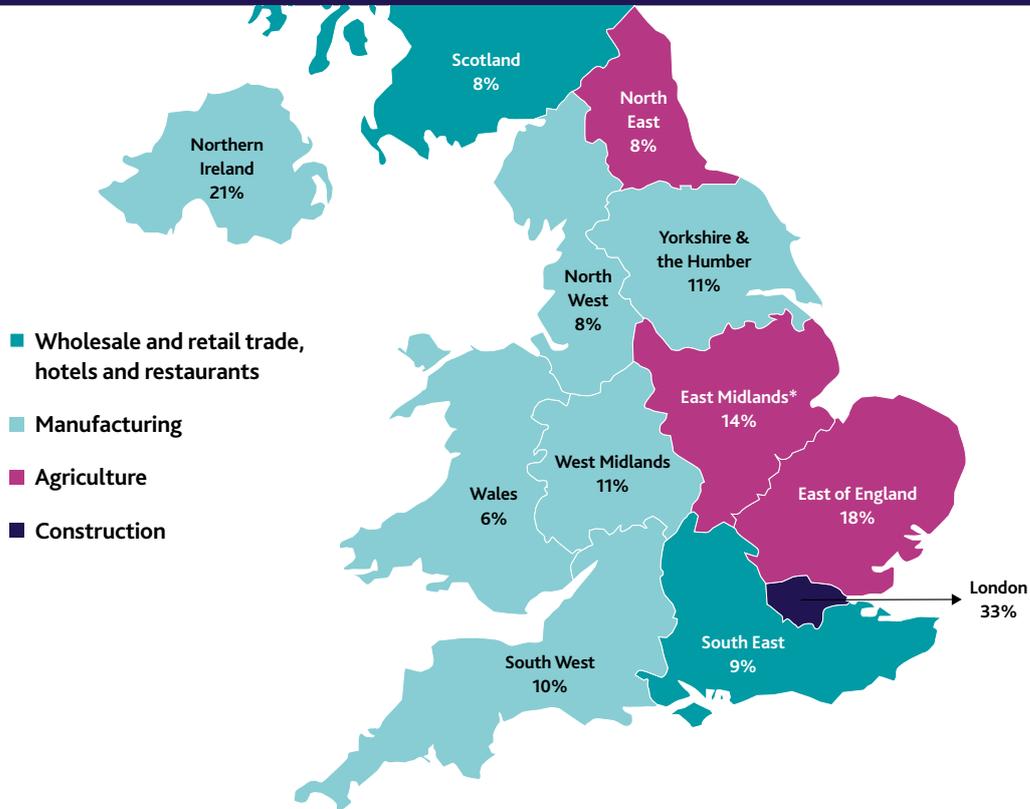
**Map 2: Share of EU27 workers by region (%), 2016**



Note: Workers refers to adults ages 16 and older in employment with valid SIC2007 codes.  
 Source: Authors' tabulation of ONS, Labour Force Survey January–December 2016 data.

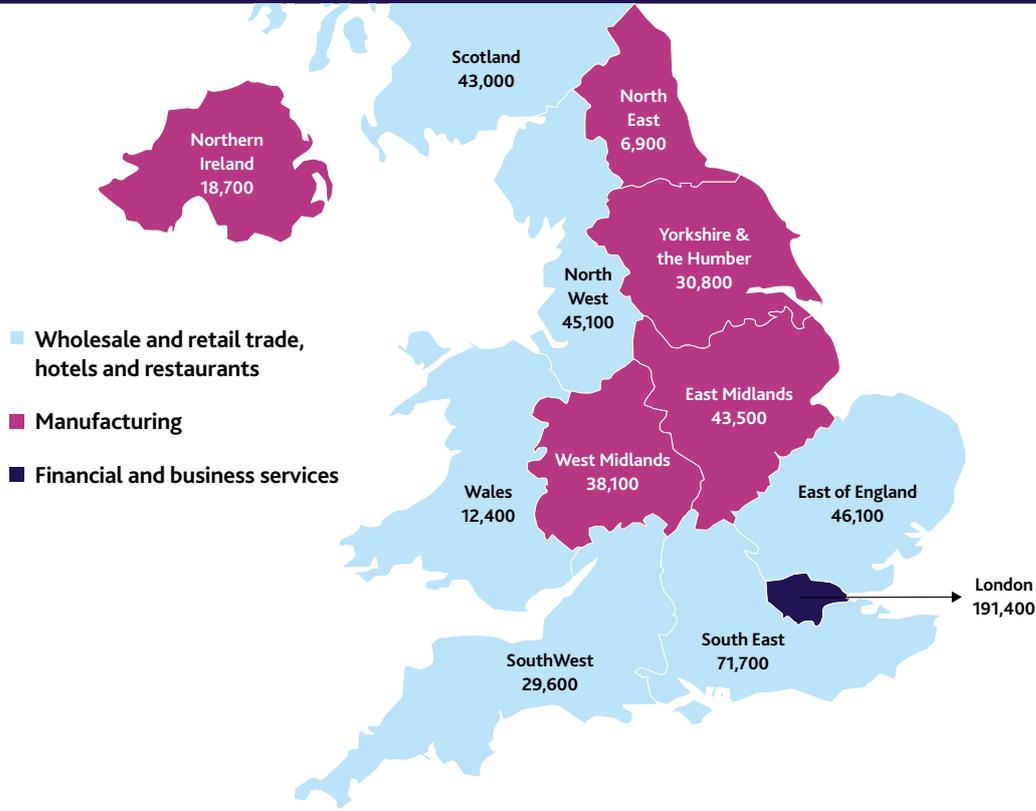
However, even in regions where EU nationals account for a relatively small share of the total workforce, they may represent significant shares of workers in specific industries in that region. Maps 3 and 4 show top industry of employment of EU workers in every region by share (Map 3) and absolute number (Map 4). Together the two maps depict visually the presence of EU workers that varies significantly both by industry and region. While EU workers accounted for 17 per cent of all workers in London (as shown in Map 2), 33 per cent of construction workers in the city were EU nationals (Map 3). Similarly, EU workers made up less than 10 per cent of all workers in Northern Ireland, but their top industry of employment, manufacturing, relied more heavily on them: 21 per cent of all manufacturing workers in the region were EU nationals (see Map 3). London is a financial heart of the UK and the EU more broadly. If grouped together, the finance sector and related sectors, such as professional services and administrative and support, exceeds other big industries, such as construction, in terms of absolute numbers (191,000) (see Map 4).

**Map 3: Top industry of employment of EU workers in terms of their share in the industry workforce, by region (%), 2016**



\* Manufacturing has a roughly similar share of EU migrant workers (14 per cent).  
 Source: Authors' tabulation of ONS, Labour Force Survey January–December 2016 data.

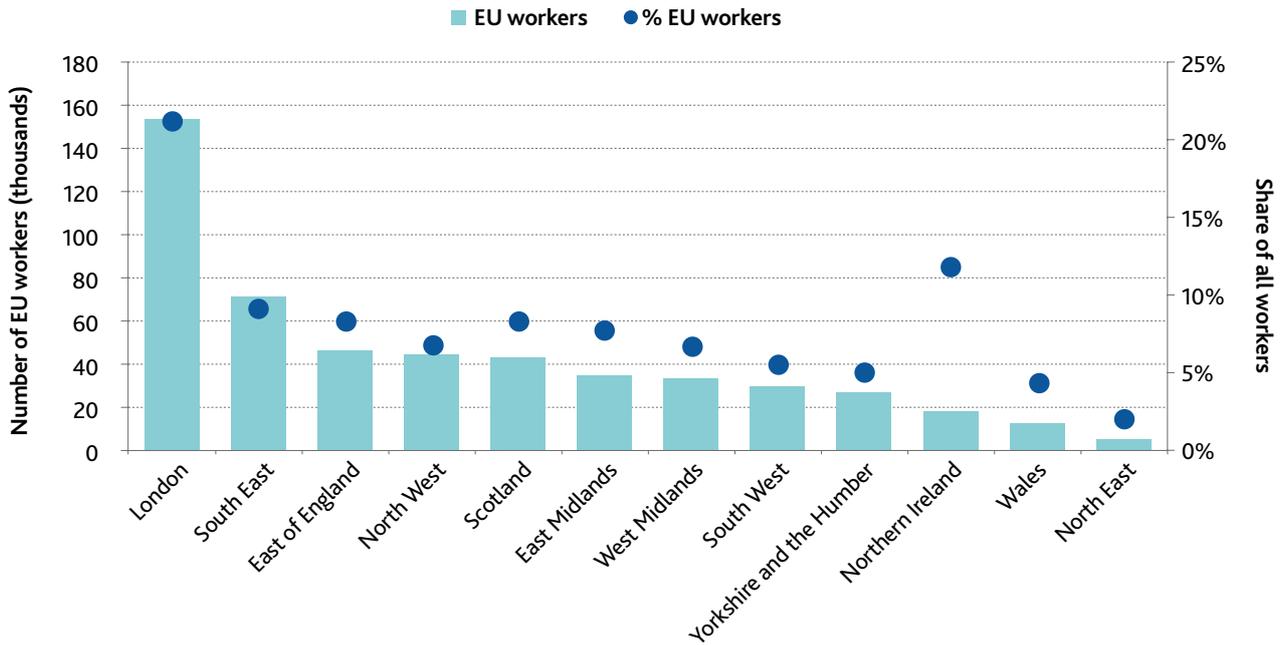
**Map 4: Top industry of employment of EU workers in terms of their absolute number in the industry workforce, by region, 2016**



*Note:* Workers refers to adults ages 16 and older in employment with valid SIC2007 codes.  
*Source:* Authors' tabulation of ONS, Labour Force Survey January–December 2016 data.

As shown in Map 4, EU workers accounted for higher shares of workers in manufacturing and wholesale and retail trade, hotels and restaurants. Focusing on these two industries (which are among those where EU workers are distributed across the UK) shows notable regional variation. London's hospitality/wholesale and retail trade sector employed the largest number of EU nationals (more than 150,000); at the same time, 21 per cent of workers in this industry were EU nationals (see Figure 6). Another region where this sector relies on EU workers is Northern Ireland: 12 per cent (or 18,400) of its wholesale and retail trade, hotels and restaurants workers were from the EU.

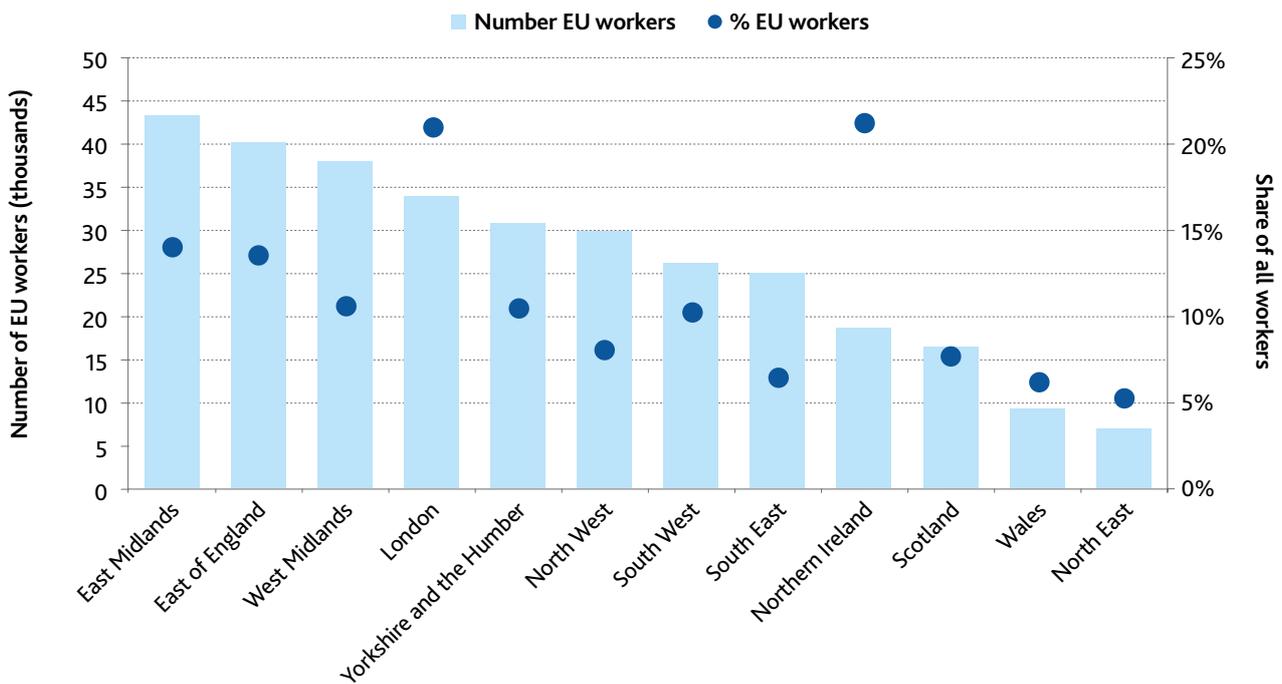
Figure 6: Number and share of EU workers in wholesale and retail trade, hotels and restaurants, 2016



Note: Workers refers to adults ages 16 and older in employment with valid SIC2007 codes.  
 Source: Authors' tabulation of ONS, Labour Force Survey January–December 2016 data.

Similarly, EU nationals formed the largest shares of manufacturing workers (more than a fifth) in London and Northern Ireland (see Figure 7), but their presence in manufacturing (in absolute terms) was the highest in the East Midlands and East of England regions (with 40,000 or more EU workers employed in that sector).

Figure 7: Number and share of EU workers in manufacturing, 2016



Note: Workers refers to adults ages 16 and older in employment with valid SIC2007 codes.  
 Source: Authors' tabulation of ONS, Labour Force Survey January–December 2016 data.

## Self-employment trends

The proportion of EU nationals reporting self-employment is similar to that of the general UK population (around 15 per cent in Q4 2016), and is slightly less than for non-EU nationals (16 per cent).

The rates of self-employment among EU migrants vary by region and sector. EU workers are more likely to report self-employment if they work in construction (57 per cent), households (45 per cent), arts and entertainment (32 per cent), real estate (31 per cent) and the professional/scientific/technical sector (21 per cent). These are also sectors that have high levels of self-employment among UK nationals. The proportions of self-employed EU nationals – among those in employment – show great differences across regions. London and the South East are the most entrepreneurial, with 24 per cent and 17 per cent of resident EU migrants being self-employed, respectively. Moreover, in London and the North East, EU nationals are more likely to be self-employed than their UK counterparts (the share of self-employed among UK nationals is 18 per cent in London and 10 per cent in the North East).

## Skills and underutilisation of EU workers

Three in ten UK employers have an employee who is underemployed, that is, working in a job that requires a lower level of education and training than they hold. In general, immigrants in the UK are approximately twice as likely to be overqualified than UK natives: 31 per cent of EU14 nationals and 39 per cent of A10 nationals versus 13 per cent of UK natives.<sup>29</sup> A number of factors contribute to immigrants' skill underutilisation (also known as brain waste), including language difficulties, lack of local labour market experience or valuable networks, and poor recognition of foreign credentials and education.<sup>30</sup> Anecdotal evidence suggests that Eastern Europeans may trade their higher levels of education for the opportunity to earn higher (than at home) wages, gain experience and improve English skills, which then unlock existing human capital (education; soft and communications skills).<sup>31</sup> Skill underutilisation, which is a serious issue already, may get worse if Brexit means that EU degrees will have to be evaluated and validated on different terms, or other barriers to adequate employment arise.

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29 ONS, 'Analysis of the UK Labour Market – Estimates of Skills Mismatch Using Measures of Over and Under-Education: 2015,' <https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/articles/analysisoftheuklabourmarketestimatesofskillsmismatchusingmeasuresofoverandundereducation/2015>.

30 Madeleine Sumption, *Tackling Brain Waste: Strategies to Improve the Recognition of Immigrants' Foreign Qualifications* (Washington, DC: MPI, 2013), [www.migrationpolicy.org/research/tackling-brain-waste-strategies-improve-recognition-immigrants-foreign-qualifications](http://www.migrationpolicy.org/research/tackling-brain-waste-strategies-improve-recognition-immigrants-foreign-qualifications); Rachel Marangozov, *Benign Neglect? Policies to Support Upward Mobility for Immigrants in the United Kingdom* (Washington, DC: MPI, 2014), [www.migrationpolicy.org/research/benign-neglect-policies-support-upward-mobility-immigrants-united-kingdom](http://www.migrationpolicy.org/research/benign-neglect-policies-support-upward-mobility-immigrants-united-kingdom).

31 Comments from a representative of the retail industry, MPI/Fragomen focus group meeting, London, 7 March 2017.

## III. QUALITATIVE ANALYSIS: EXAMINING THE ROLE OF EU NATIONALS IN DIFFERENT SECTORS

EU nationals are concentrated in a number of different sectors distributed across the skills spectrum, ranging from providing a key source of seasonal labour in agriculture to working in highly skilled roles or establishing new businesses in the financial services and tech sectors. This section provides a deeper dive into several of these sectors – agriculture, construction, hospitality, retail and logistics, health and social care, higher education, financial services and tech – before examining their risk of future labour or skills shortages after Brexit. It looks first at the sectors that employ the greatest share of EU nationals – agriculture, construction, health and social care, hospitality, and retail and logistics – before looking at sectors in which EU nationals play a smaller role, but at higher skill levels.

### CASE STUDIES

#### Agriculture

##### Key findings:

- Brexit poses a number of challenges for agriculture, including the uncertainty surrounding future conditions for UK – EU trade, the loss of Common Agricultural Policy (CAP) subsidies and possible curbs on recruiting EU migrants.
- EU migrant workers are an important component of the agriculture workforce, working in seasonal roles, such as fruit-picking and jobs located in remote areas. LFS 2016 data suggest 8 per cent of agricultural workers in the UK were EU nationals (14 per cent in the East Midlands and 18 per cent in the East of England), but as these data undercount seasonal labour, the true figure is likely to be higher.
- With UK nationals reluctant to fill these jobs, employers are worried by the implications of immigration restrictions on their ability to recruit the seasonal labour they need, and industry bodies have called for the urgent reintroduction of a seasonal agricultural workers recruitment programme.<sup>32</sup>
- Over the medium to longterm, big data and automation may offer promising opportunities for improving productivity and potentially lessening farmers' reliance on migrant labour, but this is likely to require high up-front investments in an industry where many employers operate on tight profit margins.

In 2016, the LFS estimated that 8 per cent (or 27,800) of agricultural workers were EU nationals, rising to 14 per cent (or 4,600) in the East Midlands and 18 per cent (or 8,900) in the East of England – but these household-based data likely exclude many of those working on a seasonal basis in occupations such as food processing or fruit and vegetable picking.<sup>33</sup> Prior to its closure in 2012, the Seasonal Agricultural Workers Scheme (SAWS) provided a useful source of data on seasonal workers, capturing the number of SAWS permits issued by nationality and distributed by region. Between 2009 and 2012, 20,000–21,000 applications were approved annually (of a cap of 21,250); in 2012, SAWS work permits were concentrated in parts of South East England (Kent and Cambridgeshire), East Scotland (Angus, and Perth and Kinross) and Western England (Herefordshire).<sup>34</sup>

<sup>32</sup> Country Land and Business Association (CLA), 'New Opportunities: A policy that provides a stable, productive, and secure workforce for the rural economy,' 12 September 2016, [www.cla.org.uk/sites/default/files/Labour%20Market%20-%20Email.pdf](http://www.cla.org.uk/sites/default/files/Labour%20Market%20-%20Email.pdf).

<sup>33</sup> LFS data do not capture non-household settings, so likely undercount seasonal workers.

<sup>34</sup> Migration Advisory Committee (MAC), *Migrant Seasonal Workers: The impact on the horticulture and food processing sectors of closing the Seasonal Agricultural Workers Scheme and the Sectors Based Scheme* (London: MAC, 2013), [www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/257242/migrant-seasonal-workers.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/257242/migrant-seasonal-workers.pdf).

While no skilled agricultural occupations are currently listed on the Shortage Occupation List (SOL), industry bodies and employers report labour shortages, particularly in seasonal roles or remote areas. For example, the National Farmers Union (NFU) End of Season Labour Survey for 2015 found that one in three businesses had difficulty hiring and retaining seasonal labour (particularly in fruit picking), with businesses anticipating that this would get progressively worse, leading to rising labour costs. The reliance of all advanced developed nations on migrant labour for fruit picking is on the rise.<sup>35</sup> More recently, the NFU's Labour Provider Survey (Q1–Q3 2016) in the horticulture and potatoes sector pointed to rising turnover rates (from 8 per cent in Q1 2016 to 38 per cent in Q3 2016) and growing pessimism among its respondents in the horticulture sector about the supply of seasonal workers meeting demand (falling from 78 per cent in Q1 2016 to 20 per cent in Q3 2016).<sup>36</sup>

These reported difficulties in hiring UK nationals for jobs, particularly those of a seasonal nature or located in remote areas, have led employers to turn to EU migrants to fill labour shortages, just as other high-income countries do.<sup>37</sup> The closure of SAWS and the Sectors Based Scheme in 2013, and the decision not to implement the Tier 3 category of the Points-Based System (for low-skilled non-EU nationals)<sup>38</sup> mean that employers have relied on EU nationals to fill gaps in seasonal labour, in particular, where demand is growing.<sup>39</sup>

Brexit poses a number of risks to the agriculture sector, including the withdrawal of EU annual subsidies, possible tariffs on exports and curbs on recruiting seasonal labour from the EU. These risk factors are exacerbated by the tight profit margins that many employers operate on, which limits their ability to cushion their businesses against rising prices or make high up-front investments in new technologies that could improve productivity or lessen their reliance on seasonal labour in the medium to long term.<sup>40</sup> This lack of flexibility lends credence to industry warnings of worsening labour shortages and possible shortfalls if they are not able to recruit from the EU after Brexit. Employer surveys point to widespread concerns about future shortages: for example, a 2016 survey of dairy farmers found that more than half were worried about their long-term prospects due to labour shortages.<sup>41</sup> And these concerns pre-date Brexit: for example, the NFU's End of Season Labour Survey in 2015 found that two-thirds of growers anticipated increased shortages of seasonal labour and resulting rises in labour costs by 2018.<sup>42</sup>

35 MAC, *Migrant Seasonal Workers*; and National Farmers' Union (NFU), 'NFU End of Season Labour Survey 2015', NFU Briefing, 29 March 2016, [www.nfuonline.com/assets/60835](http://www.nfuonline.com/assets/60835).

36 NFU, 'Labour Providers Survey 2016 Q1-Q3' (press release, 6 November 2016), [www.nfuonline.com/assets/80667](http://www.nfuonline.com/assets/80667).

37 NFU, *Farming's Offer to Britain: How Farming Can Deliver for the Country Post-Brexit* (Stoneleigh, UK: NFU, 2016), [www.nfuonline.com/assets/80290](http://www.nfuonline.com/assets/80290); NFU, *EU referendum – UK farming's relationship with the EU* (Stoneleigh, UK: NFU, 2016), 6-7, [www.nfuonline.com/assets/61993](http://www.nfuonline.com/assets/61993); MAC, *Migrant Seasonal Workers*, 140-45.

38 See Appendix II for a history of this point.

39 The NFU estimated that the horticulture industry will need 95,000 seasonal workers by 2020 (up from 80,000 in 2016). See NFU, *Farming's offer to Britain*, 7.

