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**Article**

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End of previous Forum article

Carlos Vargas-Silva\*

## EU Migration to and from the UK After Brexit

In the 2016 referendum over the UK's membership of the EU, the question of how Brexit would impact migration to the UK was a major point of contention. Those leading the campaign to leave the EU promised lower levels of immigration and the introduction of an "Australian type points based system" to regulate future inflows of EU nationals to the country,<sup>1</sup> while at the same time maintaining access

to the EU single market. At the same time, the status of EU nationals already living in the UK was not a key topic in the debate. The leaders of the campaign to leave the EU suggested that EU nationals already residing in the UK would be granted some form of residence permit and would retain most of their current rights. Likewise, there was little concern about the legal status of UK nationals in other EU countries and the argument that the "EU would be obliged to grant permanent settlement rights to Britons living in Ireland and mainland Europe".<sup>2</sup>

Post-referendum deliberations suggest that these issues are much more complicated than indicated by the promises and assurances made during the referendum campaign. While the vote to leave the EU was largely driven by

\* Thanks to Isabel Ruiz and Madeleine Sumption for helpful suggestions on an earlier version of this article.

1 Migration Observatory: What would UK immigration policy look like after Brexit?, Migration Observatory Commentary, 9 June 2016. The term "Australian type points based system" was generally used as a reference to a system that involves selection based on individual skills and economic shortages.

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2 Voteleave.eu: Frequently Asked Questions, available at <http://leave.eu/en/faqs>.

opposition to the free movement of workers,<sup>3</sup> there is major uncertainty about what it actually means for future UK migration policy. Concerning the inflow of EU nationals, Brexit could mean tighter controls on the migration of EU nationals, but free movement could also remain largely unaffected if the UK were to follow a model such as that of Norway, which is not a member of the EU but has access to the EU single market as part of the European Economic Area (EEA). The post-referendum discussion has also made it clear that EU nationals currently living in the UK and UK nationals living in other EU countries do not have an automatic right to permanent settlement and that their final legal status will depend on the outcomes of negotiations between the UK and the rest of the EU.

This article looks at possible scenarios related to the introduction of admission criteria for EU nationals coming to the UK and related concerns for the status of EU nationals living in the UK and UK nationals living in other EU countries.

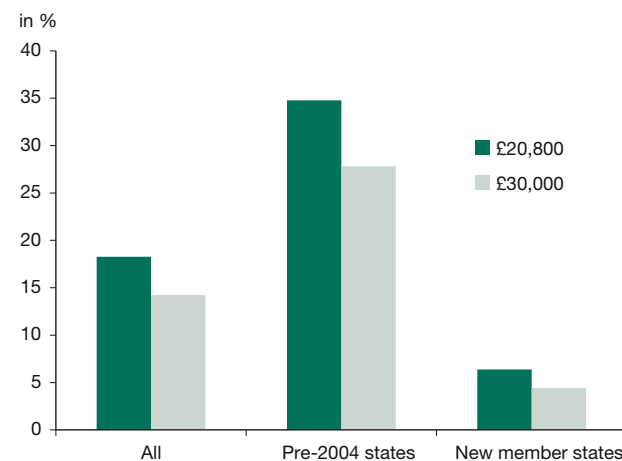
### Migration for work reasons

It is possible that the UK might accept EU rules on free movement of workers in exchange for access to the single market during Brexit negotiations. However, this may prove an unpopular option in the UK given the prominent role that migration played during the referendum campaign.

If free movement comes to an end and the UK does introduce admission requirements for EU nationals, the requirements for work visas would be particularly significant, since 73% of EU nationals coming to the UK in 2015 reported doing so for work.<sup>4</sup> Even if we do not know exactly which admission criteria would be in place for EU workers, it is reasonable to assume that the salary and skill level of the job would be an important part of the selection criteria.

