



House of Commons
Home Affairs Committee

**Policy options for
future migration from
the European Economic
Area: Interim report**

Eighth Report of Session 2017–19



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*Report, together with formal minutes relating
to the report*

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Home Affairs Committee

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Contents

Summary	3
1 Introduction	5
Background to our inquiry	5
Status of the negotiations	6
Withdrawal Agreement	6
Consensus on a future EEA migration policy	6
2 Objectives for a future EEA migration policy	8
European Commission guidelines	8
The UK's objectives for the future immigration system	8
Limitations of the Government's position	11
Overarching objectives for migration policy	12
3 Existing applicable controls	15
Registration and sanction	15
Labour market reforms	17
Deterrence and enforcement	17
Worker rights	18
Collective agreements	18
Regulation of employment agencies and intermediaries	19
4 Controls within an EFTA-style framework	21
EFTA and EEA membership	21
Citizens' Rights Directive	22
The EEA Agreement	22
Liechtenstein	23
Switzerland	23
Accession Arrangements	24
Cameron negotiations	25
Emergency brake provisions	26
National emergency brake	26
Regional emergency brake	27
Limits on equal treatment	28
Accession-style controls	28
'Prior job offer' system	28

5 Other free trade options	30
Ukraine-style Association Agreement	30
Canada-style FTA	32
Extending the Non-EEA tier structure	33
Alternative bespoke options	35
Seasonal workers	36
Regional immigration system	38
6 Conclusion	39
Conclusions and recommendations	40
Formal minutes	44
Witnesses	45
Published written evidence	46
List of Reports from the Committee during the current Parliament	48

Summary

With eight months to go until the United Kingdom leaves the European Union, the Government is yet to set out any substantive proposals on long-term migration between the UK and the EU. White papers and pieces of legislation, promised on multiple occasions by successive Home Secretaries, have been delayed. While we welcome the Government's efforts to secure the status of EU citizens currently living in the UK, we join the European Parliament in urging other EU countries to provide clarity and support for British citizens living in the European Union.

There has been no attempt by the Government to build consensus on future migration policy despite the fact that the issue was subject to heated, divisive and at times misleading debate during the referendum campaign in 2016. This, we believe, is regrettable. An opportunity to help business and employers plan, and a crucial moment to rebuild confidence in the migration system, has so far been missed.

After the referendum debates, we called upon the Government to instigate debates and policy processes to challenge misinformation, and to build trust, support and credibility. Our report, *Immigration policy: basis for building consensus*, noted that following the referendum the UK had the opportunity to reset the immigration debate. Migration is an important part of the UK's economic, social and cultural history—and will go on being so, including in future migration between the UK and the European Union. It is a serious disappointment that the Government has made no attempt so far to attempt to build consensus, nor to consult with the public about the decisions that must be made and the trade-offs our country faces as it negotiates a new relationship with the European Union. We warn in this report that immigration policy decisions now risk being caught up in a rushed and highly politicised debate in the run up to a vote on the Withdrawal Agreement.

In this interim report, we consider the limited statements so far made by the Government about future migration policy, and we set out for Parliament the range of options for EU/EEA migration during the transition period and beyond, that witnesses and other contributors have put to us.

We are waiting for the Migration Advisory Committee's (MAC) report in the autumn before making further recommendations, and we recognise that the Government ideally should not make final decisions on the majority of immigration policy in advance of the MAC report. However, we believe it is right to set the options out for Parliament and the public at this stage to inform the debate. We have also considered the potential trade-offs on immigration and trade relationships.

Broadly, our Report looks at three sets of policy options. First, within the EU and during transition there are further measures that could be taken, in particular on registration, enforcement, skills and labour market reform. As witnesses noted, the UK has opted not to take up measures which are possible.

Second, within an EFTA-style arrangement with close or full participation in the single market, we highlight a range of further measures that might be possible—especially in a bespoke negotiated agreement. These include 'emergency brake' provisions, controls on

access to the UK labour market, and further measures which build on the negotiation carried out by the previous Prime Minister. We conclude that there are a series of options for significant immigration reform that should be explored.

Third, within an association agreement or free trade agreement, the options in part depend on how close such an agreement is. While any agreement itself may not cover many 'labour mobility' measures, the Government will still need to make decisions about long-term migration, including for work, family and study.

Overall, we heard considerable evidence that refusing to discuss reciprocal immigration arrangements in the future partnership would make it much harder to get a close economic partnership with the EU. The need for a good economic deal, the fact that the EU is our closest neighbour and trading partner, and the shared economic, social and cultural bonds that exist between the UK and the EU mean that mobility of people will remain important.

The proximity geographically, economically and socially between the UK and the EU, and the need for a good overall deal, supports a distinct arrangement for EU migration in the future, linked to our economic relationship—with specific policies and models to be debated in the months ahead.