40 The NFU has made a number of recommendations to facilitate further investment in automation and other technologies, including calling on retailers to offer longer-term contracts with price guarantees to provide employers with more financial stability, and calling on the government to support these investments by offering low-interest loans or grants and tax allowances. See Sarah Butler, 'Farmers deliver stark warning over access to EU seasonal workers', *The Guardian*, 21 February 2017, [www.theguardian.com/environment/2017/feb/21/farmers-warning-eu-seasonal-workers-nfu-conference-birmingham](http://www.theguardian.com/environment/2017/feb/21/farmers-warning-eu-seasonal-workers-nfu-conference-birmingham).

41 Royal Association of British Dairy Farmers (RABDF), 'RABDF 2016 EU-labour survey findings', 12 January 2017, [www.rabdf.co.uk/latest-news/2017/1/12/rabdf-2016-eu-labour-survey-findings](http://www.rabdf.co.uk/latest-news/2017/1/12/rabdf-2016-eu-labour-survey-findings).

42 NFU, 'NFU End of Season Labour Survey 2015'.

## Construction

### Key findings:

- Current labour and skills shortages and high turnover rates could be exacerbated by restrictions on hiring non-UK nationals, particularly in London, where one in three construction workers come from the EU (compared with 8 per cent across the UK).
- Shortages in the construction industry stem from an ageing workforce and falling apprenticeship rates, as well as challenges recruiting from the local workforce.
- Employers and industry bodies have emphasised that while investing in training opportunities and improving the industry's productivity can help address these shortages in the long run, migrant workers are crucial to helping fill these gaps in the short term.<sup>43</sup>

In 2016, 8 per cent (or 192,400) of UK workers in construction were EU nationals, but this share is much higher in London, where 33 per cent (or 104,800) of the construction workforce are EU nationals.<sup>44</sup> London also employs a large number of non-EU (non-UK) nationals (close to 8 per cent of the workforce, or 23,800 people) in construction. EU nationals are overrepresented in less-skilled trades, such as constructing or finishing buildings, though some also work in highly skilled trades, such as welding.<sup>45</sup>

Employers in the construction industry report high turnover rates and both labour and skills shortages. Though employer surveys produce varying estimates of labour and skills shortages, they tend to point to particular difficulties in recruiting carpenters, joiners, bricklayers, surveyors and engineers. One survey found that 43 per cent of respondents had turned down work in the past 12 months due to a lack of skilled workers.<sup>46</sup>

The industry's reliance on migrant labour stems partly from these skills shortages, which are exacerbated by the ageing UK workforce – with one in five construction workers set to retire in the next five to ten years – and apprenticeship rates have fallen.<sup>47</sup> The Farmer Review suggested that retirements and declining training places could lead to a 25 per cent contraction in the construction workforce by 2026 (though it acknowledges that this could be partly offset by new approaches, such as off-site manufacturing, that could improve productivity).<sup>48</sup>

The strength of vocational training in Eastern Europe helps ready EU migrants for skilled trades. As one focus group participant pointed out, Eastern Europeans were particularly appealing because of the strength of the vocational training in that part of Europe.<sup>49</sup> Self-employed EU nationals can also act as job creators in this sector.<sup>50</sup> Meanwhile, UK nationals may be put off by the instability of construction jobs, arising from fluctuating

43 See employer and industry body submissions to the All Party Parliamentary Group for Excellence in the Built Environment, *Inquiry on the effects of Brexit*. Written evidence from the Construction Industry Council (CIC), <http://cic.org.uk/services/brexit-skills/sessions.php>.

44 Rounded to the nearest hundred.

45 Heather Rolfe and Nathan Hudson-Sharp, *The Impact of Free Movement on the Labour Market: case studies of hospitality, food processing and construction* (London: National Institute for Economic and Social Research (NIESR) 2017), [www.niesr.ac.uk/publications/impact-free-movement-labour-market-case-studies-hospitality-food-processing-and#.WOLAbG\\_ysdU](http://www.niesr.ac.uk/publications/impact-free-movement-labour-market-case-studies-hospitality-food-processing-and#.WOLAbG_ysdU).

46 Construction Industry Training Board (CITB), *Skills and Training in the Construction Industry 2016*, August 2016, [www.citb.co.uk/documents/research/citb%20skills%20and%20training%20in%20the%20construction%20industry\\_2016%20final%20report.pdf](http://www.citb.co.uk/documents/research/citb%20skills%20and%20training%20in%20the%20construction%20industry_2016%20final%20report.pdf); Federation of Master Builders (FMB), *State of Trade Survey Q4 2016* (London: FMB, 2017), [www.fmb.org.uk/media/32421/state-of-trade-q4\\_2016\\_digi.pdf](http://www.fmb.org.uk/media/32421/state-of-trade-q4_2016_digi.pdf); and RICS, 'Q4 2016: RICS UK Construction Market Survey', February 2017, [www.rics.org/Global/RICS\\_UK\\_Construction\\_Market\\_Survey\\_Q4\\_2016\\_economics.pdf](http://www.rics.org/Global/RICS_UK_Construction_Market_Survey_Q4_2016_economics.pdf).

47 The Chartered Institute of Building (CIOB), *CIOB Perspectives: An Analysis on Migration in the Construction Sector* (Bracknell: CIOB, 2015).

48 Mark Farmer, *The Farmer Review of the UK Construction Labour Model* (London: Construction Leadership Council, 2016), [www.cast-consultancy.com/wp-content/uploads/2016/10/Farmer-Review-1.pdf](http://www.cast-consultancy.com/wp-content/uploads/2016/10/Farmer-Review-1.pdf).

49 MPI/Fragomen focus group with representatives from construction, retail, higher education, recruitment and research sectors, London, 7 March 2017.

50 Ibid.

demand for projects.<sup>51</sup> Employers also report challenges hiring people locally to work on large-scale construction projects, particularly when this requires long-distance travel.<sup>52</sup>

Given the sector's reliance on migrant labour, particularly in London, any curbs on EU migration could, in the short term, exacerbate labour and skills shortages in this sector. Our analysis shows that 30 per cent of EU workers in construction are recent arrivals (came in 2012 or later) and are thus unable to qualify for permanent residence under current rules. The uncertainty around Brexit, both in terms of its implications for recruiting and retaining EU nationals and its broader impact on the economy, may have already led to delays in planned construction projects.<sup>53</sup>

In the medium to longterm, the extent of shortages – and the likely impact of the UK exiting the EU – are far less clear. Employers and industry bodies warn of large-scale labour and skills shortages in the medium to longterm (extrapolating from existing shortages and the share of EU nationals working in construction). For example, Arcadis published a report that models the effects of different Brexit scenarios on the EU construction workforce by 2020; this analysis (focused on workers in the infrastructure and house-building sectors) suggests that extending the points-based system to EU nationals could result in 214,000 fewer EU workers, while applying a sector-based approach could result in 135,000 fewer EU workers.<sup>54</sup> But these projections assume steady demand in a sector that is intricately linked to the well-being of the broader economy; furthermore, they cannot incorporate future investments in training places or innovation (such as off-site production or automation) that could offset some of these shortages.

## Health and social care

### Key findings:

- The health and social care sectors are characterised by rising turnover and vacancy rates coupled with a growing reliance on EU workers (particularly in London).
- A number of health and social care occupations are already on the Shortage Occupation List; but the National Health Service (NHS) estimates that training the domestic workforce to fill some of these skills gaps could take more than a decade.<sup>55</sup> As a result, the NHS and industry bodies warn of short- to medium-term labour and skills shortages if curbs on EU immigration are introduced.<sup>56</sup>

EU (and non-EU) migrants comprise an important part of the UK's health and social care workforce that employs more than 4.1 million people. In 2016, 5 per cent (or 202,800) of health and social care workers were EU nationals, and five per cent (202,400) were non-EU (non-UK) nationals.<sup>57</sup> This share is higher in London, where 11 per cent of the workforce are EU nationals, and 11 per cent are non-EU, non-UK nationals.

51 Paul Chan, Linda Clarke and Andy Dainty, *Staff Shortages and Immigration in Construction*, paper prepared for the MAC, 2 June 2008, [www.researchonline.org.uk/sds/search/download.do;jsessionid=F6CAC7161E955542A68903E113F00F5B?ref=B13277](http://www.researchonline.org.uk/sds/search/download.do;jsessionid=F6CAC7161E955542A68903E113F00F5B?ref=B13277).

52 Rolfe and Hudson-Sharp, *The Impact of Free Movement on the Labour Market*, 30-31; and CIOB, *CIOB Perspectives*, 13.

53 A December 2016 survey of British architects found that 61 per cent said the referendum results had caused projects to be delayed, while 37 per cent reported projects were subsequently cancelled. Experts also have warned of possible delays to high-profile construction projects such as HS2 and the Hinkley Point C nuclear power station project, particularly if recruiting foreign workers becomes more difficult. Comments from representatives of the construction and recruitment industry at MPI/Fragomen focus group meeting, 7 March 2017; Royal Institute of British Architects (RIBA), 'RIBA Member Brexit Survey: summary of key results', February 2017, <https://riba.app.box.com/s/pyehsvzyl45jlbpyglvc3aj764ehho/1/18500271019/132463899811/1>; Balfour Beatty, *Infrastructure 2050: Future Infrastructure Need* (London: Balfour Beatty, 2016), [www.balfourbeatty.com/media/164183/infrastructure-2050.pdf](http://www.balfourbeatty.com/media/164183/infrastructure-2050.pdf); and Adam Vaughan, 'Brexit Will Delay New British Nuclear Power Stations, Warn Experts', *The Guardian*, 27 January 2017, [www.theguardian.com/business/2017/jan/27/uk-exit-eu-atomic-treaty-brexit-auratom-hinkley-point-c](http://www.theguardian.com/business/2017/jan/27/uk-exit-eu-atomic-treaty-brexit-auratom-hinkley-point-c).

54 Arcadis, 'Hard Brexit to See British Construction Miss Out on 215,000 Workers, Warns Arcadis' (press release, 30 November 2016), [www.arcadis.com/en/united-kingdom/news/latest-news/2016/11/hard-brexit-to-see-british-construction-miss-out-on-215000-workers/](http://www.arcadis.com/en/united-kingdom/news/latest-news/2016/11/hard-brexit-to-see-british-construction-miss-out-on-215000-workers/).

55 NHS Confederation, 'Written evidence submitted by NHS Confederation (BRE0050)', House of Commons Health Committee, Brexit and health and social care inquiry, 22 November 2016, <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/health-committee-brexit-and-health-and-social-care/written/42232.html>.

56 See NHS Confederation submission; House of Lords European Union Committee, *Brexit: UK-EU movement of people*, 14th Report of Session 2016–17, 6 March 2017, [www.publications.parliament.uk/pa/ld201617/ldselect/lducom/121/121.pdf](http://www.publications.parliament.uk/pa/ld201617/ldselect/lducom/121/121.pdf).

57 EU nationals comprise 5 per cent of the UK workforce in both healthcare (human health) and social care (residential care and social work) in the LFS data.

Vacancies and turnover rates have risen across the health and social care workforce in recent years. In the healthcare sector between 2012 and 2015, there was a 50 per cent increase in nursing vacancies (from 12,513 to 18,714) and a 60 per cent increase in doctor vacancies (from 2,907 to 4,669).<sup>58</sup> A number of healthcare occupations are on the SOL, including all nurses and an array of specialist consultants and medical staff.<sup>59</sup> Meanwhile, Skills for Care's National Minimum Data Set for Social Care reveals rising turnover and vacancy rates in the adult social care sector: turnover rose from 23 per cent in 2012/13 to 27 per cent in 2015/16, while vacancy rates rose from 5 per cent to 7 per cent in the same period.<sup>60</sup> The social care sector has relied heavily on EEA migrants to fill these gaps: about 80 per cent of new caregiver recruits came from the EEA between 2010 and 2014 (many from Poland and Romania), and about 90 per cent of EEA migrants currently working in the UK are not British citizens, particularly those working in professional social care and direct care roles.<sup>61</sup>

Experts point to a number of factors driving labour and skills shortages within the health and social care sectors, including a lack of training places to train the domestic workforce, poor workforce planning, low retention rates, an increased workload (reflecting an ageing population, as well as other factors such as revisions to safe staffing levels) and curbs on non-EEA immigration (such as raising the minimum salary threshold and English language requirements).<sup>62</sup> Employers have sought to fill these gaps by relying on temporary workers and recruiting from overseas, with more than two-thirds of NHS trusts and health boards in England, Northern Ireland and Wales reportedly looking to recruit from overseas.<sup>63</sup>

Estimates of shortages in this sector tend to focus on a rise in demand – such as the projected ageing population and extrapolating the likely demand on health services – though some studies have tried to estimate future shortages by looking at how many people are leaving the workforce. For example, Independent Age and the International Longevity Centre sought to model future requirements for social care workers through projected ageing population estimates (assuming the same ratio of care workers to patients over time), different retention rates within the workforce and different annual net migration scenarios; this produced estimates ranging from 349,000 to 1.12 million additional workers needed by 2037.<sup>64</sup> What is clear is that the health and social care sectors will likely continue to rely on EU and non-EU migrants to meet short-term skills and labour shortages; in its testimonies to both Houses of Parliament, the NHS noted this reliance, stating that while shortages can emerge in two or three years, training the domestic workforce to fill these gaps can take up to 15 years.<sup>65</sup>

58 This is based on a BBC Freedom of Information Act request, reported in Dominic Hughes and Vanessa Clarke, 'Thousands of NHS nursing and doctor posts lie vacant', BBC News, 29 February 2016, [www.bbc.com/news/health-35667939](http://www.bbc.com/news/health-35667939).

59 Home Office, 'Immigration Rules Appendix K: shortage occupation list', last updated 3 January 2017, [www.gov.uk/guidance/immigration-rules/immigration-rules-appendix-k-shortage-occupation-list](http://www.gov.uk/guidance/immigration-rules/immigration-rules-appendix-k-shortage-occupation-list).

60 Skills for Care provides a breakdown of vacancy rates by sector: care workers (5.6 per cent in 2012/13 to 8.3 per cent in 2015/16), senior care workers (2.5 per cent to 3.5 per cent), social workers (7.1 per cent to 12.6 per cent), support and outreach (4.8 per cent to 5.4 per cent), occupational therapist (4.1 per cent to 8.2 per cent) and registered nurses (3.9 per cent to 9.2 per cent). Its data also show variation in turnover rates by role: while turnover rates for senior care workers and care workers rose from 13.3 per cent to 16.2 per cent and 27.2 per cent to 33.5 per cent (respectively) between 2012/13 and 2015/16, turnover rates for support and outreach roles spiked at 22.7 per cent in 2013/14 before falling to 20.8 per cent in 2015/16. See Sarah Davidson and Gary Polzin, *The State of the Adult Social Care Sector and Workforce in England, September 2016* (Leeds: Skills for Care, 2016), [www.nmds-sc-online.org.uk/Get.aspx?id=999138](http://www.nmds-sc-online.org.uk/Get.aspx?id=999138).

61 Ibid.

62 MAC, *Partial Review of the Shortage Occupation List: Review of nursing* (London: Home Office, 2016), [www.gov.uk/government/publications/migration-advisory-committee-mac-partial-review-shortage-occupation-list-and-nursing](http://www.gov.uk/government/publications/migration-advisory-committee-mac-partial-review-shortage-occupation-list-and-nursing); Rachel Marangozov, Matthew Williams and James Buchan, *The Labour Market for Nurses in the UK and its Relationship to the Demand for, and Supply of, International Nurses in the NHS* (Brighton: Institute for Employment Studies 2016), [www.employment-studies.co.uk/resource/labour-market-nurses-uk-and-its-relationship-demand-and-supply-international-nurses-nhs](http://www.employment-studies.co.uk/resource/labour-market-nurses-uk-and-its-relationship-demand-and-supply-international-nurses-nhs); NHS Improvement, *Evidence from NHS Improvement on Clinical Staff Shortages: A workforce analysis* (London: NHS Improvement, 2016), [www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/500288/Clinical\\_workforce\\_report.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/500288/Clinical_workforce_report.pdf); and Matthew Mckew, 'Exclusive: EU nurse figures in decline before Brexit vote', *Primary Health Care*, 9 March 2017, <https://rcni.com/primary-health-care/newsroom/news/exclusive-eu-nurse-figures-decline-brexit-vote-79566>.

63 Hughes and Clarke, 'Thousands of NHS nursing and doctor posts lie vacant'.

64 Independent Age and International Longevity Centre-UK, *Brexit and the Future of Migrants in the Social Care Workforce* (London: Independent Age, 2016), [www.independentage.org/sites/default/files/2016-09/IA-Brexit-Migration-report.pdf](http://www.independentage.org/sites/default/files/2016-09/IA-Brexit-Migration-report.pdf).

65 NHS Confederation, 'Lords Debate on the Implications of the EU referendum Result on Ensuring Safe Staffing Levels in the NHS and Social Care Services: Briefing for Peers', 19 July 2016, [www.nhsconfed.org/~media/Confederation/Files/public%20access/Lords\\_debate\\_staffing\\_levels\\_NHS\\_post\\_Brexit\\_July\\_2016\\_Final.pdf](http://www.nhsconfed.org/~media/Confederation/Files/public%20access/Lords_debate_staffing_levels_NHS_post_Brexit_July_2016_Final.pdf); and NHS Confederation, 'Written evidence submitted by NHS Confederation (BRE0050)'.  


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## Hospitality

### Key findings:

- Hospitality has seen high demand for migrant labour, particularly at the low-skilled end, but also for skills which are in short supply.<sup>66</sup>
- The sector is the second-largest employer of EU nationals after the domestic work sector, with EU nationals comprising 14 per cent of the workforce across the UK.
- Research and employer surveys suggest that the hospitality sector's reliance on migrants (especially from Eastern Europe) stems from the industry's seasonal fluctuations and temporary contracts, which make hospitality jobs less appealing to locals, especially as fewer young people take part-time work.<sup>67</sup>

EU nationals comprise nearly 14 per cent<sup>68</sup> of the hospitality workforce, double the overall share of EU nationals in the UK workforce (7 per cent). During 2016, about 234,800<sup>69</sup> EU nationals were estimated to be employed in accommodation and food services in the UK: 73,600 working in accommodation and 161,200 in food and beverage services. The number of EU nationals working in hospitality has risen rapidly, rising by 71 per cent between 2011 and 2016.

Prior to last year's referendum, the hospitality industry was already reporting difficulties filling labour and skills gaps, and curbs on EU migration are likely to exacerbate these challenges, at least in the short term. A 2015 report by the UK Commission for Employment and Skills projected that the industry would need to recruit 1.3 million people between 2014 and 2024, but documented how employers were reporting skills and labour shortages.<sup>70</sup>

These existing recruitment difficulties stem in part from structural factors such as the limited appeal of part-time or seasonal work for UK nationals (with fewer young people taking part-time jobs), but these may be intensified after Brexit. While the weaker pound made the UK a relatively cheaper destination for foreign visitors wanting to shop and visit attractions,<sup>71</sup> Brexit poses several risks to the hospitality sector. The status of many of the EU nationals employed in this sector remains uncertain, with only half meeting the five-year residence requirement for permanent residence. And the prospects for future recruitment remain unclear, as most jobs in the sector would not qualify under the current points-based system thresholds for skilled work, and there is limited scope for filling these gaps with unemployed or inactive UK nationals (at least in the short to medium term).<sup>72</sup>

66 Rolfe and Hudson-Sharp, *The Impact of Free Movement on the Labour Market*

67 Ibid.

68 Approximately 80 per cent of employees in the accommodation and food services sector are UK nationals and another 6 per cent are other nationals. Authors' tabulation of ONS LFS 2016 data.

69 ONS, Labour Force Survey, January–December 2016 data.

70 For example, 22 per cent of businesses in the hotel and restaurant sector reported skill shortages – 4 percentage points higher than the UK average across sectors. See People 1st, *Migrant Workers in the Hospitality and Tourism Sector and the Potential Impact of Labour Restrictions* (London: People 1st, 2016), [www.people1st.co.uk/getattachment/Research-Insight/Latest-insights/Migration-labour-restrictions/Migrant-workers-in-the-hospitality-and-tourism-sector-and-the-potential-impact-of-labour-restrictions.pdf?lang=en-GB](http://www.people1st.co.uk/getattachment/Research-Insight/Latest-insights/Migration-labour-restrictions/Migrant-workers-in-the-hospitality-and-tourism-sector-and-the-potential-impact-of-labour-restrictions.pdf?lang=en-GB).

71 Rob Davies, "Brexit Tourists" Exploit Weak Pound to Boost UK High Street Sales', *The Guardian*, 12 January 2017, [www.theguardian.com/business/2017/jan/12/brexit-tourists-exploit-weak-pound-to-boost-uk-high-street-sales](http://www.theguardian.com/business/2017/jan/12/brexit-tourists-exploit-weak-pound-to-boost-uk-high-street-sales).

72 Carlos Vargas-Silva, *Potential Implications of Admission Criteria for EU Nationals Coming to the UK* (Oxford: Migration Observatory, 2016), [www.migrationobservatory.ox.ac.uk/resources/reports/potential-implications-of-admission-criteria-for-eu-nationals-coming-to-the-uk/](http://www.migrationobservatory.ox.ac.uk/resources/reports/potential-implications-of-admission-criteria-for-eu-nationals-coming-to-the-uk/); and KPMG, *Labour migration in the hospitality sector* (London: KPMG, 2017), <http://dip9shwwohtcn.cloudfront.net/wordpress/wp-content/uploads/2017/03/BHA-KPMG-Labour-migration-in-the-hospitality-sector-report.pdf>.

## Retail and logistics

### Key findings:

- The combined retail and logistics sectors are highly reliant on trade with Europe, so the impact of Brexit will extend far beyond its impact on labour supply.<sup>73</sup>
- EU nationals comprise about 7 per cent (285,300 people) of the wholesale and retail workforce, but are concentrated in less-skilled roles, such as sales and customer service, and elementary occupations.
- While the sector has opportunities for considerable innovation and digitisation, these may be constrained by narrow profit margins and dependence on complex international supply chains.

Approximately 285,300<sup>74</sup> EU nationals were estimated to be employed in the wholesale and retail sector in the UK in 2016 (or 7 per cent of the sector's workforce). Of those, 174,000 were engaged in retail activities. The retail sector generates 11 per cent of UK economic output and is responsible for 4.5 million jobs in shops, e-commerce and physical distribution.<sup>75</sup> It offers a wide range of positions from senior management to distribution and customer services. But most EU nationals work in jobs with limited skill requirements; this includes sales and customer service roles (29 per cent) and elementary occupations (also 29 per cent), such as distribution and warehousing. An estimated one-third of EU workers in the retail/wholesale sector arrived in the UK after 2011, and thus would not meet the five-year residence requirement for permanent residence.

