UK Migration Policy Post-Brexit

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2018

Freedom of Movement post Brexit

Summary

This paper sets out proposals to revise the immigration system and additionally in the annexe it makes the point that more information is required to fully understand the nature of where the costs fall and benefits exist. The information on much, if not all, of this is held by the government.

The central objective should be to ensure control over the movement of people. Using a combination of work permits and a cap we would look to control access to work and rights to settlement. Free movement for EU citizens for other purposes should be preserved.

Introduction

The recent referendum vote gave HMG a clear mandate to leave the EU. Once we have left, what was also clear from the vote was that HMG will need to put in place controls on immigration for EU citizens as well as non EU citizens. This paper explores a way to reduce migration pressures on jobs and wages whilst at the same time reducing the pace of population growth to sustainable levels.

1) Freedom of movement

a) Origins of Freedom of movement in the EU

In 1951 The Treaty of Paris established the European Coal and Steel Community. This created a right to free movement for workers in these industries. Building on this the Treaty of Rome (1957) provided a right for the free movement of workers within the European Economic Community. The Directive 2004/38/EC on the right to move and reside freely assembles the different aspects of the right

of movement in one document, replacing *inter alia* the directive 1968/360/EEC. It also clarifies procedural issues, and it strengthens the rights of family members of European citizens using the freedom of movement.

b) EU definition of freedom of movement:

Freedom of movement and residence for persons in the EU is, the EU insists a cornerstone of Union citizenship, as established by the Treaty of Maastricht in 1992. Its practical implementation in EU law, however, has not been straightforward. It first involved the gradual phasing out, of internal borders under the Schengen agreements, initially in just a handful of Member States. Today, the provisions governing the free movement of persons are laid down in Directive 2004/38/EC on the right of EU citizens and their family members to move and reside freely within the territory of the Member States.

c) Freedom of movement - EU Workers:

The following defines the designation of an individual as a worker under European Union Law:

'The essential feature of an employment relationship, however, is that for a certain period of time a person performs services for and under the direction of another person in return for which they receive remuneration.'

- Under the ECJ case law, the rights of free movement of workers applies regardless of the worker's purpose in taking up employment abroad, so long as the work is not solely provided as a means of rehabilitation or reintegration of the workers concerned into society. The right of free movement applies to both part-time and full-time work, so long as the work is effective and genuine and not of such small scale, irregular nature or limited duration to be purely marginal and ancillary

- A wage is a necessary precondition for activity to constitute work, but the amount is not important. The right to free movement applies whether or not the worker required additional financial assistance from the Member State into which he moves. Remuneration may be indirect *quid pro quo* (e.g. board and lodging) rather than strict consideration for work.

- Where a person is self-employed, he/she can avail themselves of the freedom to provide services and freedom of establishment.

d) Extent of EU's citizens right to freedom of movement

The right to free movement applies where the legal relationship of employment is entered into in or shall take effect within the territory of the European Community. **The precise legal scope of the right to free movement for workers has been shaped both by the European Court of Justice and by directives and regulations.** (See Annexe C).