The UK's current labour immigration policies for non-EU nationals provide an interesting policy benchmark to explore. The main visa category for labour migration from outside of the EU to the UK is known as "Tier 2". Those holding this type of visa must be sponsored by a licensed UK employer and must usually have a job offer in a graduate-level occupation (i.e. one that requires an undergraduate university degree or equivalent education). The overall minimum salary required for a non-EU national to get a Tier

**Figure 1**  
Share of EU nationals working in the UK who meet Tier 2 income criteria and are employed in a graduate-level occupation



Note: Only includes those of working age (16-64) working as employees (i.e. excludes the self-employed).

Source: 2015 UK Labour Force Survey.

2 work visa is currently £20,800. This minimum salary can increase substantially if there is high demand for Tier 2 visas in any given month.<sup>5</sup> The government has announced that it will raise the overall minimum salary threshold to £30,000 by April 2017 for many workers. The UK employer must also pay all relevant fees, which from April 2017 will include an annual £1,000 immigration skills charge.<sup>6</sup>

Figure 1 shows the share of EU nationals currently working in the UK that meet the eligibility criteria for a Tier 2 visa regarding annual salary (at least £20,800) and type of job (graduate-level occupation). Only 18% of EU nationals working in the UK meet these criteria. If we use the £30,000 salary threshold, this share decreases to 14%. As such, this type of selection criteria would mean that future EU migrants would be markedly different from the current ones with regard to their skills and job types in the UK. This is particularly the case regarding migrants from the newer EU member states, as only six per cent of those workers meet the criteria discussed above.

Nonetheless, it is important to note that if admission criteria were imposed on EU nationals, requirements might not

3 J. Curtice, R. Ormston: British Social Attitudes: the 32<sup>nd</sup> Report, NatCen Social Research, London 2016.

4 Office for National Statistics: Provisional Long-Term International Migration estimates, August 2016.

5 If the demand for Tier 2 visa applications exceeds the number available, the points required to get a visa increase automatically. The first jobs to become ineligible for visas are those that pay the lowest salaries, since these jobs receive fewer points.

6 UK Government: Statement: the status of EU nationals in the UK, 11 July 2016, available at <https://www.gov.uk/government/news/statement-the-status-of-eu-nationals-in-the-uk>.

be exactly the same as the ones that currently apply to non-EU nationals. These requirements were designed to regulate non-EU migration in a context in which no restrictions were imposed on EU nationals. Ending free movement would be a significant change to the UK immigration system, and it is likely that any move to impose admission requirements on EU nationals would be accompanied by a comprehensive review of the system, rather than simply applying to EU nationals the rules that currently exist for non-EU nationals. This might involve less restrictive criteria for skilled work visas for EU and non-EU nationals and might even entail the introduction of some type of low-skilled worker migration programme. There is no low-skilled work visa in the UK, as it is assumed that the supply from other EU countries is sufficient to cover the demand for low-skilled labour.<sup>7</sup> Yet, any form of selection criteria would be more restrictive than the status quo and would affect the type and number of EU workers moving to the UK.

There are two other UK policies related to migration that might also play a key role after Brexit. First, the UK has imposed an annual cap of 20,700 Tier 2 visas. If this policy were to apply to EU nationals, it would mean a numerical limit on the number of EU workers entering the country in addition to the possible selection criteria discussed above.

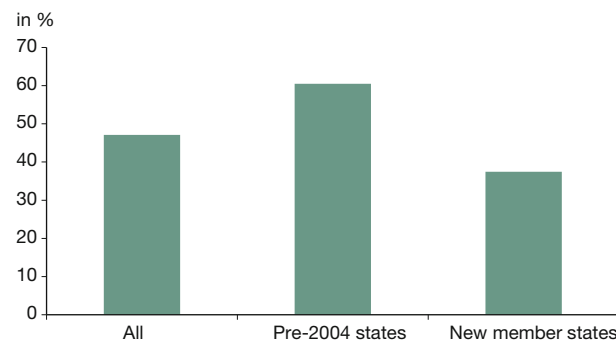
Second, most non-EU nationals with Tier 2 visas are only eligible to stay in the UK permanently if they earn at least £35,000 annually. With some exceptions – for example, those in a shortage occupation – those earning below this threshold are not able to stay in the UK for longer than six years. Most of the EU nationals currently working in the UK earn less than this amount. It is unclear how Brexit will affect these policies and if these rules will be applied to EU nationals in any form.