Any post-Brexit restrictions on hiring EU nationals will be felt across the UK. In the vast majority of UK regions, retail is among the top three sectors hiring EU nationals. But how employers might respond to a reduced labour supply remains to be seen. In areas such as London, where there is a high demand for unskilled manual vacancies and posts in warehouses, employers may struggle to fill these jobs. Employers may face the choice between increasing wages in the low-paid segments of the industry and making career pathways more robust and appealing, hiring more part-time workers (such as young people or people caring for family members), or investing further in automation. The sector is also dependent on what happens to other areas, such as food and drink manufacturing, where the supply of flexible and high-performing EU labour has helped keep food prices down.<sup>76</sup>

Retail is a sector that has already seen considerable fluctuation in its skill structure and use of automation. The last few years (2008–14) saw a decline in retail employment and an increase in the incidence of low-wage positions,<sup>77</sup> which was partly driven by the lower retail prices stemming from the 2007–09 economic crisis and the gradual shift towards e-commerce and wider technological change in the economy.<sup>78</sup> The growth of online retail – if it continues – could create additional demand for transport services, warehousing, retailing and logistics.<sup>79</sup> Similarly, it may stimulate growth in higher-skilled occupations such as programming and in middle-skilled occupations such as supervision and operation of new equipment. But in the short to medium term, a focus group participant suggested that narrow profit margins may curb employers' investments in automation or other technological innovations in the retail sector.<sup>80</sup>

73 Retail and logistics are also likely to face significant challenges with regard to capital flows, import structures, and taxes such as (VAT) in the post-Brexit era. Centre for Retail Research (CRR), 'UK Retail After Brexit', 13 July 2016, <http://www.retailresearch.org/brexit.php>.

74 ONS, Labour Force Survey, January–December 2016 data.

75 CRR, 'UK Retail After Brexit'.

76 Food and Drink Federation: Food and Drink Manufacturing EU Workforce Report – December 29, 2016 (unpublished).

77 British Retail Consortium (BRC), *Retail 2020: Fewer But Better Jobs* (London: BRC, 2016), [http://brc.org.uk/media/54304/retail\\_2020\\_-\\_final.pdf](http://brc.org.uk/media/54304/retail_2020_-_final.pdf).

78 Ibid.

79 Rob Wilson et al., *Working Futures 2014-2024* (London: UK Commission for Employment and Skills, 2016), 46, [www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/513801/Working\\_Futures\\_final\\_evidence\\_report.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/513801/Working_Futures_final_evidence_report.pdf).

80 Comments by representative of the retail sector, MPI/Fragomen focus group meeting, 7 March 2017.

## Higher education

### Key findings:

- EU nationals comprised nearly 17 per cent of academic staff and 6 per cent of non-academic staff in the higher education (HE) sector in 2015–16.
- The UK's exit from the European Union could imperil research funding and makes the continued supply of academics, researchers and students – in part tied to EU membership – somewhat uncertain.
- As other countries (such as Ireland and Germany) are likely to step up their efforts to attract EU talent, the sector has resolved to put continuous pressure on the UK government for access to people (staff and students); access to research opportunities (collaboration, networks and funding); opportunities for UK students and universities; and transferability of UK degrees.

Like the financial and tech sectors, higher education is a highly international sector and thrives in an environment that promotes collaboration, flexibility and networking, which constitute the core of its competitiveness.<sup>81</sup> UK universities are highly renowned for the quality of their teaching and research, hosting the second-largest number of international students in the world (after the United States), and contributing 3 per cent of the UK's GDP.<sup>82</sup>

EU workers comprise close to 17 per cent of the UK's academic staff (33,735) and 6 per cent of non-academic staff (12,490) employed in the HE system in 2015/16, a significant step up over the 7 per cent share across the entire UK workforce. Russell Group universities – a group of 24 research-intensive UK universities – rely even more on international (EU/non-EU) staff, who account for 25 per cent of their overall workforce and 37 per cent of their academic staff.<sup>83</sup> International staff are concentrated in certain fields, such as science and maths, and can help fill critical shortages in emerging fields such as computer biology. Focus group participants emphasised how international master's and PhD students form an important part of the workforce, and called for more attention to be paid to supporting research roles in universities instead of just the high-value academics. As a focus group participant put it, *'It's easy to explain that for a long-term position you need to be able to recruit from across the world, but much harder to explain why people need to move for three months or six months.'*<sup>84</sup> Therefore, Brexit represents a significant challenge for a sector that wishes to retain its unrestricted access to people who can not only lead and undertake but also support everyday, behind-the-scenes activities that are necessary for research and innovation.<sup>85</sup>

Brexit may also impact the number of EU nationals who choose to study in the UK or go on to work in the higher education sector. In 2015/16, around 127,400 EU students made up close to 6 per cent of the total

81 Research shows that most of the highly cited research articles are co-authored internationally, while grant proposals written with collaborators from other countries are more likely to be funded. House of Commons Education Committee, 'Written Evidence: The Impact of Exiting the European Union on Higher Education', HC 483, 25 January 2017, <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/education-committee/the-impact-of-exiting-the-european-union-on-higher-education/oral/46199.html>.

82 Universities UK estimates that higher education (HE) provides over 750,000 jobs and generates about £73 billion in annual output. See Universities UK, 'What Should be the Government's Priorities for Exit Negotiations and Policy Development to Maximise the Contribution of British Universities to a Successful and Global UK?', February 2017, <http://www.universitiesuk.ac.uk/policy-and-analysis/reports/Documents/2017/government-brexit-priorities-universities.pdf>.

83 Russell Group, 'Russell Group Evidence to the Home Affairs Select Committee Immigration Inquiry' January 2017, <http://russellgroup.ac.uk/media/5463/home-affairs-select-committee-response-on-immigration-inquiry.pdf>.

84 Comments by representative of the science/research sector, MPI/Fragomen focus group meeting, 7 March 2017.

85 Campaign for Science and Engineering (CaSE), 'An Immigration System that Supports Research and Innovation', accessed 1 March 2017, [www.sciencecampaign.org.uk/our-work/education-skills/immigration/immigration-principles.html](http://www.sciencecampaign.org.uk/our-work/education-skills/immigration/immigration-principles.html).

(undergraduate and postgraduate) student body,<sup>86</sup> generating an estimated £3.7 billion for the sector.<sup>87</sup> In testimonies to different parliamentary inquiries about the effects of Brexit, higher education leaders have warned that Brexit may deter EU nationals from coming to study or work in the UK.<sup>88</sup> The lack of clarity on the future status of EU researchers and students (and their families) has reportedly already prompted some to rethink their academic and educational careers, and start looking for jobs and schooling elsewhere. A more long-term concern is a decline in the appeal of the UK as an academic and learning environment.<sup>89</sup>

The broader research and innovation environment also depends on continuous and dedicated funding.<sup>90</sup> The UK is one of the largest recipients of EU research funding,<sup>91</sup> bringing benefits from international collaboration to reduced regulatory barriers. Ground-breaking innovation requires a critical mass of research activity, people and funding. While funding holes could be compensated by the UK government and private sector, in practice it takes significant resources, time and commitment to expand domestic research and teaching capacity, build the infrastructure and create vital funding streams.

Meanwhile other countries may become a more attractive destination. Ireland in particular may be well poised to take advantage of disgruntled EU academics and students, building on two strengths (shared with the UK): English language instruction and a meritocratic academic system.<sup>92</sup> However, many German and Scandinavian institutions have established English-language research and postgraduate study – making them another logical alternative.<sup>93</sup> Countries outside of the EU, such as Canada, Australia and the United States (historically the most desirable destinations for the highly skilled), and China, Singapore and the Gulf region (the newer destinations) are also likely to take advantage of post-Brexit uncertainty.

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86 Non-EU students vastly outnumber those from the EU. While Germany (13,400) is the top origin country of EU students, it ranks seventh among all non-UK students after China (91,000), Malaysia, the United States, India, Hong Kong and Nigeria. Ibid.

87 Some estimates suggest that of the £10.7 billion higher education export earnings contributed to the UK economy, EU students accounted for an estimated £3.7 billion. These estimates are based on calculations of tuition fees, off-campus expenditure on living costs, etc. House of Commons Education Committee, 'Written Evidence: The Impact of Exiting the European Union on Higher Education', HC 483; and Sue Hubble, 'The Impact of Leaving the EU on Higher Education' (briefing paper 7834, House of Commons Library, 13 December 2016), <http://researchbriefings.files.parliament.uk/documents/CBP-7834/CBP-7834.pdf>.

88 House of Commons Education Committee, 'Written Evidence: The Impact of Exiting the European Union on Higher Education', HC 483; and House of Commons, Education Committee, 'Oral Evidence: The Impact of Exiting the European Union on Higher Education', HC 683, 11 January 2017, <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/education-committee/the-impact-of-exiting-the-european-union-on-higher-education/oral/45114.html>

89 Hubble, 'The Impact of Leaving the EU on Higher Education'.

90 House of Commons Education Committee, The Impact of Exiting the European Union on Higher Education, HC 483.

91 The UK's contribution to EU research and development was €5.4 billion over the period 2007–13. During this time, the UK received €8.8 billion in direct EU funding for research, development and innovation activities.

92 House of Commons Education Committee, The Impact of Exiting the European Union on Higher Education, HC 683.

93 House of Commons Education Committee, 'Oral Evidence: The Impact of Exiting the European Union on Higher Education', HC 683.

## Digital technology ('Tech')

### Key findings:

- About one in five London tech workers are EU nationals (compared with about 6 per cent of the UK's digital-sector workforce as a whole).
- The UK's tech industry is highly valuable and high-growth, with the digital sector creating jobs twice as fast as the non-digital sector.<sup>94</sup> Over the past few years, the tech sector grew at twice the rate of non-digital tech sectors (a growth rate of 22 per cent between 2010 and 2015, while the number of businesses grew by 28 per cent).<sup>95</sup>
- With considerable interdependence on other sectors (for example financial services and higher education), high reliance on freelance and flexible labour, and global connectivity, Brexit is raising a number of potential challenges.

It is difficult to estimate the true size of the tech industry, and it depends in part on definition because digital technologies have now permeated all sectors of the economy.<sup>96</sup> The tech industry itself represents around 3 million jobs in 2017.<sup>97</sup> The tech industry is also highly valuable. It was estimated that the gross value added (GVA) per person working in the tech industry in 2013 was £91,800, compared with £51,300 for the average UK worker.<sup>98</sup> From 2009 to 2014, the digital-producing sector grew by 21 per cent (compared with 3.3 per cent GVA for the economy as a whole).<sup>99</sup>

Because the sector has no clear edges, it is difficult to estimate the proportion of EU nationals. A recent report estimates that 18 per cent of workers across digital sectors in the UK are foreign born, a third of whom are from the EU.<sup>100</sup> According to industry reports and our own analysis, the dependence of London firms on EU workers is much higher. A conservative estimate (combining IT and telecommunications professionals, and IT technology technicians) suggests one in five London tech workers are EU nationals; a Tech London Advocates report puts the figure at one in three (see Box 2 for a more detailed analysis of London's tech sector).<sup>101</sup> The reliance on the EU pipeline is also not confined to 'tech' workers – but also the freelance staff employed through the 'gig economy' and digital platforms. For instance, Deliveroo (which became one of Europe's top unicorns by raising £213 million in its latest funding round) relies heavily on self-employed delivery riders – many of whom are EU nationals.

94 Tech City UK, 'Tech Nation 2017: At the Forefront of Global Digital Innovation', accessed 3 April 2017, <http://technation.techcityuk.com/>.

95 Ibid.

96 As a recent report put it, 'It's an increasingly futile task to separate the digital economy from the non-digital economy'. See Frontier Economics, *The UK Digital Sectors After Brexit* (London: Tech UK, 2017), [www.techuk.org/insights/news/item/10086-the-uk-digital-sectors-after-brexite](http://www.techuk.org/insights/news/item/10086-the-uk-digital-sectors-after-brexite). A recent government report defines tech as 'IT software and services' (including telecoms, computer games, IT and telecoms manufacturing) and 'digital' as software development, e-commerce and telecoms through to advertising and marketing and financial services. See ECORYS UK, *Digital Skills for the UK Economy* (London: Department for Business Innovation and Skills and Department for Culture, Media and Sport, 2016), [www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/492889/DCMSDigitalSkillsReportJan2016.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/492889/DCMSDigitalSkillsReportJan2016.pdf).

97 Frontier Economics, *The UK Digital Sectors After Brexit*.

98 Tech Partnership, 'Tech Insights: The Digital Economy', March 2015, [www.thetechpartnership.com/globalassets/pdfs/research-2015/techinsights\\_report\\_mar15.pdf](http://www.thetechpartnership.com/globalassets/pdfs/research-2015/techinsights_report_mar15.pdf).

99 Frontier Economics, *The UK Digital Sectors After Brexit*.

100 Ibid.

101 Billy Bambrough, 'London Tech Heavyweights Call for European Talent to Remain in the Capital Following Brexit Vote', City A.M. 30 June 2016, [www.cityam.com/244568/london-tech-heavyweights-call-european-talent-remain](http://www.cityam.com/244568/london-tech-heavyweights-call-european-talent-remain).

## Box 2: Tech City London and Brexit

London is often described as the tech capital of Europe. According to Nesta's Digital Cities analysis, compared with other European cities, London offers a more favourable environment for start-ups and scale-ups across a number of key indicators, such as access to capital, entrepreneurial culture, market and skills (coming top or second only to nearby UK cities on four out of ten indicators), and came top of the index in both 2015 and 2016 overall.<sup>102</sup> Almost half of UK tech companies are based in London and the South East (compared with just a third of all UK companies).<sup>103</sup> Nearly 40 per cent of Europe's unicorns (high-growth tech companies) are based in London.

Since 2010, the government has sought to promote the development of 'Tech City', the area spanning the boroughs of Islington, Hackney, the City and Tower Hamlets, with a portfolio of policies from business support to co-workspaces.<sup>104</sup> But most of the growth of the tech cluster has been organic. Although it might seem counter-intuitive for a sector built around remote connections, tech firms often prefer face-to-face interaction both for negotiating funding and meeting their skills needs, often through informal collaboration and freelance work. This depends on access to finance and business support, 'soft infrastructure' – such as cafes, bars and universities – and an elusive cultural and creative mix, generally only found in big cities.<sup>105</sup> Like Silicon Alley in New York, London's tech cluster emerged out of existing creative, design and media hubs.

The high volume of start-ups makes London's tech cluster especially vulnerable to delays and blockages in the human capital pipeline.<sup>106</sup> And since the tech industry operates in a global market, London's connectivity and openness to trade and business are vital ingredients of its competitiveness.

How the tech community will be affected by Brexit is an open question. Shortages in the sector are already common – and predicted to grow.<sup>107</sup> While the UK government has sought to make London open to tech entrepreneurs, for instance by reserving a quota of 200 exceptional ability visas for digital leaders for allocation by Tech City,<sup>108</sup> the UK visa system is too rigid and slow for start-ups that rely on giving equity instead of traditional salaries and have to move quickly in response to a funding round.<sup>109</sup>

The symbiosis between the financial and tech sectors could also make them vulnerable. The tech industry in the UK draws on a rich landscape of venture capital firms, angel investors, accelerators and alternative finance, such as peer-to-peer lending.<sup>110</sup> Fintech (described in the financial services case study) is particularly young, and faces a double risk because of the likely loss of 'passporting' rights in financial services, which enable firms to do business across Europe. Losing access to the European Investment Fund, a risk-finance provider for SMEs designed to promote innovation, research and development, and entrepreneurship, could reduce the amount of capital in the field.<sup>111</sup>

102 Nesta, 'Digital City Index', accessed 1 March 2017, <https://digitalcityindex.eu/city/16>.

103 Tech Partnership, 'Tech Insights'.

104 Max Nathan, *The Human Capital Needs of Tech-City, London* (Washington, DC: MPI, 2014), [www.migrationpolicy.org/sites/default/files/publications/TCM\\_CitiesLondon.pdf](http://www.migrationpolicy.org/sites/default/files/publications/TCM_CitiesLondon.pdf).

105 Ibid.

106 These creative clusters were also more likely to vote Remain, and whether an area was 'creative' was highly correlated with voting in the referendum. According to analysis by Nesta, 70 per cent of areas with a high creative clustering score voted to Remain, while 70 per cent of those with a lower creative clustering score voted to Leave. And even after controlling for factors in a regression analysis, being in the 13 per cent of creative clustering meant a boost in share of Remain vote of almost 3 per cent. See Juan Mateos-Garcia, 'Should I Stay or Should I...? UK creative clusters and the EU referendum', Nesta blog, 5 August 2016, [www.nesta.org.uk/blog/uk-creative-clusters-and-eu-referendum](http://www.nesta.org.uk/blog/uk-creative-clusters-and-eu-referendum).

107 A joint Department for Business, Innovation and Skills and Department for Culture, Media and Sport report from January 2016 found 'a shortage in suitable digital skills for digital jobs persists in the UK labour market' and attributed a shortage in digital skills to a fifth of all vacancies. See ECORYS UK, *Digital Skills for the UK Economy*.

108 Between April 2014 and September 2016, Tech City UK received 257 applications and approved three-quarters (181) of these. See Tech Nation, 'Tech Nation Visa Scheme in Numbers', accessed 1 March 2017, [www.techcityuk.com/blog/2016/10/tech-nation-visa-numbers/](http://www.techcityuk.com/blog/2016/10/tech-nation-visa-numbers/).

109 See evidence from Daniel Morgan, in House of Lords European Union Committee, *Brexit: financial services*, Oral and written evidence, 2016, <https://www.parliament.uk/documents/lords-committees/eu-financial-affairs-subcommittee/Brexit-financial-services/Brexit-financial-services-evidence-volume.pdf>.

110 Oliver Patel, 'What will Brexit mean for London's tech industry and digital entrepreneurs', Open Democracy, 16 December 2016, [www.opendemocracy.net/brexitdivisions/oliver-patel/what-will-brexit-mean-for-london-s-tech-industry-and-digital-entreprene](http://www.opendemocracy.net/brexitdivisions/oliver-patel/what-will-brexit-mean-for-london-s-tech-industry-and-digital-entreprene).

111 The fund committed €2.3 billion to UK funds, supported 144 UK private equity funds and indirectly supported 27,700 companies between 2011 and 2015. See European Investment Fund, 'EIF in United Kingdom', accessed 1 March 2017, [www.eif.org/news\\_centre/publications/country-fact-sheets/EIF\\_Fact-sheet\\_UK.pdf](http://www.eif.org/news_centre/publications/country-fact-sheets/EIF_Fact-sheet_UK.pdf). The impacts may vary widely, especially given the greater dependence of accelerators on EU funding in the North of England. See Romilly Denny, 'Life after Brexit: From the Coadec Community', Coadec blog, 28 August 2016, [www.coadec.com/blog/life-after-brexit-from-the-coadec-community/](http://www.coadec.com/blog/life-after-brexit-from-the-coadec-community/).

## Financial services

### Key findings:

- The financial and insurance services sector accounts for more than 3 per cent of the UK workforce, but generates a much larger share of economic activity.<sup>112</sup> EU nationals comprise about 6 per cent of this workforce (about 80,000 people), but this share rises to 16 per cent in London, where much of the sector is based.
- The UK's flexible labour market, plus its supply of skilled EU nationals, created a highly favourable context for the growth of the financial services industry.<sup>113</sup> These human capital elements combine with a broad investor base, innovative large and small companies, clear laws and regulations, and experience.<sup>114</sup>
- London's continued attractiveness as a financial centre depends on a number of complex factors, such as its language and cosmopolitanism, labour market flexibility and the total package for individuals of high net worth (from access to EU citizenship through investor visas, to high-quality 'complementarity' with other professional services and proximity to prestigious universities and private schools). London faces competition with Amsterdam, Frankfurt and Paris; however, its specific combination of regulatory landscape, funding, research and advice may be difficult to replicate.<sup>115</sup>

The financial sector's reliance on EU workers appears less significant than other sectors – at least in terms of scale. Only 6 per cent of its workforce comes from the EU (and 5 per cent from the rest of the world).<sup>116</sup> But this is equivalent to almost 80,000 EU workers (over 38,000 EU workers in financial services; and a further 39,000 in insurance and auxiliary services).<sup>117</sup> And there is a much greater proportion in London, with EU migrants representing 16 per cent (or 51,300) of financial and insurance sector workers.

As such, there may be a number of unanticipated knock-on effects of Brexit. The strength of the financial services industry is in many ways connected to everything from associated professional services (for example legal services) to higher education. It has been described as an 'interdependent and interconnected ecosystem comprising a large variety of firms providing world-class services, products and advice'.<sup>118</sup> An industry report puts the number of jobs at risk at anywhere from 3,000 to 35,000, and a potential decline in revenue ranging from £2 billion to £5 billion.<sup>119</sup> It also points out that the knock-on effect to the broader ecosystem could be much larger.

The fintech industry is thought to be especially vulnerable, given its domination by start-ups, sharing many of the challenges outlined in the tech case study above. According to an industry expert, 30 per cent of start-up founders were born overseas.<sup>120</sup> And some press reports following the Brexit vote suggested that one of

112 The financial services industry represents 8 per cent of gross value added (2013 figures), 11 per cent of tax revenue (2015 figures) and provides a trade surplus (£5.8 billion in 2014). See Michael McMahon, 'The Implications of Brexit for the City' in *Brexit Beckons: Thinking ahead by leading economists*, ed. Richard E. Baldwin (London: CEPR Press, 2016), 96.

113 Ibid.

114 TheCityUK, 'Brexit and UK-Based Financial and Related Professional Services', accessed 1 March 2017. [www.thecityuk.com/assets/2017/Reports-PDF/Brexit-and-UK-based-financial-and-related-professional-services.pdf](http://www.thecityuk.com/assets/2017/Reports-PDF/Brexit-and-UK-based-financial-and-related-professional-services.pdf).

115 House of Lords European Union Committee, *Brexit: financial services*, 9th Report of Session 2016–17, 15 December 2016, <https://www.publications.parliament.uk/pa/ld201617/ldselect/lducom/81/81.pdf>.

116 UK LFS Top 10 2 digit SIC07 industries with the highest proportion of EU nationals (UK, ages 16 and over, January–December 2016 data).

117 UK LFS Age 16 and Older Workers, January–December 2016 data: By detailed industry and nationality.

118 Oliver Wyman, *The Impact of the UK's Exit from the EU on the UK-Based Financial Services Sector* (London: Oliver Wyman, 2016), [www.oliverwyman.com/content/dam/oliver-wyman/global/en/2016/oct/Brexit\\_POV.PDF](http://www.oliverwyman.com/content/dam/oliver-wyman/global/en/2016/oct/Brexit_POV.PDF).

119 Ibid.

120 Several fintech companies have testified to parliament on the share of non-UK EU nationals they hire, and their concerns about recruiting and retaining nationals with science, technology, engineering and maths (STEM) skills or financial or entrepreneurial talent, which could compromise the viability of their start-ups. See House of Lords European Union Committee, *Brexit: financial services*.

the industry heavyweights, TransferWise, was considering moving elsewhere.<sup>121</sup> But more recent reports have suggested the industry continues to thrive, and may be relatively insulated from Brexit. A Bloomberg report on Funding Circle, a peer-to-peer lending company, found that in the eight months since the referendum the firm showed a 50 per cent jump in loans and became profitable for the first time.<sup>122</sup>

## Prospects for the post-Brexit labour market: Where might shortages arise?

The analysis in the last section uncovered a reliance on EU labour in a number of key sectors. Periods of tight labour supply can be temporary. Some shortages are cyclical and emerge on a seasonal basis. Others result from spatial mismatch (people are not willing to move to where the jobs are) – which can mean that national calculations about shortages can both under- and overplay the extent to which shortages exist in certain regions. Finally, temporary shortages can arise because the market has not yet had time to adjust (for instance by increasing salaries that lead more people to choose the profession).<sup>123</sup>

There is considerable uncertainty around the exit from the EU and future trade deal with Europe, including the role of EU workers in the labour force. Although there have been reports of large multinationals and banks already relocating or downsizing their London offices, the scale of shrinkage in certain high-value sectors remains to be seen. Options for the UK's future relationship with the EU exist along a spectrum between associate membership (or a 'soft' Brexit) and the imposition of WTO rules if the UK leaves without a deal (or a 'hard' Brexit). Another unknown is what will happen to the EU population in the wake of Brexit.