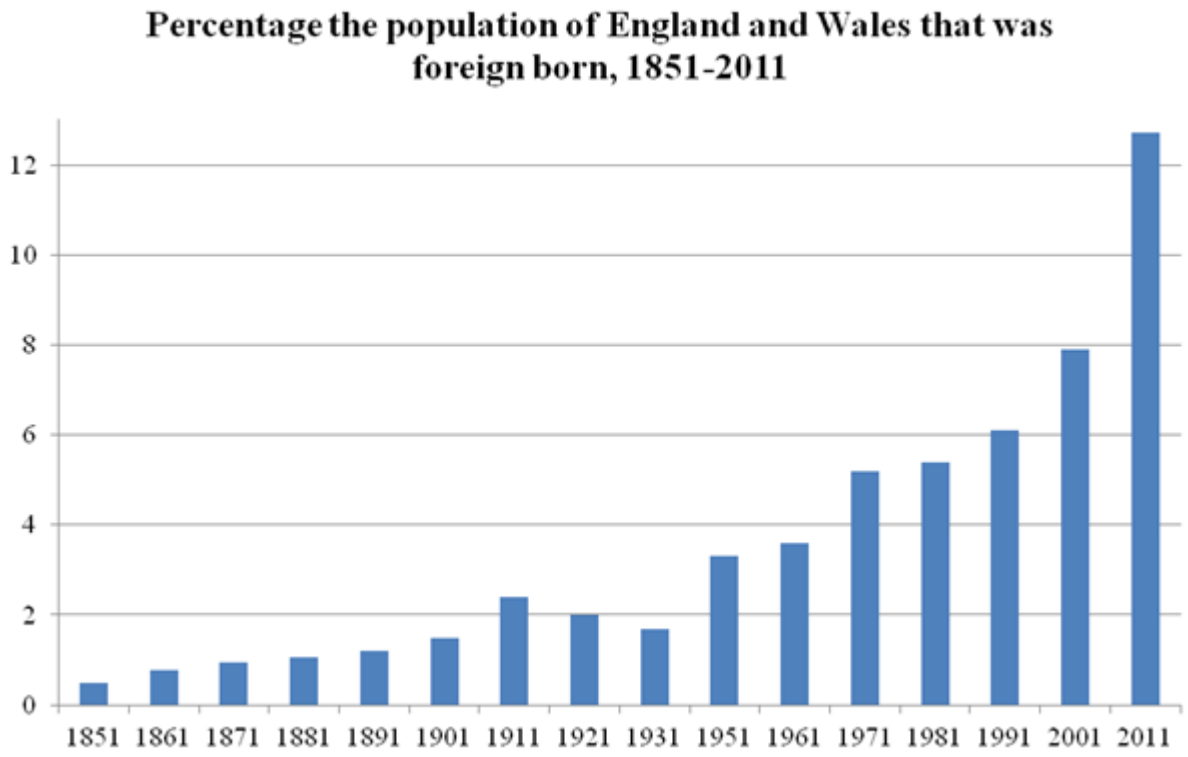
Underlying these developments is a tension "between the image of the Community worker as a mobile unit of production, contributing to the creation of a single market and to the economic prosperity of Europe" and the "image of the worker as a human being, exercising a personal right to live in another state and to take up employment there without discrimination, to improve the standard of living of his or her family".

It is also true that the rights of the EU citizen to seek and take work anywhere in the EU have also run into the right of Nation States to set their own welfare policies. Britain's 'Habitual Residency Test' has been under constant pressure from the ECJ, where it is seen as contravening the EU citizen's right to equal treatment. It is the Commission, using the ECJ that has over a period of time eroded the nation states ability to define who may and may not receive financial support from the taxpayer. Quite often it is stated that the growing

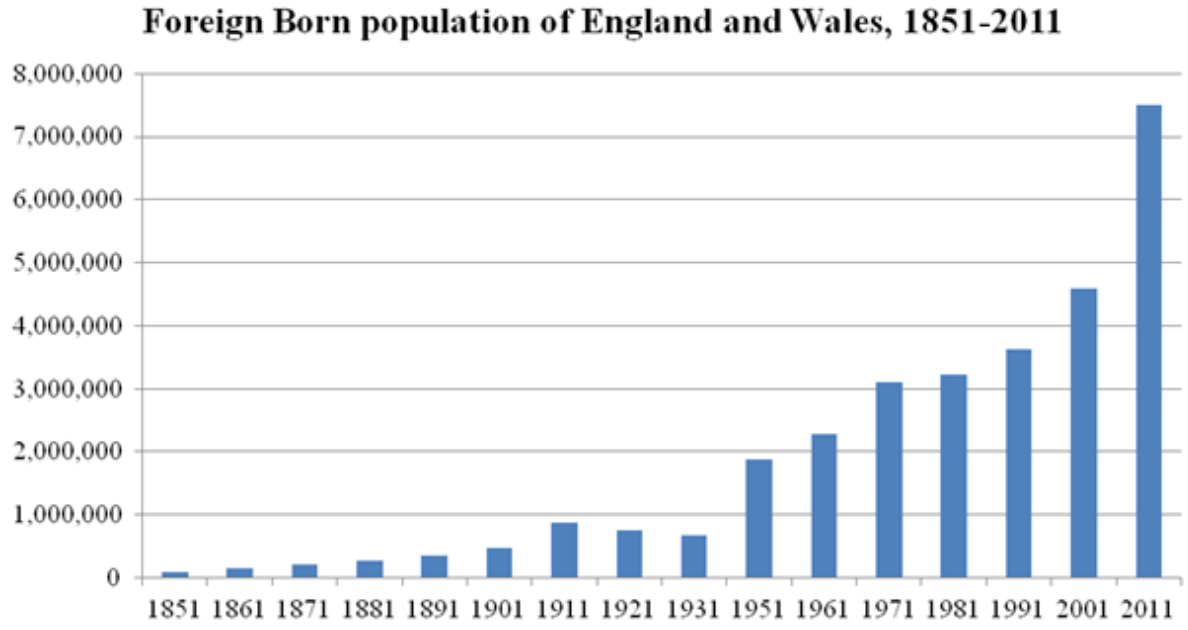
cost of EU citizens benefit claims from the UK is because we don't have the same contributory based systems of social assistance as other countries do. This isn't correct. Most other countries have a mix of social assistance and social security payments, for example in Germany where the Federal systems are different from the Länder systems.