### Migration for family unification and study reasons

As explained above, if the UK were to apply admission requirements to EU nationals after it leaves the EU, the requirements for work visas would likely be the most relevant. However, other migration routes could also be affected. For instance, family unification could become more difficult for EU nationals. At the moment, UK nationals and settled migrants from outside the EU (i.e. those with indefinite leave to remain in the UK) are required to meet an annual income threshold of £18,600 to bring a

<sup>7</sup> In the past, there were seasonal programmes which allowed employers to recruit non-EU nationals for low-skilled work, but this ended in 2007. See E. Consterdine, S. Samuk: Closing the Seasonal Agricultural Workers Scheme: A Triple Loss, Working Paper No. 83, University of Sussex, Sussex Centre for Migration Research, 2015.

**Figure 2**  
**Share of EU nationals working in the UK who earn £18,600 or more**



Note: Only includes those of working age (16–64) working as employees (i.e. excludes the self-employed).

Source: 2015 UK Labour Force Survey.

non-EU spouse to the country.<sup>8</sup> For applicants who are also bringing non-EU dependent children, the threshold rises by £3,800 for one child and £2,400 for each additional child. This income threshold does not apply to EU nationals, whose free movement rights under European law allow them to bring non-EU spouses with them. That is, EU nationals currently have an advantage in this regard compared to UK nationals and settled non-EU nationals. This could change after Brexit. As shown in Figure 2, only 47% of EU nationals working in the UK as employees earned £18,600 or more. This share is substantially lower for those coming from the new EU member states (37%). Please note that these numbers are not comparable to those of Figure 1, as the numbers in Figure 2 are only based on earnings, while those in Figure 1 are based on earnings (£20,800 or more) and type of job (graduate-level occupation).

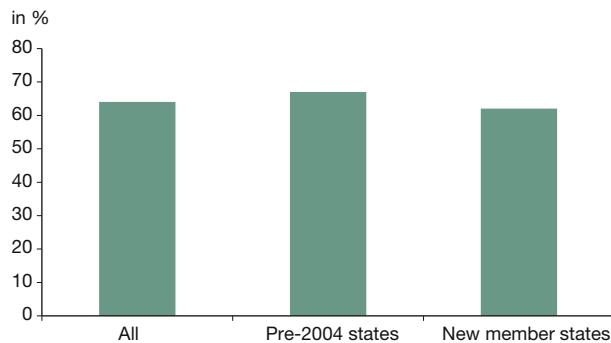
Understanding how EU students would be affected by the introduction of admission requirements is more difficult. EU students currently pay the same fees as UK domiciled students; they do not need visas and therefore can study at any institution, even if it is not a licensed sponsor of international students. The UK is likely to become less attractive to EU students if these rules change in the future.

### EU nationals living in the UK and UK nationals living in other EU countries

The UK government has made several statements supporting in principle the rights of EU nationals already living

<sup>8</sup> M. Sumption, C. Vargas-Silva: The Minimum Income Requirement for Non-EEA Family Members in the UK, Migration Observatory Report, 27 January 2016.

**Figure 3**  
**Share of EU nationals who have spent five years or more in the UK**



Source: 2015 UK Labour Force Survey.

in the country.<sup>9</sup> However, Theresa May, the recently appointed UK Prime Minister, has also stated that moving forward the rights and status of EU nationals in the UK would depend on the rights and status of UK nationals living in other EU countries. Also, while there will be a common set of rules applied to all EU/UK nationals, it is also possible to have special bilateral arrangements between countries.

Even if the UK maintains the rights of other EU nationals living in the country, important questions remain. For instance, under which criteria will EU nationals qualify for a residence permit or permanent settlement in the UK? What supporting evidence will be required? These questions will be answered as part of the process of negotiation between the UK and the rest of the EU. The discussion below reviews possible criteria for registering and granting permission to stay to EU nationals in the UK.