1 Introduction

Background to our inquiry

1. Two years on from the referendum on the United Kingdom's membership of the European Union, the Government is still to give a firm indication of what kind of immigration arrangements it wants post-Brexit. The Government has proposed replacing free movement with a 'labour mobility' framework which will require EU nationals to have a visa in order to work in the UK for an extended period of time. Both the Home Secretary and the Secretary of State for Exiting the EU have suggested that the Government's proposals on labour mobility or visas will be subject to negotiation with the European Union as part of the proposed 'future deep and special relationship',¹ but basic details about how such a scheme might work in practice or what its costs and benefits might be, remain unknown.²

2. Following the referendum in June 2016, our predecessor Committee launched an inquiry to assess whether it might be possible to build greater consensus on immigration policy. We agreed to continue this work and have published two Reports; *Immigration policy: basis for building consensus* in January 2018 and *Home Office delivery of Brexit: Immigration* in February 2018.³

3. This is an interim report published to inform Parliament and the public about the limited statements so far from the Government on future migration policy, the range of options for EU/EEA migration during, and after, the transition period that have been raised with us in evidence hearings, and the potential trade-offs between future immigration policy and future economic and trade relationships. We will await the conclusions of the Migration Advisory Committee in the autumn, and—we hope and expect—some substantive proposals from the Government before making recommendations on the future shape of EU migration policy.

4. We heard evidence from the Home Secretary, and from a range of academics, think tanks, campaigning organisations, business representatives and other experts. We particularly wish to thank Guy Verhofstadt MEP, Chair of the Brexit Steering Group, European Parliament, and Professor Michael Ambühl, former Swiss State Secretary for Foreign Affairs for travelling from Belgium and Switzerland respectively to give evidence to our inquiry. We are also grateful to the individuals and organisations who submitted their views in writing.

1 Q396; HC Deb, [col 1154](#), 12 July 2018

2 In this report we refer to negotiations with the European Union (EU) but do so with the expectation that any agreement will apply to all Members of the European Economic Area (EEA) which comprises all EU Member States plus three of the four EFTA states - Norway, Iceland and Liechtenstein. The fourth EFTA state, Switzerland, is not a member of the EEA but instead has a bilateral relationship with the EU.

3 Home Affairs Committee, Second Report of Session 2017–19, [Immigration policy: basis for building consensus](#), HC 500; Home Affairs Committee, Third Report of Session 2017–19, [Home Office delivery of Brexit: immigration](#), HC 421

Status of the negotiations

Withdrawal Agreement

5. In March 2018 the UK and EU27 reached agreement on large parts of the legal text of the Withdrawal Agreement, particularly those aspects covering citizens' rights, the financial settlement, and the transition period. Both the UK Government and the European Commission have said they hope to conclude negotiations on the Withdrawal Agreement at the October Council. On 12 July the Government published a White Paper which set out its proposals for the future UK-EU relationship but which included only limited information on a 'framework for mobility' within a document that ran to nearly 100 pages.⁴ We discuss these proposals in the next chapter.

6. Successive Home Secretaries have told us that details of a future immigration system would be set out in a White Paper on Immigration but the timetable for its publication has been changed several times. In October last year the former Home Secretary, Rt Hon Amber Rudd MP, told us it would be published by the end of 2017,⁵ then in March she told us it would not be published until the autumn of 2018.⁶ After his appointment the current Home Secretary Sajid Javid told us in June that the White Paper on Immigration would be published before the summer.⁷ On 10 July he told us it would be published "in the autumn" with an Immigration Bill expected in early 2019.⁸

7. We welcome the Government's efforts to secure the status of EU citizens currently living in the UK—and we join the European Parliament in urging the Members States to provide clarity and support for British citizens living in the European Union. However, we are extremely concerned about the current lack of information over future UK immigration policy towards EEA nationals. The shifting timetable for the publication of a long-awaited White Paper on Immigration—and the Immigration Bill announced in the 2017 Queen's Speech—is not the result of design, but indecision. Whilst we recognise the need for evidence from the Migration Advisory Committee to inform final decisions, we believe that public consultation on broad options is needed. So, it is shocking that it has taken more than two years since the referendum for the UK Government to set out any information on future arrangements at all.