2) Background to migration control

The United Kingdom has always had a strong desire to help people fleeing persecution and tyranny from all over the world, as well as bringing in many who have wished to settle here. Over the centuries Britain has experienced many relatively small episodes of immigration. For nearly a thousand years migration was on a very small scale compared to the size of the population. In the decades between the Second World War and the late 1990s, whilst immigration grew steadily, it did so at a relatively modest rate before declining in the late 1960s and becoming fairly stable between 1971 and 1981. The increase in the level of migration since the late 1990s was unprecedented in UK history, dwarfing the scale of anything that came before. (See Annexe C)



This bar chart shows the percentage of the population of England and Wales that was 'foreign born' at every census between 1851 and 2011. (There was no census conducted in 1941, due to the Second World War.) [Migration Watch]



The total number of foreign born people, 1851-2011.

[Migration Watch]

- There has always been immigration to the UK but its scale since 1998 has been unprecedented in the country's history.
- Jewish refugees fleeing Russia, Eastern Europe and Germany arrived in Britain during the 19th and 20th centuries. Around 200,000 arrived over a 50 year period.
- 50,000 French Huguenots arrived in Britain over a 40-50 year period, approximately 10,000 a year.
- In the 13 years between 1997 and 2010 net foreign migration totalled 3.6 million.
- Today, net migration to year ending 2017 stands at 244,000.

The objective of this new migration policy is to get this into balance, so that the UK can continue to be able to attract those needed to work but at a sustainable rate that can be absorbed whilst adding value to the economy.

3) Post Brexit control of migration:

a) Key Objectives

The following should be the key objectives for the Government when looking to take back control of migration from the EU.

I. EU nationals wishing to come to the UK for work should be brought within the present UK work permit system. The level of the cap on work permits should be a matter for a new Government to decide; meanwhile Intra Company Transfers (ICTs) would be unrestricted unless they became open to abuse.

II. The Government should ensure that the eventual system is as flexible as possible for those areas of high added value but low

volume employees. Examples of those would be academics, scientists and people in financial services. In these categories it should be possible to arrange processes by which a very light touch system operated with much fewer restrictions. (It is worth recording that the UK is different from some other nations in that much of its applied research work, relevant to industrial use is carried out by Universities and thus those engaged in this high value work would need to be treated in the same flexible manner.)

III. Free movement for EU tourists, students and the self-sufficient (e.g.: many pensioners) should continue in both directions as they are not competing for work, and have little impact on the permanent population. There should be no restrictions on genuine marriage, (although robust checks should be in place).

IV. The large number of EU citizens who have previously lived or worked in the UK at some time but have since left must be subject to these new requirements if they wish to return to the UK to work.

V. People should be expected to have secure employment to go to before entering the country.

VI. People allowed into the UK for work should have no access to income, family or housing benefits for a set period; this paper proposes five years, although an alternative could be to require a 4 year record of NI contributions. There is significant evidence that too many migrant workers take jobs where their income alone would not be able to sustain them in the UK. This is particularly the case with those classified as self-employed. This in turn has led to abuse and criminality with many preyed upon by criminal gangs, using their identities to claim money from welfare payments. (Annex B (3)(4))

VII. If the Government introduces a cap system, then the EU might reciprocate but their Blue Card scheme is a feasible alternative for British citizens wishing to work in the EU, with a prospective salary range of £17,000-£47,000 per year in the five EU states with the most resident British citizens (2014 figures)

b) Supporting mechanisms

The new system will need to be flexible and should allow HMG from time to time to exempt some occupations from any restrictions whilst tightening up on other occupations, thus allowing them to cater for both changing circumstances and the economic cycle. The Migration Advisory Committee's Shortage Occupation List could be used for this purpose. For example, high added value migrants whom are low in number such as, for example scientists and software engineers might be exempted but a range of lower skilled work would be restricted by both the cap and the permit system.