The current requirements for permanent residence in the UK provide a good starting point for discussion. Obtaining a permanent residence card currently requires EU nationals to continuously exercise their treaty rights in the UK for a period of at least five years.<sup>10</sup> As shown in Figure 3, close to 64% of EU nationals living in the UK during 2015 had been resident in the country for five years or more. As such, a substantial share of EU nationals in the UK meet this requirement. If many of these apply for residence cards, the pressure to come up with a solution for

the situation of EU nationals in the country will decrease. Moreover, EU nationals can then apply for British nationality after holding the permanent residence card for one year.

Providing evidence of continuous residence in the UK might not be a straightforward process for many EU nationals, as the vast majority have had no need to formally register as residents or gather any evidence in this regard. This is further complicated by the fact that there is no population register in the UK. Some EU nationals have also been away from the UK for long periods, and this affects their eligibility. Others (e.g. students, the self-sufficient and economically inactive) are required to have “comprehensive sickness insurance”, and many are unaware of this requirement. As such, many EU nationals do not qualify for permanent residence under current rules, even after spending five years living in the UK.

A possible solution is to require EU nationals to document their presence in the UK before a given cut-off date and giving some form of residence permit or permanent settlement to all those who can provide this evidence. A key difficulty in such a plan is the selection of the cut-off date. Possible cut-off dates range from the date of the referendum (23 June 2016) to the date in which the UK officially exits the EU. The logic behind using the referendum date is the concern among some British politicians that the prospect of Brexit might lead to a last minute surge in EU migration to the UK. However, there are major legal issues related to using the referendum date, as the UK remains a full member of the EU and has not initiated the process of leaving the EU. Regardless of the actual cut-off date, EU nationals would still need to obtain documents demonstrating their presence in the country, and this remains a challenge for many.

## Conclusion

There is major uncertainty about the rules that will regulate post-Brexit EU migration to the UK and UK migration to the EU. The final arrangements will depend on what the UK can and cannot negotiate with the rest of the EU. It is impossible to predict how these negotiations will unfold. Arrangements to regulate the flow of migrants can vary from a model in which free movement is largely unaffected to strong selection criteria of the type currently imposed on non-EU nationals. Likewise, residence rights for EU nationals currently living in the UK could be granted via a flexible procedure that only requires them to show evidence of physical presence in the country before a given date; alternatively, they could be contingent upon a stricter procedure similar to the current requirements for obtaining permanent residence.

9 UK Government: Press release: Government’s new Immigration Skills Charge to incentivise training of British workers, 24 March 2016, available at <https://www.gov.uk/government/news/governments-new-immigration-skills-charge-to-incentivise-training-of-british-workers>.

10 Migration Observatory: Here today, gone tomorrow? The status of EU citizens already living in the UK, Migration Observatory Commentary, 3 August 2016.

In the end, the economic consequences of Brexit might be more relevant for migration flows to and from the UK than any of the possible changes in migration policy discussed above. Many economists have predicted that Brexit will produce major negative economic consequences for the UK.<sup>11</sup> It is too early to know if these predictions will prove accurate, as much depends on the final agreement between the UK and the rest of the EU.

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11 Centre for Economic Performance: Brexit 2016 Policy Analysis, London School of Economics, June 2016; O. Carreras, M. Ebell, S. Kirby, J. Meaning, R. Piggott, J. Warren: The Long and the Short of it: What price UK Exit from the EU?, National Institute of Economic and Social Research, 12 May 2016.

An economic decline would make the country less attractive to current and potential migrants. Lower levels of immigration and higher levels of emigration could decrease public pressure for strong limitations on the free movement of workers from the EU. However, forecasts indicate that immigration flows to the UK will remain relatively high after Brexit.<sup>12</sup> This suggests that migration is likely to continue to be a major political issue in the UK long after the country leaves the EU and regardless of the outcomes of the Brexit negotiations.

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12 W. Somerville: When the Dust Settles: Migration Policy after Brexit, Migration Policy Institute Commentary, June 2016.