Any analysis of the effects of Brexit on skills or labour shortages is further clouded by the ongoing social, political, demographic and economic dynamics shaping the future labour market:

- **Demographic change:** The UK's population is getting older, with sub-replacement fertility rates, which will reduce the size of the working population and raise the old-age dependency ratio, lowering fiscal income and placing additional requirements on the welfare system.<sup>124</sup> Since EU migrants are younger, on average, than the UK population, they have helped to lower the old-age dependency ratio, and curbs on EU migration could mitigate this effect.<sup>125</sup>
- **Shifts in the supply of labour:** The supply of labour can shift as people enter or leave the labour force. Policies such as expanding childcare subsidies (undertaken by the UK government last year) or job-related benefits such as parental leave can create more favourable circumstances for people to enter the workforce and thus expand the supply of domestic labour.<sup>126</sup> Further incentives could help to fill some of the gaps left by EU workers if curbs on EU migration are introduced, although some roles will likely remain hard to fill (for example specialist roles, jobs in remote areas or low-paid temporary roles that are less popular with UK nationals).

121 Alex Hern, 'British Tech Firms Eye Relocation after Brexit Vote', *The Guardian*, 24 June 2016, [www.theguardian.com/technology/2016/jun/24/british-tech-firms-eye-relocation-after-brexit-vote](http://www.theguardian.com/technology/2016/jun/24/british-tech-firms-eye-relocation-after-brexit-vote).

122 Edward Robinson, 'Brexit Terrified This CEO. Then Business Jumped 50%', Bloomberg News, 26 February 2016, [www.bloomberg.com/news/features/2017-02-27/brexit-funding-circle](http://www.bloomberg.com/news/features/2017-02-27/brexit-funding-circle).

123 Madeleine Sumption, 'Filling Labor Shortages through Immigration: An Overview of Shortage Lists and their Implications', *Migration Information Source*, 23 February 2011, [www.migrationpolicy.org/article/filling-labour-shortages-through-immigration-overview-shortage-lists-and-their-implications](http://www.migrationpolicy.org/article/filling-labour-shortages-through-immigration-overview-shortage-lists-and-their-implications).

124 House of Commons Library, 'Political Challenges Relating to an Ageing population: Key issues for the 2015 Parliament', May 2015, <https://www.parliament.uk/business/publications/research/key-issues-parliament-2015/social-change/ageing-population/>; and United Nations Department of Economic and Social Affairs, Population Division, 'Total Fertility by Major Area, Region, and Country, 1950-2100 (Children per Woman)', *World Population Prospects: The 2015 Revision*, July 2015, [https://esa.un.org/unpd/wpp/DVD/Files/1\\_Indicators%20\(Standard\)/EXCEL\\_FILES/2\\_Fertility/WPP2015\\_FERT\\_F04\\_TOTAL\\_FERTILITY.XLS](https://esa.un.org/unpd/wpp/DVD/Files/1_Indicators%20(Standard)/EXCEL_FILES/2_Fertility/WPP2015_FERT_F04_TOTAL_FERTILITY.XLS).

125 However, over the very long term, this effect could diminish somewhat, given that the populations of some of the key EU sending countries are projected to age rapidly over the next few decades. By 2080, the old-age dependency ratio of some of the key EU sending countries are projected to outpace the UK (49 per cent), for example Germany (55 per cent), Poland (61 per cent), Romania (51 per cent) and Italy (63 per cent). See Migration Observatory, 'Migrants in the UK: An Overview', 21 February 2017, [www.migrationobservatory.ox.ac.uk/resources/briefings/migrants-in-the-uk-an-overview/](http://www.migrationobservatory.ox.ac.uk/resources/briefings/migrants-in-the-uk-an-overview/); and Eurostat, 'Projected Demographic Balances and Imbalances [proj\_15ndbims]', last updated 24 February 2017.

126 The expansion of childcare subsidies in September 2016 is expected to lead to some parents (particularly mothers) deciding to enter the workforce. See, for example, Mike Brewer, Sarah Cattan, Claire Crawford and Birgitta Rabe, 'Does Free Childcare Help Parents Work?' (IFS briefing paper, London, December 2016), [www.ifs.org.uk/publications/8792](http://www.ifs.org.uk/publications/8792).

- **Planning for future workforce:** Decisions about workforce education and training, including funding, are a key determinant of future workforce needs and shortages. For example, a 2016 review of nursing shortages blamed the lack of nurses on poor workforce planning, including cuts to training places and the decision to move from student bursaries to loans.<sup>127</sup> While industries such as health and social care will likely remain reliant on foreign nationals to fill labour and skills gaps in the short term, much better workforce planning and vocational training – which takes into account both future demand for services and recruitment and retention incentives – could potentially plug these gaps in the medium to long term.
- **Business environment and the economy:** The broader business environment – including changes to the regulatory regime, taxation or employment rights (such as minimum wage increases) and changing economic conditions (such as currency devaluation) – could affect both the hiring practices of employers and the appeal of the UK as a place to work. For example, the post-referendum devaluation of the pound reduced the incentives for EU nationals to seek work in the UK.<sup>128</sup> Other factors – for example if the UK leaves the single market, it will likely lose its passporting rights<sup>129</sup> – may drive some banks and insurance companies to relocate. At the same time, the UK government has hinted at further cuts to corporate tax rates,<sup>130</sup> which could help offset these job losses by attracting other multinationals to establish operations in London and encouraging job creation.
- **Automation:** Another unknown is how the use of robotics or machine learning will affect different sectors. Automating processes can improve productivity (and potentially generate additional employment or higher pay) but may also lead to the phasing out of certain roles (for example administrative or support jobs). Studies suggest that the effects of automation will vary widely by occupation, based on how easily replicable an occupation's tasks are, the extent to which these tasks rely on perception or social intelligence, and the degree of creativity involved.<sup>131</sup> While less creative tasks may appear easier to automate, the degree to which these industries can afford to invest in automation over the next few years, particularly when facing low profit margins, and the potential impact on the workforce, remain unknown.<sup>132</sup>

Taking all these factors into account, it seems likely<sup>133</sup> that three potential sticking points in the post-Brexit labour market could emerge following the agreement of a transitional or final deal:

- **retaining long-term competitiveness** in highly globalised sectors (such as higher education, finance and tech) that rely both on an immigration system that can bring in the best talent, and an environment that is appealing to that talent;
- **mitigating the immediate impacts of large-scale reliance on EU workers** in sectors such as agriculture, manufacturing and construction – especially where these concentrations are especially high (and obscured by headline figures) in particular subsectors and regions;
- **maintaining flexibility** both in sectors that rely on their ability to 'flex' on a seasonal basis (such as agriculture or hospitality) and in sectors where freelancers, self-employment and temporary labour are at the root of their business model (ranging from construction to tech, and to some extent, even higher education).

127 MAC, *Partial Review of the Shortage Occupation List: Review of nursing* (London: Home Office, 2016), 3.

128 See, for example, Gonzalo Viña, Zosia Wasik and Henry Foy, 'Migrants Become More Picky about British jobs', *Financial Times*, 8 July 2016, [www.ft.com/content/fffd7f8c-4456-11e6-b22f-79eb4891c97d](http://www.ft.com/content/fffd7f8c-4456-11e6-b22f-79eb4891c97d).

129 Passporting rights allow UK-registered financial companies to sell their products and services (or establish themselves) throughout the EEA without having to register elsewhere.

130 Adam Bienkov, 'Theresa May "stands ready" to turn Britain into a tax haven after Brexit', *Business Insider*, 16 January 2017, [www.businessinsider.com/theresa-may-stands-ready-to-turn-britain-into-a-tax-haven-after-brexit-2017-1?r=UK&IR=T](http://www.businessinsider.com/theresa-may-stands-ready-to-turn-britain-into-a-tax-haven-after-brexit-2017-1?r=UK&IR=T).

131 Hasan Bakhshi, Carl Benedikt Frey and Michael Osborne, *Creativity vs. Robots: The Creative Economy and the Future of Employment* (London: Nesta, 2015), [www.nesta.org.uk/sites/default/files/creativity\\_vs\\_robots\\_vv.pdf](http://www.nesta.org.uk/sites/default/files/creativity_vs_robots_vv.pdf).

132 Georg Graetz and Guy Michaels, 'Robots at Work' (LSE Centre for Economic Performance Discussion Paper no. 1335, London School of Economics, March 2015), <http://cep.lse.ac.uk/pubs/download/dp1335.pdf>.

133 On 23 March 2017, MPI held an internal 'scenario planning' meeting to rank the likely impact of different Brexit deal scenarios on key sectors, which identified these three areas as key sticking points.

## IV. POLICY OPTIONS

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Policymakers generally face the challenge of designing policies that are flexible and responsive to economic needs. In the context of greater economic uncertainty, as is occurring in the wake of the Brexit vote, it is even more important. Given the risk of businesses relocating and economic slowdown, minimising the damage and maximising the opportunity that Brexit offers will depend on continued access to skills and talent. At the same time, the government faces political pressure to assuage public concerns about the pace and scale of immigration, and to ensure that migrant workers complement – rather than replace – native workers.

As the government begins negotiations to leave the EU and lays the groundwork for a post-Brexit EU migration system, it must balance a number of competing short-, medium, and long-term objectives:

- **Protecting the post-Brexit economy:** In the immediate aftermath of Brexit, the economy will likely retain significant high- and low-skilled labour needs. Maintaining a temporary and flexible flow of workers across the skills spectrum could help ensure continuity and avoid unintended spillover effects, such as reverse agglomeration and stilted economic growth. Policymakers also need to protect 'sunrise' industries that are in the early stages of expansion, such as biotech or fintech.
- **Shaping the future labour force:** Potential automation and digitisation and the impending retirement of baby boomers mean that new jobs will be increasingly high-skilled.<sup>134</sup> An immigration system that works for the long run needs to meet these rising skills needs – while ensuring that overseas workers supplement rather than displace the resident workforce and that those who come through non-economic routes (such as family members and refugees) receive the help they need to achieve their potential.
- **Restoring public trust in the immigration system:** The government faces the challenge of building an immigration system that is seen as having integrity and serving the interests of the British people. As a first step following the referendum result, the then government renewed its commitment to reducing net immigration to the tens of thousands annually, though it acknowledged that this will be a very long-term goal.
- **Agreeing a mutually beneficial trade deal with the EU:** Any comprehensive trade deal that the UK strikes with the EU is likely to include immigration (building on the precedent of past EU trade deals) as a key bargaining chip. This could establish a preferential system for EU nationals, whether across the board or for certain sectors. But doing so will cede some of the UK's independence to set the terms (and scale) of its post-Brexit immigration policy, which was a key driver for Leave proponents, and its ability to meet some of its other goals.
- **Meeting regional needs and variation:** Any new immigration system needs to be flexible enough to accommodate the highly concentrated and variable needs of different regions. Several regions (including London and Scotland) have called for more power over the immigration system; and with a second Scottish referendum on the horizon, greater devolution on immigration policy could be back on the table.

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<sup>134</sup> Institute for the Future, *10 Strategies for a Workable Future: A call-to-action from the Workable Futures Initiative* (Palo Alto, CA: Institute for the Future, 2015), [www.iftf.org/fileadmin/user\\_upload/downloads/wfi/iftf\\_workablefutures\\_10strategies.pdf](https://www.iftf.org/fileadmin/user_upload/downloads/wfi/iftf_workablefutures_10strategies.pdf).

- **Minimising bureaucratic overload:** The civil service is juggling increased caseloads (for example EU nationals applying for settlement), impending legislation (including the Great Repeal Bill, which will transpose EU law into UK law in March 2019), and the new skills required to manage the post-Brexit legislative landscape.<sup>135</sup> Estimates suggest that even regularising the status of existing EU nationals (regardless of what deal is finally agreed) will be highly burdensome,<sup>136</sup> while the cost of policing the system could be extremely high.<sup>137</sup>

Some of these goals will align, but some will conflict. For instance, individual employers have an interest in clarity; one of the main gripes businesses have with the immigration system is how quickly it changes and the difficulty of getting consistent advice.<sup>138</sup> By contrast, many sectors and regions have an interest in a more tailored migration policy.<sup>139</sup>

## THE FUTURE IMMIGRATION SYSTEM: POLICY OPTIONS AND DESIGN CHALLENGES

Brexit offers the chance to make changes that will improve the UK's long-term competitiveness, but this should not be seen as a blank slate. It will be far less costly and disruptive to slot EU migration into the UK's existing architecture than rip up the rulebook and start from scratch.

Nonetheless, there are a number of key decisions and trade-offs that policymakers will have to keep in mind as they design a system. These building blocks include:

- **Selection:** Key issues include how to select among candidates and whether employers or governments play the main role in making this selection. Supply-driven systems bring in migrants with certain attributes that are attractive in the local labour market, while demand-driven systems leave it to employers to decide who is most desirable. Policymakers face a trade-off between reducing costs to employers (especially start-ups and SMEs) and offsetting the costs of the system and creating incentives to hire and/or train local workers (where possible).
- **Flexibility:** Where low-skilled labour needs cannot be met by the local population (for instance because of high local employment rates, the labour needs are seasonal/cyclical, or in sectors, occupations or areas seen as undesirable to the local population), high costs or laborious processes can create incentives to hire illegally.<sup>140</sup> Especially for sectors where speed is of the essence, there may be a trade-off between ensuring that the system is as swift and frictionless as possible, while performing the necessary checks to ensure local workers and labour standards are protected. For sectors (from tech to construction) that rely heavily on self-employment and freelancers, bringing people in through a traditional employment visa is not an option.
- **Implementation:** Governments have to ensure migrants are not taking jobs away from native workers or driving down wages, while not creating blockages in labour supply that could impede economic growth. One question is whether to rely more heavily on employers to 'self-police', for instance by performing right-to-work checks or being responsible for other actors in their supply chains, to reduce government bureaucracy and reduce duplication (that is, checks that businesses already make).

<sup>135</sup> For instance, it has been reported that parliament could have to pass a further seven Brexit bills. See Sophie Jamieson, "'Seven new Brexit bills' must be passed after Article 50 is triggered, leaked Whitehall documents say", *The Telegraph*, 14 March 2017, [www.telegraph.co.uk/news/2017/03/14/seven-new-brexit-bills-must-passed-article-50-triggered-leaked/](http://www.telegraph.co.uk/news/2017/03/14/seven-new-brexit-bills-must-passed-article-50-triggered-leaked/).

<sup>136</sup> For instance, it was reported that the uptick in residency applications has spurred the Home Office to hire 240 extra staff in Liverpool. See Andy Bounds, 'Influx of EU residency applications spurs Home Office hiring spree', *Financial Times*, 23 March 2017, <https://www.ft.com/content/141c8b14-0fd8-11e7-a88c-50ba212dce4d>.

<sup>137</sup> In 2015/16 the net cost to the taxpayer of managing borders immigration was £504 million. We can assume that this cost would rise exponentially if the Home Office would need to police all EU migration too. See Sunder Katwala, Jill Rutter, Steve Ballinger, and Ian Robinson, *Immigration after Brexit: Challenges for economic stakeholders* (London: British Future, 2017) <http://www.britishfuture.org/wp-content/uploads/2017/03/Fragomen.Final-report.pdf>

<sup>138</sup> Discussion in MPI/Fragomen Focus Group meeting, 7 March 2017.

<sup>139</sup> As Madeleine Sumption puts it, the government may face 'a choice between the ability to tailor labour migration policy to respond to nuanced policy goals (for example, by introducing different rules for different sectors or businesses) and creating a simple, transparent system with more uniform rules that can be more easily managed and enforced.' See Sumption, *Labour Immigration after Brexit: Trade-offs and Questions about Policy Design* (Oxford: Migration Observatory, 2017), 2, [www.migrationobservatory.ox.ac.uk/wp-content/uploads/2017/01/Report-Labour-Immigration-Policy-Brexit.pdf](http://www.migrationobservatory.ox.ac.uk/wp-content/uploads/2017/01/Report-Labour-Immigration-Policy-Brexit.pdf).

<sup>140</sup> Madeleine Sumption, *Policies to Curb Unauthorized Employment* (Washington, DC: MPI, 2011), [www.migrationpolicy.org/research/policies-curb-unauthorized-employment](http://www.migrationpolicy.org/research/policies-curb-unauthorized-employment).

## High-skilled migration policy options

Selective migration systems are generally divided into two categories: supply-driven (or 'points-based' systems) that bring people in on the basis of their attributes, and demand-driven (or employer-led systems) that bring people in on the basis of job offers. The UK system combines points-based and employer-led elements, in that it uses a points-based system to rank applicants within the pool of applicants with a job offer for the Tier 2 cap. However, it no longer has the Tier 1 General or Post-Study Work Routes which brought in highly skilled jobseekers without a job offer. (See Appendix II for an overview of the history of Tier 1 and Tier 2.)

The main basic models of high-skilled labour migration are as follows:

- **Points systems** have a number of advantages, from being able to bring in specialist skills (such as top researchers, entrepreneurs or artists) to boosting human capital in the mid to long term (by rewarding characteristics beyond immediate labour shortages).<sup>141</sup> They also tend to be politically popular because they are transparent and rule-based and focus on 'high-value' migration.<sup>142</sup> Moreover, because the right to work is attached to a person rather than a job, allowing the entry of people who meet a certain points threshold is one way to reduce pressures on employers and processing time between someone being offered and being able to take up a job. Increasing overall labour supply can contribute to future growth, innovation and productivity – even if it doesn't meet immediate shortages.
- **Employer-led systems** are associated with better integration outcomes, almost by definition – since applicants move for a particular job. Employers are likely to be better placed than government to judge subtle differences in candidates, such as the prestige of the university they attended, or the relative importance of soft skills to their field. But there is a risk that over-reliance on employers to decide the terms of who comes in can put short-term labour needs ahead of longer-term human capital development, entrenching a short-termist approach to labour market planning. For instance, employers may bring in skills that they need in the immediate future, even if these skills will soon be obsolete, or misuse the system.<sup>143</sup>
- **Hybrid systems** have evolved from the points-based systems that were very popular in the 2000s, with most countries now having more hybrid systems that either weight job offers heavily in the allocation of points (for example Canada) or use points to rank applicants among those who have job offers (for example the UK). This shift away from purely supply-driven routes was partly the result of rising evidence of overqualification, although some evaluations of the UK system suggest that it suffered less from this problem than countries such as Canada.<sup>144</sup>

The notion of an 'Australian-style points system' that was floated during and since the referendum is therefore largely a red herring, since Australia, like the UK, has moved away from a pure points system in recent years. However, it does raise a number of bigger questions about the future design of the skilled migration system: 1) to what extent increased independence from the EU migration system might allow the UK to loosen some of the more onerous requirements (especially since regularly tightening policy, for instance by increasing salary

<sup>141</sup> The New Zealand system, for instance, awards points for experience in future growth occupations.

<sup>142</sup> Demetrios G. Papademetriou and Madeleine Sumption, *Eight Policies to Boost the Economic Contribution of Employment-Based Immigration* (Washington, DC: MPI, 2011), [www.migrationpolicy.org/research/boosting-economic-contribution-employment-based-immigration](http://www.migrationpolicy.org/research/boosting-economic-contribution-employment-based-immigration).

<sup>143</sup> Demetrios G. Papademetriou, Will Somerville and Hiroyuki Tanaka, *Hybrid Immigration-Selection Systems: The Next Generation of Economic Migration Schemes* (Washington, DC: MPI, 2008), [www.migrationpolicy.org/research/hybrid-immigrant-selection-systems-next-generation-economic-migration-schemes](http://www.migrationpolicy.org/research/hybrid-immigrant-selection-systems-next-generation-economic-migration-schemes).

<sup>144</sup> Overqualification among skilled immigrants was pervasive in Canada during the 1990s and 2000s, and was one of the drivers behind the introduction of its Express Entry system. For example, Canada's Longitudinal Survey of Immigrants to Canada (2004–05) found that after four years in Canada two-thirds of Federal Skilled Worker main applicants had jobs that matched their education and training. In the UK, there was a shift away from supply-driven routes (closing the Tier 1 General and the Post-Study Work Route in 2012), after a Home Office review found some skilled workers entering through these routes were unemployed or working in low-skilled jobs. (This review estimated overqualification at 29 per cent, but the reliability of these findings is undermined by the sample size [n=1,184, only including Tier 1 visa holders with dependants] and its reliance on self-reported data of varying quality, with the authors acknowledging job titles were often 'vague' and applicants often did not list employer details.) See Home Office, UK Border Agency, 'Points Based System Tier 1: An Operational Assessment', Occasional Paper 91, October 2010, [www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/115913/occ91.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/115913/occ91.pdf); and Maria Vincenza Desiderio and Kate Hooper, *The Canadian Expression of Interest System: A Model to Manage Skilled Migration to the European Union?* (Brussels: MPI Europe, 2016), 5-6, [www.migrationpolicy.org/research/canadian-expression-interest-system-model-manage-skilled-migration-european-union](http://www.migrationpolicy.org/research/canadian-expression-interest-system-model-manage-skilled-migration-european-union).

requirements for intra-company transfers or reducing lengths of stay, has not had its desired effect on reducing numbers); 2) to what extent the UK should tip the ratio of skilled to less-skilled migration (regardless of what happens with numbers); and 3) whether this may be an opportunity to bring in people for their human capital rather than their particular relationships with an employer.

Given that the UK is facing a need for talented and *flexible* labour (as outlined in the data analysis and case studies), there may be a case for allowing untrammelled labour market access to people who meet a certain points threshold and/or hold some kind of jobseeker visa. Such an approach could grease the wheels of high-skilled labour mobility by reducing pressures on employers and minimise the time between someone being offered, and being able to take up, a job. Moreover, EU migration in particular may be somewhat insulated from the main drawbacks of points systems – their association with considerable underemployment or ‘brain waste’ – since employers are likely to have greater familiarity with institutions within Europe and some qualifications (such as medical staff) are harmonised. Since points can be attached to jobseekers with specialist occupations or degrees, the UK could use the system to build expertise in high-growth sectors it wants to support in coming years.

### Low-skilled migration policy options

When the UK government created the points system, Tier 3 was intended to replace low-skilled immigration programmes. However, large-scale intra-EU migration became a de facto alternative.

Low-skilled migration programmes are often politically unpopular,<sup>145</sup> since governments are faced with the challenge of balancing employers’ desire to pay competitive wages with the interests of labour unions in protecting native workers and labour standards (including minimising exploitation of migrant workers). This trade-off has become more pronounced with the growth in competition for manufacturing in Asia and elsewhere, as it has become clear that it is impossible to keep the costs of labour low enough to compete with offshoring while also maintaining secure, well-paid jobs.