Where the issue of a permit is being considered, the DWP regional Job Centres should be involved to check whether there is actually a shortage of UK labour in that category and location before issuing permits to business. It should be possible to leverage information gathered from the implementation of Universal Job Match and the new (UC) Work Coach Programme, plus in-work conditionality to provide new and much better data-driven insights into the potential supply of labour already available.

Some enhancement of the National Insurance number system could be required to distinguish between those granted to immigrants for work and for other purposes. This would possibly allow a time limit to be set on their validity, meaning that they would lapse on expiry of the work permit and guard against 'disappearance'.

c) Possible variations

It would also be possible to introduce a Seasonal Agricultural Workers Scheme (SAWS) for EU citizens provided that it was for truly seasonal work in defined sectors and was limited to six months. (Such a scheme was run successfully for many years. It was brought to an end when the UK borders were opened to unskilled workers from Eastern Europe). However, there would need to be some adjustments to the system such as are identified in Annexe A (2), using the New Zealand experience as a guide.

- There should be no legal or treaty objections to arrangements of the kind outlined above as the

- The UK would no longer be subject to the Lisbon treaty.

d) <u>Implementation Period</u>

I. The continuation of free movement through a transition period until the end of 2020 or early 2021 will delay any possible reduction resulting from a tightening of EU immigration arrangements as a result of Brexit. Immigration statistics run six months late so, by the time of the next election in early May 2022, we will only have net migration figures until the year ending September 2021 – probably incorporating only five to nine months of any new post-Brexit immigration regime. (There is still a net inflow from the EU of nearly 100,000 per year but the reduction of 75,000 in EU net migration over the past year may have been mainly the result of uncertainty. This may change when post-Brexit immigration arrangements have become clear).

II. The delay in an immigration white paper and draft Bill (until late 2018) are a cause of uncertainty, on the other hand, the intervening period allows time to improve a new post-Brexit immigration system. It will also be helpful that the Migration

Advisory Committee is due to publish findings on the impact of EEA migration by September 2018.

III. There would have to be a significant reduction in non-EU migration by the time of the next General Election – given that it increased over the past year by 40,000, this is difficult in the time left to deliver.

IV. Immigration remains one of the top three issues for the public. Nearly two-thirds wish to see a major reduction in net migration levels, according to YouGov. Nearly the same share (64%) want a reduction in low-skilled migration from the EU while a majority want a reduction in family migration and 80% wish to see more done to tackle illegal immigration. The public support the target of reducing net migration to the tens of thousands

e) Other EU Nations

As regards negotiability, it is worth noting that the larger member states Germany, France and Italy and the rich Benelux and Scandinavian countries do not particularly benefit from mass access to the UK labour market. To the extent that it is in their interests for their own highly skilled nationals to work in Britain, they would be accommodated under the expanded work permit scheme.

These key governments should therefore have no reason, in terms of national interest, to object to a solution of the kind outlined above. While there have been large movements of people from Eastern Europe it is not at all clear that it is in the interests of the member states in question that this should continue, bearing in mind EUROSTAT forecasts of declining population and worsening demographics, combined with pressure on their own borders from further east (Ukraine, Albania et al). Their primary interest might be in securing

the rights of those already in the UK. This is why an early statement concerning the right of EU nationals already residing here is important.

It has been estimated that this set of proposals would reduce migration by at least 100k per year. Their recent assessment of net benefits/dis-benefits from new figures shows that the influx of cheap labour did not benefit the UK as has been supposed. (Ukraine, Albania et al). Once again, this suggests that their primary interest might be in securing the rights of those already in the UK.