There are a number of options for meeting low-skilled needs:

- **Pure demand-driven approaches:** Sweden has no skill or sector requirements, or caps, but employers must advertise the job beforehand and pay minimum wages.<sup>146</sup> The system was introduced in order to be highly responsive to labour shortages, which the Swedish government felt were better determined by employers than government agencies. But evidence suggests that migration has been mostly low-skilled (mostly berry pickers), combined with some high-skilled (mostly computer professionals), leaving vacancies in teaching and skilled construction unfilled. And although migrants have come to work in occupations with labour shortages, they have also arrived in occupations with a labour surplus where concerns have been raised about wage dumping and deteriorating work conditions.<sup>147</sup> Moreover, there can be unintended consequences of low-skilled programmes that require applicants to have a job offer, such as contributing to the spread of companies or gangmasters operating out of countries of origin.
- **Low-skilled employer-sponsored programmes:** Low-skilled migration programmes are often reciprocal, governed by bilateral agreements (such as the North American Free Trade Agreement, or NAFTA). In countries such as Australia and New Zealand, low-skilled work visas for Pacific Islanders seek to recognise the historical ties between these regions and act as a development tool (hence they are often seen as an alternative to direct

<sup>145</sup> For instance, an Ipsos-MORI poll found that 64 per cent of UK respondents wanted to reduce low-skilled immigration, compared with only 31 per cent who wanted to reduce high-skilled immigration. See Bobby Duffy and Tom Frere-Smith (2014), *Perceptions and Reality* (London: Ipsos MORI), [www.ipsos-mori.com/DownloadPublication/1634\\_sri-perceptions-and-reality-immigration-report-2013.pdf](http://www.ipsos-mori.com/DownloadPublication/1634_sri-perceptions-and-reality-immigration-report-2013.pdf).

<sup>146</sup> In practice, the advertising requirements are minimal and can be fulfilled by advertising in EURES for ten days. Minimum wages vary by sector as a result of collective bargaining processes among social partners (and are in general fairly high). See Henrik Emilsson, ‘Labour Migration in a Time of Crisis: Results of the New Demand-Drive Labour Migration System in Sweden’ (MIM Working Paper Series 14:1, 2014), <http://dspace.mah.se/bitstream/handle/2043/17882/WPS%2014.1%20Henrik%20Emilsson.pdf;jsessionid=A21EE7DCCD490A5A7104FBF188C719EE?sequence=2>.

<sup>147</sup> Ibid.

foreign aid).<sup>148</sup> New Zealand also operates a priority preference programme for viticulture and horticulture that prioritises nationals, then Pacific Islanders, and finally other groups.<sup>149</sup> Elsewhere low-skilled migration programmes have been focused specifically on particular sectors with seasonal or short-term labour needs, such as agriculture or construction (for example the H-2A and H-2B visas in the United States; see below).

Expensive (in terms of time and resources) or oversubscribed low-skilled labour migration programmes can create incentives for unscrupulous employers to hire on the black market instead. The main alternatives – free movement or a totally demand-driven system – will be difficult to sell to the British public; however, the prime minister has hinted that free movement may continue in the interim (the transitional deal is discussed further below).<sup>150</sup>

Another question will be whether or not the new system will be preferential for European nationals. Arguably, people coming from nearer (that is, Europe rather than India) can maximise benefits of short-term/circular mobility better than those who have to invest lives and livelihoods in the hope they can stay. But the UK government has shown signs of also wanting to carve out bilateral deals outside Europe.

Finally, the UK government will face (depending on the outcome of the Brexit deal) the question of whether to implement a low-skilled migration system that is sector-specific. The argument for such an approach is that some of the current labour shortages are more open to employers adapting their business models than others. Agricultural producers have less scope to use wages as a vehicle for attracting greater numbers of native workers than in construction, for instance, since the work is more seasonal and less concentrated in areas where native workers prefer to live. But there is an added risk of horse trading associated with allowing different sectors to pitch for a bespoke approach, and not always a 'scientific' answer to which regions should receive preference.<sup>151</sup>

## Policies to meet demands for flexible labour

An additional gap in the existing UK immigration policy architecture is the ability to meet demands for flexible labour. Since seasonal and temporary work can be less desirable to some native workers, migrant labour provides the opportunity to 'flex up' and 'flex down' depending on fast-changing needs of employers.<sup>152</sup> This is at the heart of the competitive edge that sectors with narrow margins have vis-à-vis buying from abroad.

But this is not merely an issue in the sectors of the labour force that rely on large numbers of graduate and non-graduate EU nationals. One of the main factors behind the thriving tech sector in London is flexible labour, for instance specialist freelancers. This is not easily met through traditional migration systems: employer sponsorship routes are often too slow to meet the required speed of start-ups that are involved in a race to develop a new product, and SMEs and start-ups can rarely afford the time or resources to invest in navigating complex immigration rules. Meanwhile, supply-based approaches (points-based or jobseeker visas) are not well suited to self-employment and freelancing; and entrepreneurship visas tend to have high thresholds with the aim of bringing in business owners who will create large numbers of jobs. None of these models is well suited to the tech ecosystem or to other sectors that rely on flexible continental labour, from engineering and construction to the creative industry.

148 Samoan Quota and Pacific Access Category: Employers can apply to become a Pacific Quota Employer, and can then employ workers drawn from the annual ballot (who get resident permits) without any labour market test. There is an annual quota of 1,750, with minimum employment and salary requirements. See New Zealand Immigration, 'Samoan Quota & Pacific Access Category', [www.immigration.govt.nz/employ-migrants/hire-a-candidate/options-for-repeat-high-volume-hiring-new/samoan-quota-pacific-access-category](http://www.immigration.govt.nz/employ-migrants/hire-a-candidate/options-for-repeat-high-volume-hiring-new/samoan-quota-pacific-access-category).

149 New Zealand Immigration, 'Recognised Seasonal Employer', accessed 1 March 2017, [www.immigration.govt.nz/employ-migrants/hire-a-candidate/options-for-repeat-high-volume-hiring-new/recognised-seasonal-employer](http://www.immigration.govt.nz/employ-migrants/hire-a-candidate/options-for-repeat-high-volume-hiring-new/recognised-seasonal-employer).

150 BBC, 'Brexit: Theresa May suggests free movement extension', *BBC News* 5 April 2017, <http://www.bbc.com/news/uk-politics-39498647>.

151 See, for example, Sumption, *Labour Immigration after Brexit*, for a discussion of the fact that deciding which low- and middle-skilled migration to prioritise is 'not a simple statistical exercise', for instance, because the government will have to weigh the political pressure to reduce immigration against the economic risk of retailers beginning to buy more produce from abroad.

152 The competitive edge in the UK labour market is dependent on the ability to 'flex in and out', as a focus group participant put it. Comments by representative of the recruitment sector, MPI/Fragomen focus group meeting, 7 March 2017.

Possible options for meeting flexible needs include:

- **Self-employment visas:** A number of countries offer self-employment or freelance visas, although several of the self-employment visas are, in practice, for people to come and set up businesses in the host country. For instance, Germany and the Netherlands have permits for the purpose of freelance work or self-employment.<sup>153</sup>
- **Entrepreneurship visas:** By contrast, most of the other international examples have been moving towards high-value entrepreneurship (rather than self-employment for freelance work), faced with the risk that these routes can be misused.<sup>154</sup> A number of countries have made bringing in high-calibre candidates to set up high-value, innovative businesses a priority in recent years. Admission criteria for Organisation for Economic Co-operation and Development (OECD) countries' entrepreneur programmes can include job creation, sector-specific or location-specific requirements, a business or innovation test (usually assessed by industry representatives) and experience in the field.<sup>155</sup> (Job creation is often pertinent to renewing or extending visas, for example.)
- **Start-up visas:** Start-up visas typically reduce (or eliminate) investment thresholds, relying on the input of industry to endorse business plans (whether as part of the application, or by providing seed funding). The threshold for a UK entrepreneur visa falls from £200,000 to £50,000 when the entrepreneur is funded by a prescribed expert. Several other OECD countries have launched (or plan to launch) start-up visas, including France's Tech Ticket (2015) and Tech Visa (forthcoming, 2017), New Zealand's Global Impact Visa (due to be launched in mid-2017), Denmark's Start-Up Visa (2015), and the Netherlands' Start-Up Visa (2015). Some of these programmes are provided alongside funding and support.<sup>156</sup> However, while these programmes are focused on attracting high-quality candidates, they can struggle to attract many applications.<sup>157</sup>
- **Sector-specific work or entrepreneur visas:** Some programmes restrict entrepreneur visas to certain sectors, whether by introducing visas that exclusively cater to (or favour) emerging sectors such as digital technology, or barring business models for lower-growth industries (for example retail). See, for example, restrictions imposed by Ireland and Denmark on issuing visas to retail or catering businesses, and New Zealand's waiving of its investment threshold for innovative/high-growth industries (for example science or ICT).
- **Post-study work visas:** Students who attend high-ranking institutions represent a potentially lucrative source of human capital, since they have host-country educational experience (valued more highly by employers than foreign qualifications) and have been tested for their language skills. But the UK government has tightened up restrictions on students working following graduation, following evidence that an industry of bogus educational

153 Service-Portal Berlin, 'Residence Permit for the Purpose of Freelance or Self-Employment Issuance', accessed 1 March 2017, <https://service.berlin.de/dienstleistung/305249/en/>. Requirements include evidence of income from freelance work (for example future contracts, relevant experience), economic interest or regional need, and residence in Germany. This can also be used for prospective entrepreneurs, who need to prove their relevant experience, sufficient financial resources and a business plan. In the Netherlands, activities must be beneficial to the Netherlands (points awarded for personal experience, added value or business plan); freelancers must also prove they have at least one commission; and proof of future income. See Netherlands Government, 'Self employed person', accessed 1 March 2017, <https://ind.nl/en/work/Pages/Self-employed-person.aspx>.

154 Evidence suggests that both Tier 1 (Entrepreneur) and Tier 1 (Graduate Entrepreneur) pathways have been misused as a pathway to the informal labour market. MAC's 2015 review of both entrepreneur pathways found that 'Out of 13,746 individuals granted Tier 1 (Entrepreneur) or Tier 1 (Graduate Entrepreneur) visas since 2008, we identified 1,580 active companies registered on the IDBR who employ a total of 9,850 people and generate a combined annual turnover of £1.45 billion.' MAC, *Tier 1 Entrepreneur and Graduate Entrepreneur routes* (London: Home Office, 2015), 152, <https://www.gov.uk/government/publications/migration-advisory-committee-mac-review-tier-1-entrepreneur-and-graduate-entrepreneur-routes>. The Home Office estimated that only about one in four Tier 1 (Entrepreneur) visa holders extended their visas, and that others entered into the informal labour market. Home Office, 'Table vi\_01\_q: Entry clearance visa applications and resolution by category.' In Australia, in 2015, the Australian Joint Standing Committee on Migration published a review calling for the reform of the programme after finding that applicants tended to set up businesses in low-risk sectors such as retail or manufacturing.

155 MAC, *Tier 1 Entrepreneur and Graduate Entrepreneur routes*, 43-45.

156 Start-up Chile offers a work visa alongside a business incubator programme (with up to \$90,000 USD in funding from the government and training); since 2010 it has invested \$40 million into 1,309 start-ups (of which, 51 per cent are still active), and three-quarters of applicants have been foreign. Similarly, the French Tech Ticket offers financial support and training to foreign entrepreneurs for 12 months. Start-up Chile, 'Economic Impact', <http://www.startupchile.org/economic-impact/>; and French Tech Ticket, 'The French Program for International Start-Ups', <http://www.frenchtechticket.com/>.

157 For example, Canada's Start-Up Visa pilot programme (launched in 2013) has had lower uptake than expected, and was due to be reviewed in 2016 to see if it should be extended past 2018 (though no outcomes had been published, at time of writing). In 2015, 62 people were admitted under the programme (which has a 2,750 annual cap); as of May 2016, the government reported that 51 entrepreneurs were admitted under the programme (with 26 start-ups). As a result, countries may need to review eligibility criteria to ensure that the process is accessible to emerging (as well as established) talent, and to promote these programmes more widely. Government of Canada, 'Start-up visa continues to grow', (news release, 5 May 2016), <http://news.gc.ca/web/article-en.do?nid=1061469>; and Government of Canada, *2016 Annual Report to Parliament on Immigration*, last updated 31 October 2016, <http://www.cic.gc.ca/english/resources/publications/annual-report-2016/index.asp>.

institutions had mushroomed specifically to enable non-EU migrants to enter the UK.<sup>158</sup> There is a balance between making it easy for desirable students to stay, without creating incentives to misuse the education to work route, but the perverse incentives may be less prominent for EU students given their wealth of alternative options (that is, studying elsewhere in the EU).

- **Temporary work visas:** Another option is seasonal or temporary labour programmes for industries such as agriculture, hospitality or construction to fill temporary, short-term labour shortages. Examples include the UK's now-closed SAWS programme or its Sectors-Based Scheme, or further afield, the H-2A and H-2B guestworker programmes in the US. The UK also operates a working holiday visa (Tier 5 (Youth Mobility Scheme)) that allows nationals aged 18 to 30 from Australia, Canada, Japan, Monaco, New Zealand, Hong Kong, South Korea and Taiwan to work in the UK for up to two years; this could be expanded or extended to other countries.

In each of these approaches, there is a need to balance employers' calls for flexibility and ease of use with adequate oversight to prevent misuse. But while policymakers can experiment with their enforcement efforts, the success of these options relies on securing industry input and buy-in. This can take the form of requiring industry experts to vet and endorse a business plan either as a formal part of the application process (see, for example, the UK Tech Nation visa or Start-Up Denmark) or through a requirement to secure endorsement and funding from venture capital funds or investor groups (see, for example, Canada's Start-Up Visa pilot programme).

## Policies to meet regional needs

Some commentators have called for a devolved immigration system to allow different parts of the country to meet divergent needs.<sup>159</sup> In places such as Canada and Australia, points systems have been adjusted to channel immigrants to regions that have particular labour and skills shortages. In Canada, which is the original architect of points-based systems, applicants now have to either have a job offer or go to a province with lower levels of immigration as part of its Express Entry programme.<sup>160</sup> While these specialised programmes or conditions can help employers attract talent, there are several issues, such as how to induce new immigrants to stay in these areas (for example by attaching conditions on moving jobs), and the costs and benefits of lowering criteria (for example education attainment) to attract applications.

There are a number of different approaches:

- **Preferential treatment for certain areas**, as in the United States and Australia, which give preferential treatment in their visa systems to doctors who move to rural areas that have difficulty attracting health workers.<sup>161</sup> US investor visas also lower the threshold for 'priority areas'.
- **Regional nomination programmes** in Canada and Australia have sought to build a place-based component into points systems.
- **Employer-sponsored visas** (while not regional programmes) are inherently sensitive to place (compared with points-based systems, for instance) since an efficient employer work-permit system will, all else being equal,

158 This has been a problem everywhere. For instance, research from Australia in 2010 found that half of workers on skilled graduate visas were not in skilled jobs. See Papademetriou and Sumption, *Eight Policies to Boost the Economic Contribution of Employment-Based Immigration*.

159 Tom Kibasi, 'How a Devolved Immigration Policy Could Work in Brexit Britain', *New Statesman*, 28 October 2016, [www.newstatesman.com/politics/staggers/2016/10/how-devolved-immigration-policy-could-work-brexit-britain](http://www.newstatesman.com/politics/staggers/2016/10/how-devolved-immigration-policy-could-work-brexit-britain).

160 In Canada, the introduction of Express Entry in 2015, which means that applicants in practice have to get a job offer first or go to a province with lower levels of immigration, followed years of fine-tuning the points system to try to achieve better integration outcomes, following evidence that high-skilled migrants were disproportionately under- or unemployed. Australia has also moved in this direction, giving greater weight to candidates with job offers or who are willing to move to provinces with greater needs. See Madeleine Sumption, 'Top 10 of 2014 – Issue #9: The Points System is Dead, Long Live the Points System', *Migration Information Source*, 10 December 2014, [www.migrationpolicy.org/article/top-10-2014-issue-9-points-system-dead-long-live-points-system](http://www.migrationpolicy.org/article/top-10-2014-issue-9-points-system-dead-long-live-points-system).

161 In the US this is a waiver of the two-year foreign residence requirement, while in Australia this is a restricted medical licence to practise in 'areas of need'. U.S. Citizenship and Immigration Services, 'Conrad 30 Waiver Program', last updated 5 May 2014, <https://www.uscis.gov/working-united-states/students-and-exchange-visitors/conrad-30-waiver-program>; and Medical Board of Australia, 'Limited registration for area of need', last updated 24 March 2017, <http://www.medicalboard.gov.au/Registration/Types/Limited-Registration/Area-of-Need.aspx>.

send migrants to areas with greatest demand.<sup>162</sup> In some countries, salary requirements vary by region, to allow employers from poorer areas to compete with those in big cities and protect migrants by ensuring they are paid the prevailing wage.<sup>163</sup> Such variation was ruled out by the MAC on the basis that it would create additional complexity but nevertheless exists to a point through Scotland's SOL.

One problem in the UK's case is the divergence of local needs that has caused cities and regions to demand greater control. Most attempts to build more regional responsiveness into immigration policies have concentrated on supporting areas that do not attract immigrants through market forces alone.<sup>164</sup> Against this backdrop, it is interesting that London and Scotland, two of the main proponents of a place-based immigration policy, both receive a disproportionate share of migrants *and* claim they have specific skills and labour needs.

Although the UK no longer has a traditional points system, its points-based architecture could be customised to meet other policy objectives outside of meeting employer demand. Something along the lines of the Canadian system could operate within the UK points system for regions with specific high-skill shortages (for instance reviving the now obsolete Tier 1 General route, which allowed candidates to come without a job offer, or the also obsolete Post-Study Work Route and Scotland's Fresh Talent: Working in Scotland Scheme, which allowed non-EU graduates to work without sponsorship for up to two years).<sup>165</sup> Employer sponsorship provides an alternative model for meeting regional needs. Australia, for example, offers a specialised employer-sponsored programme for 'regional' Australia (that is, outside of immigration hubs like Sydney and Melbourne). The United States also gives preferential treatment in its visa system to doctors who move to rural areas that have difficulty attracting health workers.

Yet, in the case of the UK, the case for regional variation may be weaker than it is in larger countries such as Australia. Given its small size, the UK is susceptible to perverse consequences of regional variation – such as employers moving employees to particular regions to take advantage of particular programmes. Indeed, variation for salary thresholds for family migration was ruled out by the MAC on the basis that it would create additional complexity – a concern reiterated by the government in October 2016, which also pointed to the challenges regional variation could impose for employers with multiple locations in the UK.<sup>166</sup> In our focus group, employers raised concerns about regional systems ranging from creating perverse incentives to move business or employees into an area, to added bureaucracy.<sup>167</sup> Finally, the more highly responsive to regional and sectoral needs, the more complex the system is, which might undermine simplicity.

As already discussed, employer-sponsored visas are inherently sensitive to place, thus, an employer-driven system will in itself likely accommodate regional variation for the UK context.

## Implementation

The three hallmarks of an effective immigration policy are speed (the ability to make quick decisions), predictability and appropriate level of cost. These three elements are arguably jeopardised by the likely volume of applications that ending or modifying free movement will create.

162 Madeleine Sumption, *Giving Cities and Regions a Voice in Immigration Policy: Can National Policies Meet Local Demand* (Washington, DC: MPI, 2014), [www.migrationpolicy.org/research/giving-cities-and-regions-voice-immigration-policy-can-national-policies-meet-local-demand](http://www.migrationpolicy.org/research/giving-cities-and-regions-voice-immigration-policy-can-national-policies-meet-local-demand).

163 For instance, in the United States the prevailing wage varies by occupation and city.

164 For instance Canada, New Zealand and Australia all explicitly use immigration policies to counter the tendency of immigrants to settle in their large cities. Similarly, the US Midwest has been calling for greater immigration control in order to counter economic and demographic decline, see for example the work of Welcoming Detroit. Sumption, *Giving Cities and Regions a Voice in Immigration Policy*; and Steve Tobocman, *Revitalizing Detroit: Is There a Role for Immigration?* (Washington, DC: Migration Policy Institute, 2014), <http://www.migrationpolicy.org/research/revitalizing-detroit-is-there-a-role-for-immigration>.

165 However, the UK government rejected calls by the Scottish Affairs Committee to reinstate the Fresh Talent scheme in October 2016, citing abuse of post-study work visa schemes and their reluctance to apply different immigration rules across the UK. See House of Commons, Scottish Affairs Committee, 'Post-study work schemes: Government Response to the Committee's Fourth Report of Session 2015-16', Third Special Report of Session 2016-17, 28 October 2016, [www.publications.parliament.uk/pa/cm201617/cmselect/cmscotaf/787/787.pdf](http://www.publications.parliament.uk/pa/cm201617/cmselect/cmscotaf/787/787.pdf).

166 House of Commons, Scottish Affairs Committee, 'Post-study work schemes'.

167 Discussion in MPI/Fragomen Focus Group meeting, 7 March 2017.

There are a number of options for increasing speed and predictability:

- **Removing, shortening or reducing requirements of resident labour market tests (RLMTs):** RLMTs seek to give settled workers an opportunity to apply for jobs first, and prevent a downward slide in labour standards. But many comparative reviews have concluded that they rarely achieve their intended aim.<sup>168</sup> A number of countries have either abolished RLMTs or expanded the exceptions for these tests.<sup>169</sup> For instance, New Zealand allows employers in an array of sectors to apply for accredited status and thus forgo future RLMTs. One example is its Talent Employer stream, which requires employers to pay at least NZD\$55,000, and undergo various checks on their finances, workplace culture and human resources. Employers can then hire skilled foreigners without needing to check if New Zealanders can do the job.<sup>170</sup> To work, labour market tests must walk a fine line between being neither tokenistic nor overly onerous. The UK's RLMT is thought to be relatively cumbersome, for instance by requiring employers, in many cases, to advertise through Jobcentre Plus (even if this is not a common recruitment method for skilled roles) and to give the job to a suitable resident candidate (regardless of whether other more suitable candidates apply).<sup>171</sup>
- **Streamlining employer certification:** To reduce processing times, many countries remove some (or all) of the bureaucratic requirements for certified employers (including RLMTs); or allow employers to pay extra to process high-priority applications. For instance, Denmark runs a fast-track scheme that certifies companies to hire highly skilled foreigners without having to wait for the Danish Agency for International Recruitment and Integration to approve the application.<sup>172</sup> Similarly, New Zealand operates a number of schemes that offer accreditation for employers that hire large numbers of foreigners across the skills spectrum, with one of the requirements showing efforts to hire local workers (in lieu of an RLMT). As an example of the pay-for-processing approach, the United States offers a fast-track processing service for its H-1B programme that reduced the process from several months to 15 working days.<sup>173</sup>

As the UK government prepares for the next phase of post-Brexit EU migration, improving the system's speed, certainty and affordability should be a priority. This is particularly important for SMEs, start-ups and fledgling sectors that may lack the resources to navigate the UK immigration system successfully. One option is to set up sectoral institutions to provide sector-specific guidance on immigration routes, perhaps drawing on the role that industry bodies such as Tech City have played in guiding employers through the Tier 1 (Exceptional Talent) application and vetting process.

For other sectors, working within the existing architecture to streamline extraneous processes may be one option. Working with industry to understand their usual recruitment and vetting practices (rather than imposing

168 For instance, the OECD 2009 SOPEMI report points to the low rejection rates in countries such as Spain and Italy; while the 2014 SOPEMI report observes that they can distort the job description, listings may just be nominal, introduce bureaucratic requirements, and may not be the best way of matching people with jobs (for example public employment services). OECD, *International Migration Outlook 2014* (Paris: OECD Publishing, 2014); and OECD, *International Migration Outlook 2009* (Paris: OECD Publishing, 2009).