It should be understood that while controls of the kind listed above can make a real difference to levels of migration, the 'price to be paid' if others sought to impose a countervailing restriction on access to the single market should not actually be a high one in purely economic terms. By way of illustration, if entry to the UK of one of their nationals was 'worth' £1,000 to the other member states then measures that cut their numbers by 100,000 a year would represent a 'cost' to other member states of £100m a year. In the context of the single market even a multiple of this amount is not a very large sum.
It would also be very helpful – indeed necessary – for officials to make a proper calculation of the actual fiscal contribution of EU migrants in the UK and the potential impact of restrictions on free movement, something that they seem to have been completely averse to doing either to inform Ministers for the renegotiation or during the referendum campaign.

4) Conclusion.

On June 23rd 2016, the UK voted to leave the EU and in so doing, to take back control of their laws, their borders and their money. In this paper I have set out how and why I believe the new system should operate.

- It should ensure that UK businesses seeking to employ foreign nationals have shown that UK nationals with the correct skills cannot be found within the reasonable travel to work area.

- It should ensure that in the areas of high added value but low volume, the system remains flexible enough to accommodate the needs of industry and academia.

- It should ensure that Irish nationals be accepted in effect as UK nationals for the purposes of the scheme.

- It should make clear at the very earliest and if necessary, separate moment after the invoking of article 50 that EU nationals resident in the UK, once registered are welcome to stay and be treated as nationals with regard to work etc.

- The central purpose of the new system should be ensuring control over the movement of people while retaining largely unhindered entry for EU visitors (as well as students and the self-sufficient). Those who wish to work should be required to apply for a work permit whilst the government can set a cap at a level to be determined by the government (The EU might reciprocate but their Blue Card scheme is a feasible alternative for British citizens wishing to work in the EU.

- The automatic right to welfare payments should be ended.

Annexe A

Issues concerning new migration controls

1) Regional Immigration Policy

There have been some submissions supporting the use of a regional immigration policy. Having looked at these I believe they are for the most part complicated, difficult to administer and open to abuse. The following set out some objections.

- **Overhaul of the Immigration System:**

A regional policy would require a fairly substantial restructuring of the immigration system. Complex as that would be in normal times, it would be even more fraught at a time of Brexit when the Home Office will have to carry out sizeable changes, such as documenting and logging over three million EU migrants. Furthermore, following relatively recent reform in 2011 this would add complexity to employer's workloads, particularly as employers are now familiar with the existing framework. This would also place responsibilities on the devolved administrations and local authorities who have had no experience of immigration.

- **Complexity :**

A regional element adds further complexity to the system, especially for employers that operate across proposed regions/jurisdictions. Further complexity could have the opposite effect on business and cause harm to business by preventing them from accessing the talent that they require.

- **Enforcement and Retention :**

Some of the proposals require employers to live in a particular area – this would prohibit them from buying and renting property in other areas and even suggest that workers arrive into specific ports of entry, requiring significant costly enforcement. Given that there is the distinct risk that a regional policy could encourage greater illegal working.

Some countries do have similar restrictions on where people can live and work, such as Canada. However it can only ever be temporary in a liberal society. In Canada these restrictions generally only last two years and there are questions about their compatibility with the Canadian Charter of Rights and Freedoms which gives residents the right to live where they please. The limited nature of such restrictions mean that onward movement to other regions is likely. Many parts of Australia and Canada have low retention rates of migrants on regional programmes.

- **Different Demographic Challenges**

The UK is an island with a large population. Very few places are under populated and few regions are experiencing population decline. Between 2013 and 2015 just the North East and Yorkshire and the Humber experienced modest population decline - 22,000 and 20,000 respectively. All other regions are growing, some more rapidly than others. This makes it fundamentally different to countries that have regional immigration policies such as Australia and Canada, one of which is a continent and the other being the second largest country on the globe and both of which have extremely low pot population densities. Furthermore, they are

both set up under different constitutional arrangements having very strong regional government with wide scale powers.

- **Density:**

Australia – 3 people per square kilometer

Canada – 4 people per sq/km

England – 422 people per sq/km

UK – 268 people per sq'km

The demographic challenge that the UK faces is a growing and ageing society, neither of which can be solved by more immigration.

- **Net Migration Target**

Regional immigration policies are incompatible with the aim of reducing net migration as is the government policy. While some might think this positive, the reality would be an increase in net migration and an increase in voter concern about levels of immigration and the capacity of public services to deliver. Following the vote, such a policy would ensure faith in the government was seriously undermined.

2) Seasonal Agricultural Workers Schemes, (SAWS)

a) Case study: New Zealand's Recognised Seasonal Employer Scheme, (RSE)

Summary

- New Zealand's Recognised Seasonal Employer Scheme (RSE), established in April 2007 and has been described by a study

written for the World Bank as a 'best practice' scheme by international standards. The RSE has eased labour shortages in the horticulture and viticulture sectors while minimising risks of both overstaying and undercutting or displacement of local by immigrant labour. Indeed, 'there is a very strong focus on "New Zealand first" in the labour market. The UK's Seasonal Agricultural Workers Scheme (SAWS), as it existed in the UK until 2014, did not incorporate a Resident Labour Market Test (RLMT) unlike the RSE, nor did it include measures of the type included in the RSE to prevent illegal overstaying.

Detail

- New Zealand's RSE Scheme provides places for up to 8,000 Pacific Islanders to work during the agricultural season. Workers can remain for up to seven out of 11 months. Preference is given to workers from countries such as Samoa, the Solomon Islands, Kiribati, Tuvalu and Vanuatu. Employers must take the following steps:

- They must register as a Recognised Seasonal Employer before applying to recruit workers **(*under the UK SAWS, registration with the Gang masters' Licensing Authority (GLA) was optional for sole operators (of which there were five out of a total of nine operators servicing over 500 growers), depending on their recruitment arrangements, but compulsory for multiple operators (of which there were four out of the total nine operators).***
- Employers are required to take reasonable steps to recruit New Zealanders into available positions ***(in contrast, the UK's SAWS never included an RLMT).***
- Employers are required to pay the market rate for work being carried out. This contributes to the "New Zealand first" element of the policy, which aims to avoid the undercutting of local by immigrant labour. (***While under SAWS registered operators***

were subject to inspection by the GLA or what was then the UK Border Agency including of their pay systems, farms were inspected by the operator to ensure appropriate standards of health and safety, welfare, pay, accommodation and that UK Border Agency requirements were met.)

- Employers must also pay half the worker's return air fare between New Zealand and the country of origin***. (Employers under the UK's SAWS were not required to pay any portion of the worker's return airfare).***

- Employers must bear the cost of repatriating workers if they become illegal. ***(This was not the case under SAWS although in 2005, fines were introduced to firms caught employing illegal workers).***[1]

- Workers under RSE are allowed to be re-employed in subsequent years. While seasonal agriculture schemes around the world seem to use either an RLMT as a form of flow control as an alternative or a quota, New Zealand uses both. The policy also contributes to New Zealand's development objectives in the Pacific region and one of its aims is to help 'alleviate poverty' in those islands.

b) Australia's Seasonal Workers Programme

Australia's scheme has similar safeguards against overstaying. Introduced in July 2012, it has a cap of around 12,000 for workers who are from Pacific Island countries and East Timor.

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- Workers may come to Australia for between 14 week and six months. Employers must be approved by the government, provide the government with evidence of labour market testing, organise flights, transport and accommodation for workers, ensure a minimum of 30 hours of labour a week and also that workers depart on the expiration of their Visas.

- There are safeguards against illegal overstaying in place in Spain too. There, workers must prove that they have returned to their country of origin by visiting a Spanish diplomatic mission or consular office within a month of the end of their employment in Spain.

3) Conclusion

Concerns about illegal overstaying have dogged some temporary labour schemes in the UK in the past. For instance, In July 2005, the Sector Based
Scheme's coverage of the hospitality sector was terminated partially on the back of evidence that the scheme was being used as a means of facilitating illegal entry. It is vital that any reintroduction of SAWS in the UK be tapered and temporary, and also that it ensures British workers are not displaced or undercut by migrant workers. Any reintroduction of SAWS should include an RLMT. Finally, any return of SAWS must be accompanied by robust safeguards against illegal overstaying similar to those in operations in New Zealand, Australia and Spain.