169 For instance, Sweden abolished its labour market test in 2008, as part of its move towards a more demand-driven system, and Australia abolished its test temporarily in 2001, citing its ineffectiveness. Henrik Emilsson, 'Who Gets In and Why? The Swedish Experience with Demand Driven Labour Migration – Some Preliminary Results', *Nordic Journal of Migration Research* 4, no.3 (2014): 134-143; and John Azarias, Jenny Lambert, Peter McDonald, and Katie Malyon, *Robust New Foundations: A Streamlined, Transparent and Responsive System for the 457 Programme* (Canberra: Department of Immigration and Border Protection, 2014), 44, <https://www.border.gov.au/ReportsandPublications/Documents/reviews-and-inquiries/streamlined-responsive-457-programme.pdf>.

170 New Zealand Immigrant, 'Talent Employer Accreditation', accessed 1 March 2017, [www.immigration.govt.nz/employ-migrants/hire-a-candidate/options-for-repeat-high-volume-hiring-new/accredited-employer](http://www.immigration.govt.nz/employ-migrants/hire-a-candidate/options-for-repeat-high-volume-hiring-new/accredited-employer).

171 As an example of a more tokenistic approach, the H-1B programme requires employers to post a notice of the filing of a Labour Condition Application (LCA) to employ H-1B migrants (including period of employment, occupation, wages) for 10 days. See U.S. Department of Labor, Wage and Hour Division, 'Fact Sheet #62M: What are an H-1B employer's notification requirements?', accessed 1 March 2017, [www.dol.gov/whd/regs/compliance/FactSheet62/whdfs62M.pdf](http://www.dol.gov/whd/regs/compliance/FactSheet62/whdfs62M.pdf).

172 This scheme permits foreigners to work within or outside Denmark for the duration of the permit (up to four years), allows them to bring family members, and offers a six-month job-seeking extension if the foreigner loses his or her job through no fault of their own. Companies that wish to be certified must meet certain conditions, including employing at least 20 full-time employees, offering salary and employment terms in line with Danish standards and no involvement in labour disputes. If their application is approved by the Danish Agency for International Recruitment and Integration, their certification lasts for four years (and can be renewed). For more details, see New to Denmark, 'Fast-track Scheme', accessed 1 March 2017, [www.nyidanmark.dk/en-us/coming\\_to\\_dk/work/Fast-track-scheme/](http://www.nyidanmark.dk/en-us/coming_to_dk/work/Fast-track-scheme/).

173 This fast-track processing was suspended as of April 2017. See Faith Karimi, 'US Suspends Expedited Processing of H-1B Visas', CNN, 4 March 2017, [www.cnn.com/2017/03/04/us/h1b-visa-premium-processing-suspended/](http://www.cnn.com/2017/03/04/us/h1b-visa-premium-processing-suspended/).

overly generic models such as advertising in Jobcentre Plus that is not appropriate for many sectors) may help design a labour market test that is better at achieving its goals.

Finally, cost will have to be addressed. The UK operates one of the most expensive visa systems in the world.<sup>174</sup> Applicants, their dependants and their employers must variously pay visa application fees, the immigration health surcharge, the immigration skills charge (ISC) and for a Certificate of Sponsorship. The combined cost of the fees is substantial. If a Tier 2 worker were to enter to work for a large company for five years with a partner and three children, the government fees could be up to £16,069. If they were single and entering for three years, the government fees could be up to £4,386. The government will have to balance the desire to bring in funds to support the health system (for example NHS levy) or skills system with the risk of imposing unaffordable costs on SMEs and businesses who may be crippled by such a dramatic change to their labour supply.<sup>175</sup>

## Enforcement

The introduction of a new migration system for EU nationals will place additional burdens on the Home Office and employers alike to police the system and prevent abuse. Under the current system, employers are primarily accountable for ensuring that migrant workers comply, with responsibilities that include verifying (and continuing to monitor) their employees' right to work and tracking their whereabouts. The Home Office grants sponsor licences, oversees the sponsors and identifies and punishes employers and migrants who break the law (through fines, criminal charges and seizing earnings).

A post-Brexit system for EU nationals may transpose the current enforcement infrastructure, thus imposing new demands on employers, or it may rely solely on the Home Office for enforcement, necessitating a significant expansion of their enforcement operations that would need to be funded through visa fees or other taxes. If relying on the former, policymakers can take steps to streamline the process and lessen the burden on employers, such as removing some of the more onerous reporting duties (for example late starts or early departures), or overhauling the two-step enforcement system, which requires companies to apply for certification and then for visas, which may be overly time-consuming for meeting the needs of the post-Brexit labour market. One option is to remove one step from this process while making the most of the ability of employers to self-police, for instance by allowing for third-party verification.<sup>176</sup>

## TRANSITIONAL ARRANGEMENTS AND THE INTERIM SYSTEM

The government has promised that the status of current EU nationals is top of its negotiating list, but it has also suggested it will only make an agreement on the basis of reciprocity (that is, a deal to settle UK nationals abroad).<sup>177</sup> But the situation is more complicated than a simple 'deal or no deal', since the UK and the EU must negotiate over a lattice of complex legislation relevant to the status of these populations, from social security coordination to the permanent residence directive.

It is possible that the UK will fail to agree a mutually beneficial trade deal in the two-year period following the 29 March triggering of Article 50. Michel Barnier, chief negotiator in the European Commission, recently suggested

<sup>174</sup> If a Tier 2 worker were to enter to work for a large company for five years with a partner and three children, they would need to pay a total of £16,069. In Australia, a family of five would cost AUD 6,732.44 (£3,979.80); in Canada, \$C1170 (£677.42); in France, EUR 3203.37 (£2,720.48); and in Germany, 875 EUR (£743.10). Fragomen LLP analysis based on internal records.

<sup>175</sup> The ISC is lower for smaller companies, which goes some way to addressing this challenge.

<sup>176</sup> For example, under the Tier 5 Government Authorised Exchange, a third party (for example a higher education institution, a government agency or an organisation running an exchange) must sponsor the non-EU intern and then monitor him or her and the employer to ensure that they both comply with the Immigration Rules. The Home Office would then need to supervise the sponsors (who could sponsor multiple people), rather than the individual employer.

<sup>177</sup> Ashley Cowburn, 'MPs reject Lords amendment to guarantee rights of EU nationals before Brexit negotiations begin', *Independent*, 13 March 2017, <http://www.independent.co.uk/news/uk/politics/mps-reject-lords-amendment-to-guarantee-rights-of-eu-nationals-before-brexit-negotiations-begin-a7628116.html>.

that 'a certain number of transitional arrangements may be necessary'.<sup>178</sup> In this circumstance, it might be in the interests of the UK and the EU to extend the period of negotiations further while agreeing an interim or transitional deal. Even if this does not happen, it may make sense to stagger some of the changes the UK will make unilaterally – for instance by grandfathering some of the aspects of the Great Repeal Bill.

Whatever happens with Brussels, the process of transition will have to be staggered in some ways. Several commentators have pointed to the need for an interim migration system to help employers prepare for potential medium- and long-term skills shortages and allow for current investments in training to pay off. Enabling a large share of the current EU population to stay would also help mitigate the effect of potential labour market shocks.

## Existing EU population

In the first instance, agreeing what will happen to EU nationals currently in the country is a moral, economic and practical priority. Aside from reassuring people whose lives and livelihoods are bound up in Britain, it would provide stability for employers – and make the most of the considerable UK-specific work experience and language skills these workers are likely to have.

But the practicalities for agreeing this issue are immense. According to a recent estimate, registering all current EU citizens for permanent residence, at current processing rates, would take 140 years.<sup>179</sup> For a discussion of the current process of applying for permanent residence, see Appendix II.

A number of decisions will have to be made:

- **Cut-off date:** The first issue is when to draw the line, and the distance of time between the announcement and the cut-off date. If this date predates the announcement (for instance, if it is the date of the referendum) it will exclude some people currently in work. A cut-off date of 1 January 2017 would mean around 48 per cent of the existing population would be able to stay, while a cut-off date of two years after Article 50 could add another 14 per cent (see Table 3 on page 14).<sup>180</sup> Other commentators have pointed to the 29 March date Article 50 was triggered as a possible cut-off date, to avoid creating a magnet for future flows.<sup>181</sup> The date of separation would fare best with EU negotiators,<sup>182</sup> but creates the risk of a closing-down sale where EU nationals flock to the UK to secure permanent residence.
- **Documentation:** In the absence of a population register, officials will have to rely on individual documentation.<sup>183</sup> But documenting physical presence in the UK can be difficult, especially for people who have moved back and forth on a circular basis, been employed in 'cash-in-hand' jobs, or moved frequently within the UK. One simple solution is to allow everyone who had registered for a National Insurance number to stay, but this will include people who have since returned home and may exclude students or self-sufficient people not working.<sup>184</sup>

178 Speech by Michel Barnier, Chief European Commission Negotiator for the Preparation and Conduct of the Negotiations with the United Kingdom, to plenary session of the European Committee of the Regions, Brussels, *The Conditions for Reaching an Agreement in the Negotiations with the United Kingdom*, 22 March 2017, [http://europa.eu/rapid/press-release\\_SPEECH-17-723\\_en.htm](http://europa.eu/rapid/press-release_SPEECH-17-723_en.htm).

179 Migration Observatory, 'Here today, gone tomorrow?'. See also Andy Bounds, 'Influx of EU Residency Applications Spurs Home Office Hiring Spree', *Financial Times*, 23 March 2017, [www.ft.com/content/141c8b14-0fd8-11e7-a88c-50ba212dce4d](http://www.ft.com/content/141c8b14-0fd8-11e7-a88c-50ba212dce4d).

180 This analysis is based on data from Q4 2016, when 21.8 per cent had been in the country for 11 or more years, 26.2 per cent for 6 to 10 years, and 13.7 per cent for 4 to 5 years (which would be 6 to 7 years by January 2019). See ONS, Labour Force Survey October-December 2016 data.

181 British Future, *Report of the Inquiry into Securing the Status of EEA+ Nationals in the UK*.

182 For instance, the European Parliament's Chief Negotiator, Guy Verhofstadt, vowed to fight attempts to set the date Article 50 is triggered as the cut-off date on the basis that this erodes EU nationals' rights while the UK is still a member. See Rob Merrick, 'Europe to Block Brexit Deal Unless EU Citizens who Enter in Next Two Years can Stay, Guy Verhofstadt Says', *Independent*, 28 March 2017, <http://www.independent.co.uk/news/uk/politics/eu-citizens-rights-guaranteed-latest-european-parliament-theresa-may-guy-verhofstadt-a7654461.html>.

183 Will Somerville, 'When the Dust Settles: Migration Policy after Brexit', MPI, commentary, June 2016, [www.migrationpolicy.org/news/when-dust-settles-migration-policy-after-brexite](http://www.migrationpolicy.org/news/when-dust-settles-migration-policy-after-brexite).

184 Migration Observatory, 'Here today, gone tomorrow?' Including people who have since returned home could be seen as an advantage, since it rewards people with some experience of working in the UK. Indeed, some points-based systems assign points to host-country work experience regardless of if people are in the country directly prior to their application.

- **Family members:** Policymakers will also have to decide whether to grant current EU nationals family unification rights, which will increase the size of the EU population (and the potential for a labour source) independently of any future immigration policy. Another question will be whether EU nationals married to British residents who fail to meet the cut-off date (or other criteria) will be subject to family unification income requirements for non-EU spouses.
- **Process:** Finally, there are questions about whether some kind of interim or grandfathering deal might be the best way to go. One option, for people who do not meet the threshold for proving residence or the cut-off date, is to treat them as 'conditional' residents, and grant permanent residency in a few years conditional on fulfilling certain criteria (for example learning the language or being in work).<sup>185</sup> The previous government has shown signs of being amenable to this approach, with Home Secretary Amber Rudd pointing out that they were 'against cliff edges'.

There is a strong case for a swift, transparent agreement on the status of EU nationals, which errs on the side of inclusiveness and removes onerous requirements, such as the need to have comprehensive sickness insurance. Among the public, broad support for securing the status of EU nationals (84 per cent) even extends to Leave voters (77 per cent).<sup>186</sup> From a business perspective, current EU workers in the UK labour market and future workers are not directly exchangeable, since the former have valuable UK-specific human capital. And aside from the likelihood of system overload, additional administrative costs and long waiting times, the significant risk of creating an unauthorised population among those whose applications are denied could further erode public trust.<sup>187</sup>

These risks all arguably outweigh the risk that a deal will create a magnet for future flows, which, in any case, has not been borne out by the evidence on how flows have responded to announcements in the last year.<sup>188</sup> And if the government wants to keep the burden on employers and enforcement resources low, and contain the size of the potential unauthorised population, the cut-off date should be as close to the announcement as possible.

## Green Paper, Great Repeal Bill and other legislation

Plans for the Great Repeal Bill were published on 30 March, which will repeal the European Communities Act 1972 and transfer all EU laws onto the UK statute book. It is likely that the Bill will be announced following the general election, and will be followed by a Green Paper. The Bill will come into force on the date that the UK leaves the EU.

While it is likely that the new government will publish a separate immigration bill, the Great Repeal Bill will clearly reshape labour markets and the immigration context. The Bill may act like a mini constitution – moving over all EU law in spring 2019 in one fell swoop, with substantial executive powers and direct instruments.

In terms of content, an Immigration Bill will need to make provision for the future status of EU nationals in the UK. But legislation will also need to address other immigration and asylum regulations (outside the future of free movement). The UK has an opt-out for justice and home affairs regulations, and does not participate in external borders, asylum and immigration policy (including most notably the Schengen border-free area).<sup>189</sup> But it did adopt

<sup>185</sup> The introduction of a greater number of temporary to permanent visas to meet skills needs in the United States has been a matter of debate. See, for example, Demetrios G. Papademetriou, Doris Meissner, Marc R. Rosenblum and Madeleine Sumption, *Aligning Temporary Immigration Visas with U.S. Labor Market Needs; The Case for a New System of Provisional Visas* (Washington, DC: MPI, 2009), [www.migrationpolicy.org/research/aligning-temporary-immigration-visas-us-labour-market-needs-case-new-system-provisional](http://www.migrationpolicy.org/research/aligning-temporary-immigration-visas-us-labour-market-needs-case-new-system-provisional).

<sup>186</sup> British Future, *Report of the Inquiry into Securing the Status of EEA+ Nationals in the UK*.

<sup>187</sup> Polls suggest that illegal immigration is a much greater cause for concern than legal immigration. For instance, 80 per cent of UK respondents were concerned about illegal immigration in 2013, compared with 41 per cent about legal immigration. See German Marshall Fund of the United States (GMFUS), *Transatlantic Trends 2013* (Washington, DC: GMFUS, 2013), <http://trends.gmfus.org/files/2013/09/TTrends-2013-Key-Findings-Report.pdf>.

<sup>188</sup> In particular, the decline in net immigration (despite expectations among many EU nationals that there would be a deal for many EU nationals), and because the value of the pound seems to be a more significant driver than future status.

<sup>189</sup> For instance, it does not participate in the Blue Card Directive (which governs high-skilled labour mobility), the Family Reunification Directive or the Return Directive.

parts of the Schengen *acquis* related to police and judicial cooperation, participates in the Frontex border agency and Europol security agency, and supports the Dublin Regulation, which provides for transfers of asylum seekers back to the first country they entered in Europe. The future of these institutions will need to be addressed.

In terms of process, many have questioned whether the Bill would include extensive powers of delegated legislation. The last government previously indicated that the Bill would give ministers broad powers to use secondary legislation to respond to developments in negotiations, but the White Paper committed only to enable changes to laws that would not 'function sensibly' otherwise. Either way, this could herald a growth in executive power over immigration policy.

## EU institutions, transition agreement and trade deal

During the negotiations, the UK will interact with a wide array of EU institutions. Although no country has ever left the EU, the European Commission is not starting from a blank slate, having been through several accession processes. There are several European Council working groups for each portfolio (including free movement); meanwhile Michel Barnier's team in the Commission – which has extensive legal and technical expertise – has been involved in planning in the areas of residency rights, access to the labour market, pension and social security rights, and access to education.<sup>190</sup> Other EU institutions will also participate, with the Council of the EU and European Parliament entitled to vote on a final deal.<sup>191</sup>

It is highly likely that immigration will be central to the negotiations, and that the more open the UK is to some form of continued immigration, the more favourable the trade deal.<sup>192</sup> Although the UK is likely to stop well short of anything like continued free movement, there are a number of ancillary areas where common ground could be found:

- **Portability of benefits and access to healthcare:** All European countries have an interest in ensuring their mobile citizens can retain access to the rights and benefits they have accumulated while living abroad. However, this issue is highly complex, and will not be easily resolved in a short period of time. Moreover, different countries have asymmetrical negotiating positions; the UK's large population of retirees in some of the cash-strapped coastal resorts are more costly from Spain's perspective than young Eastern European workers in the UK.
- **Education and mobility:** Research and education are other areas where the UK and the EU are intertwined, and may wish to maintain parts of their existing framework for collaboration. The Erasmus+ programme is open to countries across Europe, with several non-EU countries participating fully<sup>193</sup> and a number of other non-EU countries participating in certain activities under the programme.<sup>194</sup> The UK has expressed interest in continuing close collaboration on research, science and technology after Brexit,<sup>195</sup> which could include some form of continued participation in the Horizon 2020 programme (for example, continuing to pay into the budget to participate, or through a looser form of association). Other, thornier areas for negotiation include mobility for researchers to collaborate on projects in the UK and across the EU, and tuition fees (including whether the UK will seek to harmonise EU and non-EU tuition fees).

190 Barnier, *The Conditions for Reaching an Agreement in the Negotiations with the United Kingdom*.

191 Institute for Government, 'The EU's Role in Brexit Negotiations', Institute for Government Brexit Explained, 2017, <https://www.instituteforgovernment.org.uk/brexit-explained/brexit-explained-eu-role-brexit-negotiations>.

192 Somerville, 'When the Dust Settles'.

193 The former Yugoslav Republic of Macedonia, Iceland, Norway, Liechtenstein and Turkey.

194 Russia, Switzerland, the Western Balkans (Albania, Bosnia and Herzegovina, Kosovo, Montenegro and Serbia), Eastern Partnership countries (Armenia, Azerbaijan, Belarus, Georgia, Moldova and Ukraine), and southern Mediterranean countries (Algeria, Egypt, Israel, Jordan, Lebanon, Libya, Morocco, the Occupied Palestinian Territories, Syria and Tunisia). See Erasmus+, 'Participating countries', accessed 1 March 2017, [www.erasmusplus.org.uk/participating-countries](http://www.erasmusplus.org.uk/participating-countries).

195 Speech by Theresa May, Prime Minister of the UK, to Lancaster House, *The government's negotiating objectives for exiting the EU: PM speech*, London, 17 January 2017, <https://www.gov.uk/government/speeches/the-governments-negotiating-objectives-for-exiting-the-eu-pm-speech>.

- **Recognition of qualifications:** The Professional Qualifications Directive provides for the recognition of qualifications for doctors, dentists, nurses, veterinary surgeons, pharmacists and architects. These professions are treated as special because of harmonised educational standards in these areas. In other occupations, national rules have prevented total harmonisation but the European Qualifications Framework seeks to enable countries to compare different educational systems. Non-EU countries can join the Qualifications Framework, and it makes sense to continue to work towards harmonisation so that the UK maintains its global competitiveness. It would make a lot of sense to keep the professional qualifications directive – since efforts have already been made and are currently transferable.

## Improving public trust

Greater control over immigration policy provides an opportunity to engage the public more actively in developing the system. But it also brings greater risks to public trust: the potential growth in unauthorised population in the wake of Brexit – stemming from a lack of birthright citizenship in the UK, and the need for labour in sectors like food processing, hospitality and retail – could further erode public trust. Meanwhile, some commentators have expressed scepticism that reducing numbers alone will allay anxiety about social change.<sup>196</sup> Recent studies have found that net migration matters less than churn for social integration and how people feel about their communities.<sup>197</sup> The potential for further eroding public trust if the promise is unmet in the immediate future arguably outweighs the possible gains. Moreover, the government will need to persuade those who voted to Remain that it has their interests at heart. In other words, it will take much more work to build an immigration system that is seen as having integrity and serving the interests of all British people – and the government must confront a number of potential risks in this regard, such as the potential for creating an unauthorised population among EU nationals.

Some of the key elements of a system that attracts public trust will include:

- **Supporting communities:** The new Controlling Migration Fund (which replaced the discontinued Migration Impact Funds) is a positive step in helping alleviate some of the uneven pressures of migration, but there is a risk that this fund is used mostly for enforcement.
- **Planning for the impacts of migration:** Over the past ten years, the UK has experimented with different fora to discuss local impacts, but these efforts failed to take root and were subsequently discontinued amid spending cuts. One example was the Migration Impacts Forum, established in 2007, which brought together national and local government, business and trade unions and frontline service providers (including housing, healthcare, and criminal justice) to share insights on the impacts of migration, good practices and areas for further research;<sup>198</sup> another was the National Migration Group, which brought together representatives from government and the Regional Strategic Migration Partnerships and other stakeholders to discuss migration issues (including impacts). Brexit provides an opportunity to review the infrastructure and governance of integration, to ensure that regional disparities are better accommodated.
- **Public engagement:** Future efforts to include the public more directly will be an essential part of this process. Countries have experimented with a number of different options, for example encouraging the public to make online submissions on different topics, or hosting local meetings for the public to discuss these issues (see the Days of Dialogue hosted in 50 Dutch municipalities<sup>199</sup>). The Home Affairs Committee inquiry could also

196 Demetrios G. Papademetriou and Natalia Banulescu-Bogdan, *Understanding and Addressing Public Anxiety About Immigration (Transatlantic Council Statement)* (Washington, DC: Migration Policy Institute, 2016), <http://www.migrationpolicy.org/research/understanding-and-addressing-public-anxiety-about-immigration>.

197 See, for example: Sunder Katwala and Will Somerville, *Engaging the Anxious Middle on Immigration Reform: Evidence from the UK Debate* (Washington: Migration Policy Institute, 2016), <http://www.migrationpolicy.org/research/engaging-anxious-middle-immigration-reform-evidence-uk-debate>.

198 Home Office and the Department of Communities and Local Government, 'The Migration Impacts Forum: Purpose and working methods', June 2007, [http://217.35.77.12/CB/england/papers/pdfs/2007/MigrationImpactsForumpurposeandworkingmethods\\_id1511562.pdf](http://217.35.77.12/CB/england/papers/pdfs/2007/MigrationImpactsForumpurposeandworkingmethods_id1511562.pdf).