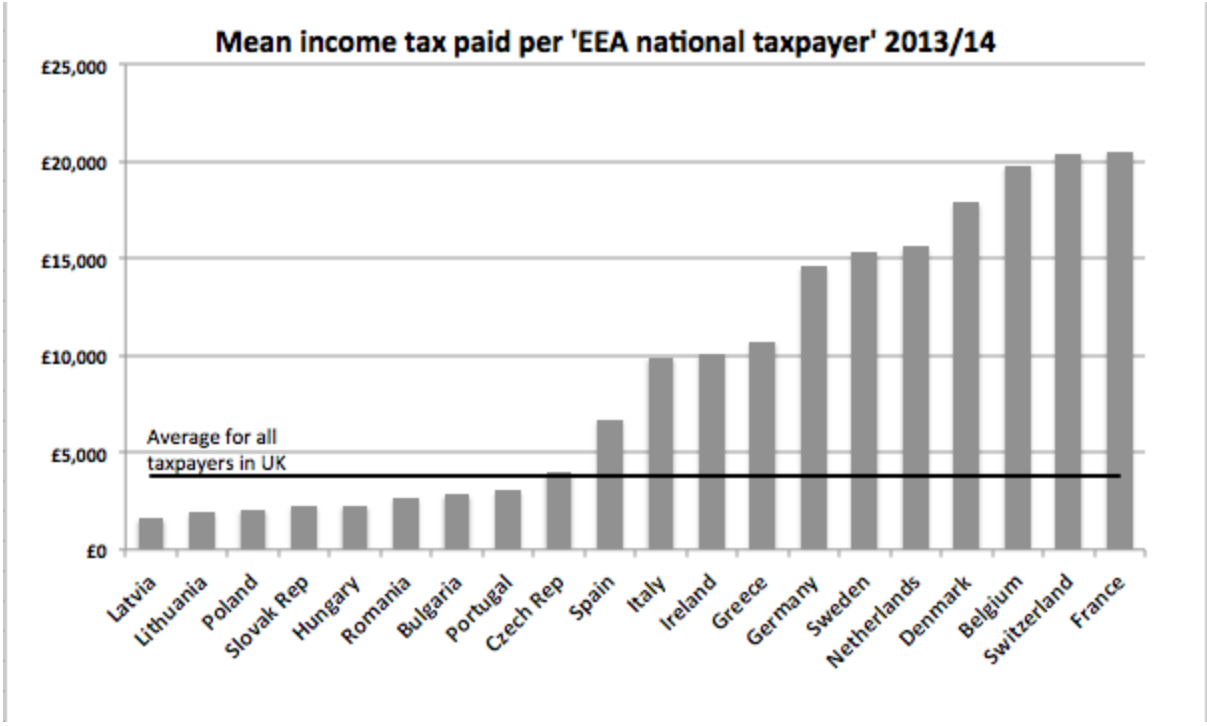
Annexe B

a) Latest Statistics on cost/benefit of migration

1. HMRC and the Treasury have for a long time been reluctant to provide any information of either the costs or contributions of migrants to the UK fiscal balance. The UK Statistics Authority subsequently found that they were in breach of the code of practice on official statistics. HMRC released in August 2016 a new publication with statistics on receipts of income tax and NICs and payments of tax credits and child benefit to EEA nationals in the tax year 2013/14.

Tax receipts from EEA nationals

2. The headline here is that while taxpayers from Western Europe pay on average twice the amount of income tax as the average for the whole UK taxpayer population, taxpayers from Eastern Europe pay only half the average for the whole UK taxpayer population.