199 Rotterdam introduced the Day of Dialogue in 2001, and developed the 'Building Bridges through Dialogue' programme in 2007 with four pillars: civic citizenship, citizenship and identity, neighborhood dialogue and street dialogue. See Natalia Banulescu-Bogdan and Meghan Benton, *Added Value? Developing Common Values in an Era of Large-Scale Integration Pressures* (Brussels: MPI Europe, forthcoming).

be a model for further debate; public meetings across the country will launch a 'National Conversation on Immigration' in conjunction with British Future.<sup>200</sup> Westminster's Parliamentary Committees are not usually models of general public engagement, but they could learn from committees elsewhere (such as the Welsh Assembly) that have experimented with creative methods to take evidence from under-served communities and collaborative digital democracy tools.<sup>201</sup>

- **Investments in training:** To help sectors and regions that might be exposed by Brexit and adjust to reduced labour supply, greater funding could be made available for supporting the British and current migrant workforce. There might be an argument for greater use of immigration fees (not just the immigration skills charge) to invest in long-term workforce planning. Alternatively, the UK could follow the approach taken by a number of countries, such as New Zealand, which invests almost all of the income from immigration fees in settlement services.
- **Integration programmes:** It should also be noted that any changes to the future immigration systems and the current EU population are likely to mean that future EU migrants will be more settled (that is, less likely to move back and forth), which strengthens the case for investing in their integration needs such as language training and migrant education programmes. In industries with considerable underemployment, migrants can be supported to plug gaps in their professional training that might be preventing them from doing jobs through bridge programmes.<sup>202</sup>

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200 House of Commons Select Committee on Home Affairs, 'Immigration inquiry launched', (news release, 8 December 2016), <https://www.parliament.uk/business/committees/committees-a-z/commons-select/home-affairs-committee/news-parliament-2015/161208-new-inquiry-immigration/>; and Katwala, Rutter, Ballinger, and Robinson, *Immigration After Brexit*.

201 Kevin Davies, 'How the National Assembly for Wales Used Loomio for Online Collaboration', Loomio Blog, 16 May 2016, <http://blog.loomio.org/2016/05/16/national-assembly-wales/>.

202 Maria Vincenza Desiderio, *Integrating Refugees into Host Country Labor Markets: Challenges and Policy Options* (Washington, DC: MPI, 2016), [www.migrationpolicy.org/research/integrating-refugees-host-country-labor-markets-challenges-and-policy-options](http://www.migrationpolicy.org/research/integrating-refugees-host-country-labor-markets-challenges-and-policy-options).

## V. CONCLUSIONS

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Factoring in the future of EU workers and the government's legislation to extricate the country from the European Union will be of critical importance to the UK economy. The UK labour market depends heavily on EU migrants, including in sectors:

- that depend on timely access to the highest-quality talent (such as finance and universities);
- that hire a large share of EU workers because employers struggle to fill jobs in the local population (such as manufacturing and social care);
- where labour needs are seasonal and thus depend on a workforce willing to move for work and take temporary jobs (such as agriculture).

While the UK workforce comprises just 7 per cent of EU nationals, in reality, they make up to a third of workers in key sectors, and their sectoral and geographic concentration in places like London means how Brexit is negotiated holds tremendous importance. In some industries, the scale of this reliance is dramatic, and a post-Brexit immigration system which doesn't make provision for the short-, medium- and long-term support of these sectors could have significant ramifications for the economy. Even in sectors where this reliance is less stark, the impact on particular regions – from agriculture in the East Midlands, to manufacturing in Yorkshire, to hospitality in Scotland – could be significant.

The social, demographic, economic and political uncertainties make it difficult to predict exactly how this adjustment will play out. For sectors that rely on EU talent, Brexit brings a host of risks (from economic slowdown to reverse agglomeration in sectors such as finance and tech) that could affect skills needs. For sectors that employ large numbers of EU nationals, the declining appeal of the UK labour market because of the weak pound, a less welcome environment (and even violence) towards EU migrants and an uncertain future can already be seen.

However, labour markets are inherently dynamic, and many sectors have the flexibility to adjust to variations in labour supply. In the short run, the likely continued residence of much of the current EU population (and the chain migration that the more settled population may bring) will lessen the impact, regardless of the outcome of the Brexit negotiations. In the long run, Brexit could be an opportunity to encourage employers to adjust their business model and invest more heavily in technology and providing robust career pathways that move their workers (whether they are from the UK, EU or elsewhere) into middle-skilled jobs .

One of the lesser noted risks is the potential for Brexit to create an unauthorised population among those who will fall on the wrong side of the cut-off date, or who are unable to meet other criteria, such as proving continued residence. How large this population will be depends on various decisions, including the cut-off date, whether permanent residence continues in its current form and what documentation is required as proof. With visa-free travel to and from Europe likely to continue, the risk of people overstaying and working in the informal economy is such that this population may even grow in coming years. Greater illegal hiring could, in turn, further erode wages and living standards to the detriment of UK workers, and ultimately public trust.

The UK will have to balance its stated goals to protect the post-Brexit economy, shape the future labour force and restore public trust in the migration system, with practical requirements to minimise bureaucratic overload, contain enforcement costs and negotiate with Brussels. One particular choice will be whether preference for EU nationals is maintained throughout the immigration system, which would play well with Brussels but might require some sacrifice in relation to the other objectives.

In designing a future immigration policy and working out the process of Brexit, the next UK government should prioritise:

- **Clarity:** To avoid the risk of entrenching instability and uncertainty, the government will have to signal clearly what the timeline is for different decisions. Even if it isn't possible to determine what the system will look like in the long run, it is important to convey a very clear five-year plan. Even if an interim system is likely, a clear roadmap to show what will happen and when, could help reassure major sectors that the landing will be soft, and that large-scale labour and skills shortages will not arise from one day to the next.
- **Evaluation and evidence:** The next few years provide an opportunity for much more rigorous data collection and evidence gathering, especially if an interim immigration system provides a natural experiment on changes to the policy landscape. The lack of data on temporary EU migration in particular means that official statistics are likely to underestimate the extent of the UK's reliance on EU workers. In the coming years, greater data integration and collection (for instance using HM Revenue & Customs (HMRC) and Department for Work and Pensions (DWP) data) could help get a better picture of who is here.
- **Independent advice and feedback:** Similarly, the role of independent bodies such as the MAC and Low Pay Commission will become more important to help the government design a system that is flexible to the needs of particular sectors. Given the likely experiments that will take place over the coming years, independent advisory bodies will have to provide constant feedback (instead of one-off commissions and investigations) on how the system is adjusting – including making use of up-to-date data sources. The MAC's shift to using Burning Glass vacancy data (which is real-time instead of quarterly) is a positive step; these bodies should as far as possible exploit emerging big data sources. Finally, the government could commission an independent review of the bureaucratic hurdles and backlogs in the system to try and streamline the process. Appendix II acts as an initial contribution on this matter.
- **Consultation and engagement:** Designing a new system offers an opportunity to advance immigration policies that are fit for twenty-first-century labour markets and that can rebuild public trust in government's ability to effectively manage the migration system. A representative business advisory group could help co-design the new system and ensure it gives employers confidence, rather than consultation being an afterthought. Meanwhile, deep public engagement – for instance by making use of new online tools for participatory democracy, or through a new public body for public engagement – could help the public see this new immigration system as 'theirs'.

The UK's exit from the European Union offers an historic opportunity to build a well-managed immigration system: one that allows employers to meet labour and skills shortages in a smooth and timely fashion, while protecting UK workers and supporting communities to weather social and population change. This process cannot only happen in Whitehall, but must be as thoughtful, collaborative and evidence-based as possible.

## APPENDIX I: DATA SOURCES AND DEFINITIONS

This paper relies on a number of different UK data sources collected and administered by the UK Home Office, the Office for National Statistics (ONS) and other government departments:

- **Long-term international migration (LTIM)** estimates the number of long-term migrants who intend to stay in the UK for at least a year or more. The International Passenger Survey (IPS) is the best source of information for LTIM data.
- **National Insurance Number (NINo)** allocation data are published by the Department for Work and Pensions (DWP). The dataset provides the number of NINo allocations to EU workers over the reporting period. NINos are requested by and issued to people who are 16 or older, are working or planning to work, or plan to claim benefits in the UK, regardless of how long they intend to stay.
- **Labour Force Survey** is the survey of resident households in the UK, providing data for the official measures of employment and unemployment published by the ONS. The survey consists of approximately 40,000 responding resident UK households and 100,000 individuals per quarter to represent the entire UK population. The survey collects data on the country of birth and the nationality of the respondents as well as their detailed socioeconomic characteristics.

However, different data are collected for different purposes and thus are not directly comparable or complementary. NINo figures, for example, include short-term migrants and the estimates are based on the date when the person registered in the National Insurance Recording and Pay As You Earn System.<sup>203</sup> Migrant workers might not register immediately after their arrival. They are also not required to de-register before departure, thus possibly over- or under-representing the number of migrant workers currently engaged in the UK labour market. Additionally, NINo data do not use the same definition of 'migrant' used by IPS.<sup>204</sup> Therefore, NINo registrations and IPS estimates for LTIM should not be directly compared. The LFS, essentially the survey of UK households, excludes many short-term migrants due to its sampling frame, but it is difficult to know to what extent the LFS may be undercounting EU migrant workers.

### Classifying occupations by skill level

While most researchers and government studies use the Standardised Occupation Classification (SOC) system, they can differ on how they group the occupations on this list into different skill levels. For example, scholars vary on how they categorise 'low-skilled' work. The Migration Advisory Committee (MAC) includes a large number of occupations in this category, ranging from administrative and secretarial roles to elementary occupations and process, plant, and machine operatives;<sup>205</sup> but as many of these occupations require qualifications and a good deal of training (for example, some of the latter roles require licences<sup>206</sup>), this categorisation might be over-inclusive. By contrast, the Migration Observatory and other experts categorise low-skilled occupations as 'elementary occupations' that don't require any specific skills or training (and are coded as skill level by ONS).<sup>207</sup>

203 Department of Work and Pensions, 'Statistics on National Insurance Number Allocations to Adult Overseas Nationals,' Assessment Report 331, January 2017, [www.statisticsauthority.gov.uk/wp-content/uploads/2017/01/Assessment-Report-331-Statistics-on-National-Insurance-Number-Allocations-to-Adult-Overseas-Nationals.pdf](http://www.statisticsauthority.gov.uk/wp-content/uploads/2017/01/Assessment-Report-331-Statistics-on-National-Insurance-Number-Allocations-to-Adult-Overseas-Nationals.pdf).

204 ONS, 'Note on the difference between National Insurance number registrations and the estimates of long-term international migration: 2016,' last updated 12 May 2016, [www.ons.gov.uk/peoplepopulationandcommunity/populationandmigration/internationalmigration/articles/noteonthedifferencebetweennationalinsurancenumberregistrationsandtheestimateoflongterminternationalmigration/2016](http://www.ons.gov.uk/peoplepopulationandcommunity/populationandmigration/internationalmigration/articles/noteonthedifferencebetweennationalinsurancenumberregistrationsandtheestimateoflongterminternationalmigration/2016).

205 MAC, *Migrants in low-skilled work: the growth of EU and non-EU labour in low-skilled jobs and its impact on the UK* (London: Home Office, 2014), [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/333084/MAC-Migrants\\_in\\_low-skilled\\_work\\_Summary\\_2014.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/333084/MAC-Migrants_in_low-skilled_work_Summary_2014.pdf).

206 Office for National Statistics: Standard Occupational Classification 2010, Vol 1 report.

207 Sumption, *Labour Immigration after Brexit*.



This report defines low-skilled occupations as 'elementary occupations'. Middle-skilled (or medium-skilled) occupations include administrative and secretarial occupations; skilled trades; caring, leisure, and other services; sales and customer service; and process, plant, and machine operatives. High-skilled occupations include managers, directors, and senior officials; professional occupations; and associate professional and technical occupations.

## APPENDIX II: THE UK IMMIGRATION SYSTEM

This appendix provides a detailed overview of the UK immigration system by Fragomen LLP, which has in-depth insights into how the system works on paper and in practice.

### INTRODUCTION

The government's Brexit White Paper published on 2 February 2017 confirmed that the Free Movement Directive will no longer apply once the United Kingdom (UK) separates from the EU. This will mean that, post-Brexit, EEA nationals will be subject to new immigration controls. It is not yet clear, however, whether this will mean that EEA nationals will ultimately be subject to the same immigration controls that are in place for non-EEA nationals or if a new system will be implemented. To provide some context to the attached report, the purpose of this appendix is to set out the current immigration regime which operates in the UK.<sup>208</sup>

There are distinct legal frameworks in place which provide for legal migration to the UK. This appendix, however, will focus principally on:

- the (European Economic Area) Regulations 2016 ('EEA Regulations'), which implement Directive [2004/38/EC](#) of the European Parliament and the Council of 29 April 2004 on the right of citizens of the EEA<sup>209</sup> and their family members to move and reside freely within the territory of the Member States; and
- the Immigration Rules, which set out the specific requirements non-EEA nationals must meet in order to be granted leave to enter or leave to remain in the UK.

### Right to Work and Sanctions

Before focusing on the particular routes to enter and work in the UK, it is important to understand the context within which the immigration regime is currently operating.

Over the past three years in particular, the government has introduced tougher measures to limit migration to the UK. One strategy to drive this objective has been to make it significantly more difficult for illegal migrants to live and work in the UK and place stronger sanctions on those who fail to take appropriate measures to identify these individuals. Some examples include:

- **Employing illegal workers:** It is a criminal offence<sup>210</sup> to employ an illegal worker if the employer knows or has reasonable cause to believe that they are disqualified from working. The maximum civil penalty is up to £20,000 per illegal worker and a criminal sanction of up to five years' imprisonment.

Where an employer has carried out a requisite right to work check, in accordance with current UK Visas and Immigration (UKVI) guidance,<sup>211</sup> it will establish a statutory defence that will protect the employer from a civil

<sup>208</sup> The information set out in this appendix is intended to provide a general outline of the immigration law and process in the UK and does not constitute specific legal advice.

<sup>209</sup> The EEA consists of EU member states and Iceland, Liechtenstein and Norway. The EU member states are Austria, Belgium, Bulgaria, Croatia, Republic of Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and UK. Bulgaria and Romania joined the EU in 2007 and the rights to work in other member states were limited for the first seven years. The UK required Bulgarian and Romanian nationals to obtain work permission and 'accession worker cards' in order to work in the UK. This restriction was lifted in January 2014. Switzerland is not an EU member or part of the EEA but it is part of the single market. In the UK, Swiss nationals enjoy the same rights as EEA nationals.

<sup>210</sup> Parliament of the United Kingdom, *Immigration, Asylum and Nationality Act 2006*, s.21 (London: Stationery Office, 2006). (This was amended by Parliament of the United Kingdom, *Immigration Act 2016*, c. 19, s. 35 (London: Stationery Office, 2016)).

<sup>211</sup> Home Office, *An employer's guide to right to work checks* (London: Home Office, 2016), [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/571001/Employer\\_s\\_guide\\_to\\_right\\_to\\_work\\_checks.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/571001/Employer_s_guide_to_right_to_work_checks.pdf)

penalty. Where a migrant has limited permission to remain in the UK, the employer has a continued responsibility to carry out additional checks before the migrant's visa expires until the individual has settled in the UK or leaves employment.

- **Working illegally:** In 2016 it became a specific criminal offence<sup>212</sup> for an individual to work in the UK without the correct permission. Where an individual knows or should have reasonable cause to believe that they are working illegally, they are liable on conviction for up to six months' imprisonment and a fine. The Home Office also has the power to seize earnings that were made where a migrant has been found to be working illegally.
- **Right to rent:** The Immigration Act 2014 introduced a new requirement for landlords to carry out 'right to rent' checks.<sup>213</sup> In 2016, amendments to the Act made it a criminal offence to lease premises to individuals that do not have this right.<sup>214</sup> Landlords are required to check that their prospective tenants have the right to live in the UK by carrying out a check of the tenants' original documents and taking a signed and dated copy of the documents. The Home Office imposes a £3,000 fine per tenant if the check was not carried out correctly and the tenant does not have a legal right to reside in the UK. The check must be carried out before tenancy commences and the landlord is required to track the expiry of the tenant's permission.

In 2016, the Immigration Act was updated to make it a criminal offence for landlords to rent properties to individuals that do not have a right to live in the UK. Landlords can face up to five years' imprisonment and/or a fine.<sup>215</sup>

- **Opening bank accounts:** UK banks are required to carry out status checks on all individuals applying for current accounts. If an individual is flagged as a disqualified person, the bank should refuse to open an account for that person. A disqualified person is somebody who has been identified by the Home Office as a foreign national who is liable to removal from the country.<sup>216</sup>
- **Driving:** Foreign nationals applying for a UK driving licence are required to provide original documentation to evidence their right to reside in the UK (that is, Biometric Residence Permit or a visa in their passport).<sup>217</sup> Foreign nationals will not be permitted to apply for a UK driving licence if they cannot show this.

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212 Parliament of the United Kingdom, *Immigration Act 1971*, s. 24B (London: Stationery Office, 1971) (as inserted by *Immigration Act 2016*, s.34)

213 Parliament of the United Kingdom, *Immigration Act 2014*, s. 20–37 and Schedule 3, (London: Stationery Office, 2014) since amended by *Immigration Act 2016*.

214 Parliament of the United Kingdom, *Immigration Act 2014*, s. 33A, (as inserted by *Immigration Act 2016*, s. 39)

215 Parliament of the United Kingdom, *Immigration Act 2014*, s. 33C (as inserted by *Immigration Act 2016*, s. 39)

216 Parliament of the United Kingdom, *Immigration Act 2014*, s. 40A (as inserted by *Immigration Act 2016*, s. 40A)

217 Parliament of the United Kingdom, *Road Traffic Act 1988* (London: Stationery Office, 1988), s. 97A (as inserted by *Immigration Act 2014*, s. 46)

## THE CURRENT LEGAL FRAMEWORK FOR EEA NATIONALS TO ENTER AND LIVE IN THE UK

The EEA Regulations provide the framework for EEA nationals and non-EEA national family members to live, work and study in the UK. The right of free movement for EEA nationals and their non-EEA national family members has existed since the UK first joined the European Economic Community on 1 January 1973.

### I. EEA Nationals

- i. **Qualified persons:** All EEA nationals have an initial right to enter and reside in the UK for up to three months.<sup>218</sup> After this period, in order to extend their right to reside in the UK, EEA nationals must show that they are exercising treaty rights as a Qualified Person.<sup>219</sup> A Qualified Person is defined<sup>220</sup> as an individual who is:
  - a. a jobseeker;
  - b. a worker;
  - c. a self-employed person;
  - d. a self-sufficient person; or
  - e. a student.<sup>221</sup>
- ii. **Registration Certificates:** EEA nationals are entitled (but not required) to apply for a Registration Certificate which evidences their existing right to live in the UK. The application can be submitted immediately upon entering the UK, provided the EEA national is exercising treaty rights.
- iii. **Permanent residence:** After an EEA national has been exercising treaty rights in the UK for a continuous period of five years, they may be eligible to apply for a document evidencing their permanent residence status.<sup>222</sup> The EEA national will also be required to evidence that they have not left the UK for more than six months in each year during the five-year period.<sup>223</sup>

Permanent residence is an automatically acquired right once an EEA national has completed five years in the UK, assuming all other requirements have been met. Similar to the Registration Certificate, therefore, permanent residence documentation merely evidences an automatically granted status. An application is needed to obtain a Permanent Residence Card (PRC), which confirms this status.
- iv. **British citizenship:** An EEA national may be eligible to apply to naturalise as a British citizen after they have held permanent residence status for 12 months in accordance with the British Nationality Act 1981. As above, while the EEA national is not required to hold a PRC, they must now obtain this document prior to submitting an application for naturalisation.

Applicants are required to meet a number of requirements, including:<sup>224</sup>

- a. that they have held permanent residency status for 12 months (and are in possession of a PRC at the time of application) (those married to British citizens may apply immediately upon obtaining permanent residency status);
- b. that they are of good character;
- c. that they have not been absent from the UK for more than 450 days in the five years preceding the

<sup>218</sup> Parliament of the United Kingdom, *The Immigration (European Economic Area) Regulations 2016*, Regulation 13 (London: Stationery Office, 2016).

<sup>219</sup> Parliament of the United Kingdom, *The Immigration (European Economic Area) Regulations 2016*, Regulation 14(1).

<sup>220</sup> Parliament of the United Kingdom, *The Immigration (European Economic Area) Regulations 2016*, Regulation 6.

<sup>221</sup> Self-sufficient persons and students are required to have comprehensive medical insurance for the period that they are exercising their treaty rights in that category.

<sup>222</sup> Parliament of the United Kingdom, *The Immigration (European Economic Area) Regulations 2016*, Regulation 15

<sup>223</sup> Some limited flexibility exists in circumstances where an individual has spent longer periods outside of the UK

<sup>224</sup> Parliament of the United Kingdom, *British Nationality Act 1981*, Schedule 1 (London: Stationery Office, 1981).

application and no more than 90 days in the 12 months preceding the application (although some flexibility applies);

- d. that they have passed a Life in the UK test and have a sufficient level of English;
- e. that they currently reside in the UK; and
- f. that they intend to keep the UK as their main place of residence in the future.

## II. Family Members

EEA nationals benefit from more extensive rights of family reunion than other foreign nationals. These apply to: spouses; civil partners; children under 21; grandchildren under 21; dependent parents; and dependent grandparents that are non-EEA nationals.<sup>225</sup> Family members enjoy the right to live and work here indefinitely, provided the EEA national (known as their 'sponsor') is exercising treaty rights and they continue to be part of a subsisting relationship. While direct family members are not required to obtain documentation to evidence that they are related to an EEA national, they will be required to do so to facilitate travel and to prove to potential employers that they have the legal right to work in the UK. Family members of EEA nationals may be eligible for permanent residence after five years in the UK. Family members can apply for:

- i. **Family permits:** Non-EEA nationals can initially apply for a family permit without charge, which will give them a document to evidence their right to enter and travel to the UK for a period of six months. Documentation to be submitted with an application include: a valid passport, evidence of the relationship with the sponsor (that is, marriage certificate, birth certificate), evidence that their sponsor is or will be exercising treaty rights, the original or copy of the sponsor's EEA state-issued ID card or passport, and proof of dependency (if applicable).
- ii. **Residence cards:** Once in the UK, family members can apply for a residence card which is granted for a period of five years. Applicants must complete an application form and provide evidence that their sponsor is exercising treaty rights.
- iii. **'Surinder Singh':** Ordinarily, family members of British citizens cannot rely on the EEA Regulations<sup>226</sup> and are instead subject to the Immigration Rules. However, the case of *Surinder Singh*,<sup>227</sup> heard in the Court of Justice of the European Communities, established an exception to this rule. Where a British citizen has properly exercised treaty rights in another EEA state for three or more months and has made that EEA state their main residence or base for the 'centre of their life', they may be able to rely on the EEA Regulations.

Applications relying on *Surinder Singh* have become more complex since November 2016 following additional requirements that must be met in order to qualify. The substituted wording<sup>228</sup> now states that Regulation 9 will not apply where the purpose of residence was as a means of circumventing the immigration laws that would be in place for family members of a British citizen. The new wording also provides factors that will be taken into consideration when deciding if the British citizen's residence in the EEA state was 'genuine'.<sup>229</sup>

<sup>225</sup> Parliament of the United Kingdom, *The Immigration (European Economic Area) Regulations 2016*, Regulation 7.

<sup>226</sup> See introduction above.

<sup>227</sup> *Regina v. Immigration Appeal Tribunal and Surinder Singh, ex parte Secretary of State for the Home Department*, C-370/90 (High Court of Justice – Queen's Bench Division – United Kingdom, 1992).

<sup>228</sup> Parliament of the United Kingdom, *The Immigration (European Economic Area) Regulations 2016*, Regulation 9, substituted by Regulation 44 and Schedule 5.

<sup>229</sup> Parliament of the United Kingdom, *The Immigration (European Economic Area) Regulations 2016*, Schedule 5, Regulation 9 (3).

- iv. **Extended family members:** EEA nationals are also permitted to bring 'extended family members' to the UK. Extended family members include: unmarried partners; siblings; aunts; uncles; cousins; nieces; and nephews. Unlike direct family members, extended family members are required to apply for a residence card. In addition to the documentation requirements listed above, extended family members are required to show that they were dependent upon the sponsor or were a member of their household and continue to be dependent on them or that they need the personal care of the sponsor (or the sponsor's spouse/civil partner/unmarried partner) on serious health grounds.

## THE IMMIGRATION RULES AND THE POINTS-BASED SYSTEM FOR NON-EEA NATIONALS

Outside of the EEA Regulations, the UK's immigration control is based on the seminal Immigration Act 1971 (as amended by subsequent immigration and asylum acts), and the Immigration Rules (the Rules).<sup>230</sup> It is the Rules that practitioners refer to, and changes to the Rules must be authorised through the parliamentary process under s.3 (2) of the Act.

The Rules regulate entry into, and the stay of persons in, the UK. It is by reference to these criteria that Entry Clearance Officers at British Diplomatic posts overseas determine if that person qualifies for entry to the UK.

The Points-Based System (PBS) was introduced into the Rules in 2008. It was a means of tidying up a dense matrix of over 80 separate visa categories to provide a more streamlined and manageable system that applicants and users alike could navigate. The rules governing PBS applications are largely set out in Part 6A of the Immigration Rules.

As the name implies, the PBS allocates a certain number of points to different attributes for visa applicants. The Rules set out how many points are required for each category, and how they are awarded. A main applicant is permitted to bring dependent family members with them but this only includes spouses/civil partners/unmarried partners with whom they have been cohabiting for two years or more and children under 18. Only in very exceptional circumstances would an alternative family member who is dependent on the main applicant be able to obtain a dependant visa.

The PBS has five distinct categories, which are set out in more detail below.

### I. Tier 1

The Tier 1 visa category is available for high-value/exceptionally talented migrants. This category is further broken down into a number of sub-categories:

- i. **Tier 1 (Entrepreneur):** This category is open to individuals aged 16 or over who hold £200,000<sup>231</sup> in funds and wish to invest in a new or existing business or businesses in the UK, with the exception of investment in property development or management. Applicants must meet an English language requirement,<sup>232</sup> be able to maintain themselves during their stay in the UK without use of public funds and provide overseas criminal records checks with their application. An applicant can also form an 'entrepreneurial team' with one other Tier 1 (Entrepreneur) applicant and share the same investment funds. All applicants must satisfy a genuine entrepreneur test.

<sup>230</sup> Provided for in section 3(2) of the 1971 Act.

<sup>231</sup> Where funding has been provided by FCA-registered firms, the Department for International Trade (DIT) or certain government departments, the investment fund sum requirement is reduced to £50,000.

<sup>232</sup> Minimum level B1. Home Office, *Immigration Rules* (London: Home Office, 2016), Appendix B.

The visa will be issued for up to three years and four months in the first instance. The visa can be extended for a further two years, provided that the funds have been invested in the UK business(es), the applicant has registered as a director or as self-employed within six months of arriving in the UK and has created at least two full-time jobs for UK settled workers that have existed for at least 12 months.

After five years in the UK, a Tier 1 (Entrepreneur) visa holder and family members may be eligible to apply to permanently reside in the UK, subject to strict eligibility requirements. There is also a route to expedite the process of permanent residence to three years, depending upon the nature and success of the entrepreneurship.

- ii. **Tier 1 (Graduate Entrepreneur):** This category is available to non-EEA nationals who have studied in the UK and have been awarded a UK bachelor's degree, master's degree or PhD and have been endorsed by a UK-recognised Higher Education Institution (HEI); or individuals that have a degree that is considered to be the equivalent of a UK bachelor's degree and have been endorsed by the DIT. Endorsements from an HEI are available for those UK graduates who have developed genuine and credible business ideas and entrepreneurial skills to establish one or more businesses in the UK. Endorsements from the DIT are available to those graduates who have been identified by the DIT or are elite global entrepreneurs to establish one or more businesses in the UK.

Applicants must provide a letter of endorsement from the HEI or DIT, evidence that they hold the appropriate academic qualification, evidence that they meet the English language requirements<sup>233</sup> and proof that they are able to maintain themselves during their stay in the UK without use of public funds.

The visa will be issued for one year in the first instance and can be extended for one further year and possibly switched to the Tier 1 (Entrepreneur) category if the business is successful.

- iii. **Tier 1 (Investor):** This category is available to non-EEA nationals who are over 18 and have access to at least £2 million to invest in the UK. The funds must be readily available and held in one or more regulated financial institutions and should be held by the applicant or their spouse/civil partner/unmarried partner. Money can be invested in UK government bonds or share/loan capital in active and trading UK companies and the investment must be made within three months of the start date of the visa.

The visa will be issued for up to three years and four months in the first instance. The visa can be extended for a further two years, provided the whole £2 million has been invested within three months of the start date of the visa and the level of investment has been maintained throughout the length of the visa in accordance with strict rules.

After five years in the UK, a Tier 1 (Investor) visa holder and family members may be eligible to apply to permanently reside in the UK. There are also routes to expedite the process of permanent residence if higher levels of investment are made.<sup>234</sup>

- iv. **Tier 1 (Exceptional Talent):** This category allows individuals to enter the UK to work for a business as an employee or director or be self-employed. The Tier 1 (Exceptional Talent) scheme recognises exceptional talent in established and emerging leaders in the fields of science, humanities, engineering, medicine, digital technology or the arts with international acclaim. There are five bodies that specialise in the relevant areas and assist in assessing the eligibility of an individual in their speciality and 500 places are made available for endorsements every six months.

<sup>233</sup> Minimum level B1. Home Office, *Immigration Rules*, Appendix B.

<sup>234</sup> Two years if the investment is £10 million or three years if the investment is £5 million.

Applicants must provide a letter of endorsement from a competent body.

After five years in the UK, a Tier 1 (Exceptional Talent) visa holder and family members may be eligible to apply to permanently reside in the UK.

- v. **Tier 1 (General):** This visa category was open to individuals that were highly skilled and were able to attain 75 points or more according to their attributes including: qualifications, previous earnings, UK experience and age. Tier 1 (General) visa holders are permitted to work for any UK employer and/or engage in self-employment activities.

This category is no longer open for new applications or extensions. Furthermore, individuals who still hold this visa type are required to apply for indefinite leave to remain in the UK by no later than 6 April 2018, when this route will close permanently.

- vi. **Tier 1 (Post-Study Work):** This visa category was open to individuals that had studied in the UK and was issued for two years only, allowing the applicant time to find employment or set up as a self-employed person. It was a means of retaining the most able migrants that had studied in the UK.

This category is no longer open for new applications or extensions.

## II. Tier 2

This is the sponsored worker category and is split into four main sub-categories (detailed below). This visa category requires sponsorship by a UK entity that holds a Sponsor Licence. Below we set out a number of key principles of Tier 2 sponsorship in addition to the main requirements of different Tier 2 visas.

- i. **Tier 2 sponsorship and duties:** Prior to sponsoring individuals under the Tier 2 visa categories, an employer must first obtain a Sponsor Licence from the Home Office. The sponsor is required to provide prescribed company documentation and information and submit an application form for the Home Office's consideration, which will usually be decided within two months. This may also entail a visit by the Home Office to ensure the sponsor is able to comply with the rigorous obligations imposed under a licence.

The Sponsor Licence is in effect, therefore, an agreement between the sponsor and Home Office that the sponsor will comply with its duties and in return will be permitted to sponsor skilled migrant workers.

The employer's sponsorship duties cover five main areas:

1. immigration status of migrants and preventing illegal working;
2. migrant contact details;
3. record-keeping;
4. migrant tracking and monitoring; and
5. recruitment practices and professional accreditations.

The Home Office requires the sponsor to ensure that they are able to comply with their duties in order for the employer to retain its Sponsor Licence. The Home Office will conduct onsite visits sporadically (sometimes unannounced) to verify and determine ongoing compliance. Where a sponsor does not comply with its duties, it risks loss of licence and the ability to sponsor migrants in the future.

### Certificate of Sponsorship

A migrant worker in the Tier 2 category will require a Certificate of Sponsorship (CoS) before he or she can apply for a visa. The CoS is an electronic work authorisation, which contains the employment information and is issued by the sponsor. Only after a sponsor has issued the CoS to the individual can he or she then apply for Entry Clearance to enter and begin work in the UK.

### Cooling-off period

Tier 2 migrants are subject to a cooling-off period once they have left the UK.<sup>235</sup> This is effectively a 12-month period where they are unable to apply to enter the UK as a Tier 2 migrant. The only exceptions to this are:

- if the migrant's previous CoS in the past 12 months has/have been issued for three months or less;
- they are applying for a Tier 2 visa as a high earner (a salary threshold of £159,600 or more); or
- the individual is able to prove that they have not lived in the UK for the past 12 months where they hold a visa that covers a longer period than they actually stayed in the UK.

### Contract work

Tier 2 migrants are permitted to carry out work to fulfil contracts for services that their Tier 2 sponsor holds with a client and can work at the client site, provided that overall control still remains with their sponsor. The contract in place between the sponsor and its client should be for a finite period and cannot be for an ongoing routine role or service.

There is limited scope for a Tier 2 migrant to do supplementary work as a self-employed individual, provided the supplementary, self-employed role they are undertaking falls within the same Code of Practice that is listed on their CoS and there is a genuine contract in place between the migrant and the company that it will work for or provide services to.

### Overseas criminal records

From 6 April 2017 applicants who are to be sponsored in certain occupations are required to provide overseas criminal certificates for any countries that they have lived in for 12 months or more over the immediate ten-year period before the application.

### Immigration skills levy

From 6 April 2017, sponsors are required to pay the Immigration Skills Charge<sup>236</sup> each time they sponsor a worker from outside the EEA (although some exceptions do apply).

The skills charge applies to a Tier 2 worker assigned a CoS on or after the 6 April 2017 in the 'General' or 'Intra-Company Transfer' routes and the amount payable depends on the size of the organisation and the length of employment. The skills charge is £1,000 per person, per year and is payable at the same time that CoS is assigned. The Immigration Skills Charge cannot be passed on to the worker and so must be paid for by the sponsor.

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<sup>235</sup> Home Office, *Immigration Rules*, Paragraphs 245GB (d) and 245HB (g).

<sup>236</sup> Immigration Skills Charge Regulations 2017.

- ii. **Tier 2 (General):** This category is generally used for new hires from outside the UK that will be coming to the UK to fulfil a skilled<sup>237</sup> position that cannot be filled by a settled worker<sup>238</sup> in the UK. The government has a prescribed list of roles in the Codes of Practice for Skilled Workers (latest version published 6 April 2015) that meet the correct skill level.<sup>239</sup>

In the majority of cases a sponsor will be required to undertake a Resident Labour Market Test (RLMT) before a role can be offered to a non-EEA national. The RLMT requires 28 days' advertising to verify that there are not any suitable settled workers who can fill the role. Exceptions to having to complete the RLMT include:

- high earners (the current salary threshold is £159,600 or more at the time of producing this report);
- roles that fall within the shortage occupation codes,<sup>240</sup> with the exception of nurses; and
- those applying to switch into Tier 2 (General) from the Tier 4 (General) category (students).

### Restricted CoS

There is an annual limit of 20,700 CoS available to sponsors under Tier 2 General.<sup>241</sup> This cap is relevant where an individual is applying for an initial Tier 2 (General) visa from outside of the UK and they do not meet the high earner threshold or where an individual is switching from within the UK and previously held a Tier 4 (Dependant) visa.

Once the RLMT described above is complete the sponsor must usually then apply for a Restricted CoS. The Restricted CoS request must be submitted by the 5th of the month to be considered in that month's allocation. If the request is approved, this will be communicated from the 11th of the month and only at that point will an applicant be able to apply for their visa.

### Unrestricted CoS

Unrestricted CoS are not subject to a limit as described above and are available to use within the annual allocation provided to all sponsors. The following will fall into the unrestricted category:

- high-value inward investment posts – where the job offer is for the migrant to work in support of a posting from an overseas firm in connection with the relocation of a high-value business to the UK or a significant new inward investment project and certain requirements from the sponsor's perspective are met,
- those who are eligible to switch to the Tier 2 (General) category from within the UK (with the exception of Tier 4 (Dependants));
- high earners; and
- those who are extending their Tier 2 visas.

Applicants must provide proof of maintenance and evidence that they meet the English language requirement.<sup>242</sup>

The visa can be issued for up to five years in the first instance and can be extended to bring total leave as a Tier 2 (General) migrant to six years.

237 National Qualification Framework (NQF) level 6.

238 A settled worker currently includes UK and EEA nationals, ancestry visa holders and individuals that have permission to stay in the UK indefinitely.

239 UK Visas & Immigration, 'Codes of Practice for Skilled Workers: Standard Occupational Classification (SOC) Codes and minimum appropriate salary rates,' 6 April 2015, [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/423732/codes\\_of\\_practice\\_april\\_2015.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/423732/codes_of_practice_april_2015.pdf).

240 Home Office, *Immigration Rules*, Appendix K.

241 The number of certificates available varies each month but is between 1,100 and 2,000.

242 Minimum level B1. Home Office, *Immigration Rules*, Appendix B.

After five years in the UK, a Tier 2 (General) visa holder and family members may be eligible for Indefinite Leave to Remain (ILR). If they are not granted ILR, they must leave the UK after six years and are subject to the cooling-off period.

- iii. **Tier 2 (Intra-company Transfer):** This visa category is for non-EEA nationals working for a company which is linked to the UK entity by common ownership or control.<sup>243</sup> As with the Tier 2 (General) category, the role needs to be skilled to degree level as listed in the Codes of Practice for Skilled Workers and must meet minimum salary levels.

To be eligible for this visa category, workers must have worked for the overseas company for a minimum of 12 months unless: (1) they will earn a salary of £73,900, in which case they can apply any time after they have commenced employment with the company; or (2) they are filling a graduate trainee position, in which case they will only need to have worked for the overseas company for three months prior to applying.

Applicants must provide proof of maintenance and evidence that they have been employed by the overseas company for the requisite length of time.

The Tier 2 (Intra-company Transfer) visa can be issued for up to five years in the first instance, which is the maximum time allowed in most cases. High earners<sup>244</sup> can extend their visa up to a maximum of nine years in total.

Graduate trainees can only stay in the UK for a maximum of 12 months.

The ICT category does not lead to permanent settlement in the UK.

#### iv. **Tier 2 (Minister of Religion) and Tier 2 (Sportsperson)**

The Tier 2 (Minister of Religion) category is available to those who will fill a role within a faith community.

The Tier 2 (Sportsperson) category is available to elite sportspersons or qualified coaches recognised by a sport's governing body as internationally established at the highest level. The applicant will be required to obtain a letter of endorsement from the sport's governing body to submit with their application.

Applicants must provide proof of maintenance and evidence that they meet the English language requirement.

The visas will be issued for up to three years and one month in the first instance. The visas can be extended for a further three years, bringing total leave to a maximum six years.

After five years in the UK, a Tier 2 (Minister of Religion) or Tier 2 (Sportsperson) visa holder and their family members may be eligible for ILR. If they are not granted ILR, they must leave the UK after six years and are subject to the cooling-off period.

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<sup>243</sup> In order to be defined as a 'linked entity', the two companies must fall into one of the prescribed scenarios set out in paragraph 4.3 of the Tier 2 and 5 Guidance. Home Office, *Tiers 2 and 5: guidance for sponsors*, April 2017, [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/600342/Tier\\_25\\_guidance.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/600342/Tier_25_guidance.pdf).

<sup>244</sup> That is, those earning at least £120,000 per annum.

### III. Tier 3

This category was initially created for low-skilled work in the PBS but never opened for use. Instead, a small number of seasonal schemes did exist but these were closed in 2013.<sup>245</sup>

### IV. Tier 4

The Tier 4 category<sup>246</sup> is available for overseas students that will study with an education provider that holds a Tier 4 sponsor licence.

- i. The Tier 4 (Child) visa is available for individuals aged between 4 and 17 who will study at an independent school in the UK.

Tier 4 (Child) applicants must provide evidence that they have a place on their course, proof that they have consent from parents or guardians to study in the UK and proof of maintenance to cover a full year's academic fees and living costs.

- ii. The Tier 4 (General) visa is available for individuals aged 16 or over who will study at an independent school, embedded college offering pathway courses, private provider or higher education institution (HEI). Depending on what type of institute the Tier 4 (General) visa holder studies at, they may be permitted to work part-time (10–20 hours per week) during term times and full-time during holidays.

The Tier 4 (General) visa will be issued for a maximum of two years if the course is below degree level (certain exceptions apply) and will vary in length for courses at degree level or above, depending on the course that will be studied. It is possible to extend a Tier 4 (General) visa but most individuals studying at degree level or above will be subject to a limit of five years in total as a Tier 4 (General) visa holder.

Tier 4 (General) applicants must provide proof of maintenance to cover a full year's academic fees and nine months' living costs (certain exceptions apply), evidence that they meet the English language requirement<sup>247</sup> and parental consent if they are under 18.

The Tier 4 categories do not lead to settlement.

### V. Tier 5 – Temporary Workers

The Tier 5 visa category<sup>248</sup> comprises a number of sub-categories that facilitate the temporary movement of non-EEA nationals to the UK. With the exception of Tier 5 (Youth Mobility Scheme), Tier 5 applicants will require a CoS from an entity that holds a Tier 5 sponsor licence for the relevant sub-category.

- i. **Tier 5 (Creative and Sporting):** Available for sportspersons, entertainers or creative artists who have been offered work in the UK. The visas are initially issued for up to 12 months and can be extended by a further 12 months.

<sup>245</sup> Seasonal schemes included: Seasonal Agricultural Workers Scheme (SAWS) & Sectors Based Scheme (SBS) – these schemes were available for Bulgaria and Romania nationals to work in horticulture (SAWS) and in the food processing industry (SBS). The SAWS visa was issued for a maximum of six months to permit work for fruit and vegetable growers. The SBS visa was issued for a maximum of 12 months to permit work within the food processing sector. These visa categories closed in 2013. Sheep shearers – there is a non-PBS visa type for temporary employment as sheep shearers for non-EEA nationals, which is an exception as it is a lower-skilled role. This is a seasonal visa category which permits individuals to enter the UK between 1 April and 30 June each year for the purpose of shearing sheep. Applicants are required to provide a copy of their contract to shear sheep in the UK, evidence that they can maintain themselves without making use of public funds and proof that they intend to leave the UK at the end of their stay. The visa will be valid until 30 September at the latest.

<sup>246</sup> Home Office, *Immigration Rules*, Part 6A, paragraphs 245ZT - 245ZZE.

<sup>247</sup> Minimum level B1 for below degree level and minimum level B2 for degree level or above. Home Office, *Immigration Rules*, Appendix B.

<sup>248</sup> Home Office, *Immigration Rules*, Part 6A, paragraphs 245ZI - 245ZS.

- ii. **Tier 5 (Charity Workers):** Available for voluntary workers who wish to do unpaid work for a charity. The visas are initially issued for up to 12 months, the maximum time allowed under this visa.
- iii. **Tier 5 (Religious Workers):** Available for those who want to do religious work such as preaching or working in a religious order. The visas are initially issued for up to 24 months, the maximum time allowed under this visa.
- iv. **Tier 5 (Government authorised exchange):** This a category available for those who want to come to the UK for a short period to carry out work experience or do:
  - i. training;
  - ii. an overseas government language programme;
  - iii. research; or
  - iv. a fellowship through an approved government authorised exchange scheme.

The visas are initially issued for up to 12 or 24 months (dependent on the scheme). If an initial visa is issued for less than the maximum period permitted, an extension application can be submitted to cover the remaining permitted period.

- v. **Tier 5 (International Agreement):** This for those contracted to do work covered by international law while in the UK, such as a free trade agreement. The visas are initially issued for up to two years and can be extended in two-year increments for a maximum cumulative length of six years in the UK. There are certain exceptions and restrictions within this category. This category is rarely used at present but may become more relevant as the UK negotiates free trade agreements after Brexit.
- vi. **Tier 5 (Youth Mobility Scheme):** This a cultural exchange scheme which allows young people from certain countries, aged between 18 and 30, to live and work in the UK. The visa category is available to nationals from Australia, Canada, Japan, Monaco, New Zealand, Hong Kong, Republic of Korea and Taiwan and it offers young migrants opportunities to work temporarily while experiencing life in the UK. This category is also available to British overseas citizens, British overseas territories citizens and British nationals (overseas).

The visa is issued for two years and cannot be extended.

## OPTIONS OUTSIDE OF THE PBS FOR NON-EEA NATIONALS

There are some additional options, which are outside of the PBS. Below we look at three of the more common applications that are submitted to the Home Office to facilitate a move to the UK.

### i. Spouse of British citizen

This is available to married/civil/unmarried partners of British citizens or individuals who hold permanent residence in the UK. The visa will allow the spouse/partner to live, study and work without restriction in the UK.

Applicants must provide evidence of marriage or relationship and cohabitation, proof that they will have accommodation in the UK and the evidence that the British/settled spouse (or applicant if applying from within the UK) is able to meet the strict financial requirements through a number of ways (including earnings from salary, investments and/or savings) and evidence that they meet the English language requirement.<sup>249</sup> The visa will be issued for up to 33 months in the first instance and can be extended for a further 30 months.<sup>250</sup>

After five years in the UK, a spouse/civil partner/unmarried partner of a British citizen may be eligible for indefinite leave to remain (ILR).

### ii. Sole Representative of Overseas Business

This is available to a senior employee (but not major shareholder) of an overseas company that does not have a commercial presence in the UK. The visa will allow the sole representative to set up a commercial presence in the UK and work in the business.

Applicants must provide evidence that they can maintain and accommodate themselves during their stay in the UK without use of public funds, evidence that they meet the English language requirement,<sup>251</sup> details of the overseas business activity, information about the role in the UK and details of the applicant's relationship with the overseas company.

The visa will be issued for up to three years in the first instance and be extended for a further two years. After five years in the UK, a sole representative may be eligible for ILR.

### iii. Ancestry

This is available to the grandchildren of those born in the UK; Republic of Ireland before 31 March 1922; or on a British-registered ship or aircraft. The applicant must be a Commonwealth citizen and aged 17 or over. The visa will allow an applicant to live and work in the UK.

Applicants must provide evidence of the ancestry, documentation to prove that they intend and are able to work in the UK and evidence that they are able to maintain themselves during their stay in the UK without use of public funds.<sup>252</sup>

The visa will be issued for up to five years in the first instance and can be extended indefinitely.

After five years in the UK, an Ancestry visa holder may be eligible for ILR.

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249 Minimum level A1. Home Office, *Immigration Rules*, Appendix FM, Paragraph E-ECP.4.1

250 From 1 May 2017, an additional English language requirement will be introduced at the extension stage to require applicants to pass a test at level of A2.

251 Minimum level A1. Home Office, *Immigration Rules*, Paragraph 144 (vi).

252 Home Office, *Immigration Rules*, Paragraph 186.

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**Recruitment & Employment Confederation**

Dorset House  
First Floor  
27-45 Stamford Street  
London SE1 9NT

Tel: 020 7009 2100

Fax: 020 7935 4112

Email: [info@rec.uk.com](mailto:info@rec.uk.com)

Twitter: @RECPress

Web: [www.rec.uk.com](http://www.rec.uk.com)

Registered in England, company registration number 3895053

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