Working-age benefit payments to EEA nationals

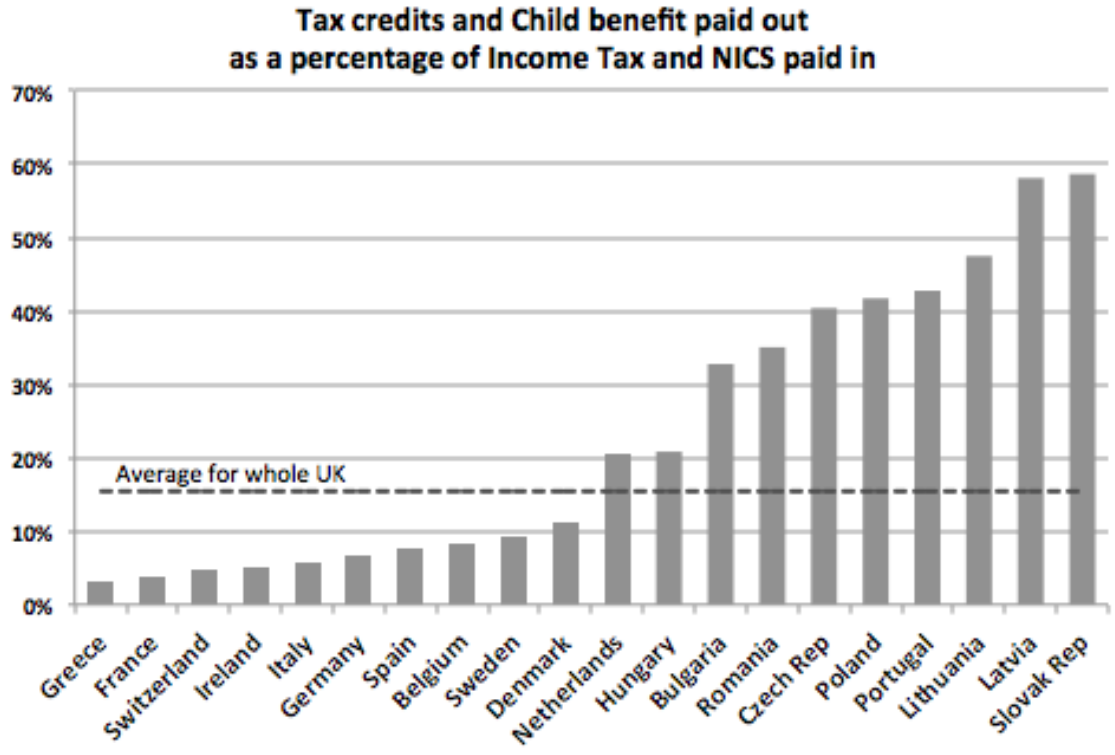
3. The information from HMRC can be put together with data from the DWP to give for the first time a fairly complete picture of working-age benefit expenditure on EEA nationals. This amounted to over £4bn in 2013/14,

	Description	Amount (£m)	Department
In work	Tax credits	1,549	HMRC
	Housing benefit	724	DWP
Out of work	Tax credits	315	HMRC
	HB, JSA, ESA etc.	842	DWP
n/a	Child Benefit	714	HMRC

Total working age benefits	**4,144**	

Overall effect

4. The DWP data is not broken down by country, but comparing just HMRC benefits with payments made to HMRC the stark divergence between migrants from Western and Eastern Europe can be seen, with nearly half the personal taxes paid by Eastern Europeans going straight back in tax credits and child benefit. If the DWP benefits follow a similar distribution, then almost all of these taxes go straight back in working-age benefits.



[Migration Watch]

Annexe C

Examples of ECJ Interventions with regards to access to benefits

The European Court of Justice (ECJ) has also played a key role in the evolution and extension of EU competence in this area. Important examples are the Bambast judgement (1999), which confirmed the de-coupling of free movement rights from economic activity, the Metock judgement (2008) which enabled third country nationals to gain free movement rights by marriage to EEA nationals, without having been lawfully resident in a Member State, and the Zambrano judgement (2011) which for the first time created rights based on an EU citizen's residence in his or her own country of nationality."

Since the introduction of EU citizenship, the CoJ has extended access to social benefits for EU citizens residing in another Member State (Cases C-184/99 Grzelczyk, C-224/98 D'Hoop). The status of first-time job seekers is currently the subject of intense discussion, as they do not have a worker status to retain. In Cases C-138/02 Collins and C-22/08 Vatsouras, the CoJ found that such EU citizens had a right of equal access to a financial benefit intended to facilitate access to the labour market for job seekers; such a benefit consequently cannot be considered to be 'social assistance', to which Directive 2004/38/EC excludes access. However, Member States may require a real link between the job seeker and the labour market of the Member State in question. The CoJ further clarified the situation of previously employed workers in its Alimanovic judgment (C-67/14). The individuals concerned had worked, and had consequently retained their worker status for a further six months after becoming unemployed (Article 7(3)(c) of the directive).

Directive 2004/38/EC amended Regulation 1612/68/EEC with regard to family reunification and extended the definition of 'family member' (formerly limited to spouse, descendants aged under 21 or

dependent children, and dependent ascendants) to include registered partners if the host Member State's legislation considers a registered partnership to be the equivalent of a marriage. Irrespective of their nationality, these family members have the right to reside in the same country as the worker.