Consensus on a future EEA migration policy

8. A key recommendation of our previous report, *Immigration policy: basis for building consensus*, was that the Government should lead an open and honest debate on immigration and commit to the principle of transparency in making and debating immigration policy. We set out a series of recommendations on how policy-making should change, and what needed to be done to build a new consensus, based on community discussions and evidence we took from across the country.⁹

4 HM Government, [The future relationship between the United Kingdom and the European Union](#), Cm 9593, 12 July 2018

5 Evidence taken before the Home Affairs Committee, [17 October 2017](#), HC 434, Q29

6 Evidence taken before the Home Affairs Committee, [28 March 2018](#), HC 434, Q207

7 Evidence taken before the Home Affairs Committee, [15 May 2018](#), HC 990, Q280

8 Evidence taken before the Home Affairs Committee, [10 July 2018](#), HC 434, Q396

9 Home Affairs Committee, Second Report of Session 2017–19, [Immigration policy: basis for building consensus](#), HC 500

9. After the referendum debates, we called for government-led action, dialogue and policy processes to challenge misinformation and build trust, support and credibility. We also noted that after the referendum the UK had the opportunity to reset the immigration debate and design the new system in a way that allowed the Brexit divide to heal. We warned that division, polarisation, anger and misinformation risks doing long-term damage to the social fabric, economy and politics of the United Kingdom.

10. It is a serious disappointment that in the two years since the referendum there has been no attempt by the Government to build a consensus on immigration reform, to consult the public on options for change. We welcome the Home Office commissioning evidence from the Migration Advisory Committee and the work it is doing to consult employers on their needs. However, we are concerned that the Government has left a wider debate until late in the process.

11. Immigration has been an important part of our economic, social and cultural history, and will continue to be important for us in future. As the Prime Minister said at Mansion House, after the UK leaves the European Union “UK citizens will still want to work and study in EU countries—just as EU citizens will want to do the same here”.¹⁰

12. Geography and the shared economic, social and cultural bonds between the UK and the European Union mean that the movement, or mobility, of people will remain vital. It is therefore imperative that the debate about our future EEA migration policy does not see a resurgence of the polarisation that characterised some elements of the 2016 referendum campaigns. We warn all those involved in the debate on the Brexit Withdrawal Agreement over the next few months not to exploit or escalate tensions over immigration when it should be possible to hold a sensible debate and build greater consensus instead.

10 HM Government, [PM speech on our future economic partnership with the EU](#), 2 March 2018

2 Objectives for a future EEA migration policy

13. In this chapter we look at the UK's proposals for future immigration policy as outlined so far, the guidelines adopted by the European Commission on the future of the UK-EU relationship, and the objectives for future migration policy.

European Commission guidelines

14. At the end of the March meeting of the European Council, EU27 leaders agreed to move Brexit talks into the final phase and adopted negotiating guidelines for talks on the future of the UK-EU relationship. This gave chief negotiator Michel Barnier the mandate to talk directly to the UK about the future relationship with a view to reaching a broad political agreement in the autumn to accompany the Withdrawal Agreement. The guidelines took into account the stated intentions of the UK (including to leave the single market and the customs union and no oversight by the European Court of Justice) and that such intentions limit the depth of the future partnership. The guidelines make clear the EU's desire to include immigration arrangements in negotiations on the future partnership:

The future partnership should include ambitious provisions on movement of natural persons, based on full reciprocity and non-discrimination among Member States, and related areas such as coordination of social security and recognition of professional qualifications.¹¹

15. At the June 2018 meeting of the European Council, Michel Barnier restated the EU27's negotiating position, notably that the EU27 considered the four freedoms of the single market as indivisible:

After Brexit, we want, the EU want, an EU-UK ambitious partnership, on trade as well as on security. But we have to base this partnership on our values and principles, respecting also the UK red lines. That means for us integrity of the single market, indivisibility of the four freedoms [freedom of movement of people, goods, services and capital], autonomy of the decision making of the EU, and protection and respect of the fundamental rights of EU citizens. And this point is key for our future cooperation and security.¹²

The Home Secretary told us that he expected the EU to raise issues around mobility as part of the negotiations, "we will listen to those. That is not unusual. In any free-trade agreement, labour mobility is always discussed".¹³

The UK's objectives for the future immigration system

16. In February 2018, we said that the Government had a responsibility to Parliament, the public, EU and other EEA citizens who will be affected, employers and the public servants

11 European Council, [Guidelines \(Art 50\)](#), 23 March 2018

12 Guardian, [Barnier says 'huge and serious' gap remains between UK and EU demands on Brexit, especially on Ireland](#), 29 June 2018

13 Q441

it expects to deliver the policies, to provide some urgent clarity on its intentions for post-Brexit immigration policy.¹⁴ Since then, while there has been welcome progress on plans for the settlement of EEA citizens in the UK during the transition period, the Government has given very little detail on its intentions for immigration after the transition period.

17. When the Government published supporting material for the Queen’s Speech in June 2017, it said:

With the repeal of the European Communities Act, it will be necessary to establish new powers concerning the immigration status of EEA nationals. The Bill will allow the government to control the number of people coming here from Europe while still allowing us to attract the brightest and the best. The Bill will: allow for the repeal of EU law on immigration, primarily free movement, that will otherwise be saved and converted into UK law by the Repeal Bill; make the migration of EU nationals and their family members subject to relevant UK law once the UK has left the EU.¹⁵

18. In her Mansion House speech in March this year, the Prime Minister said that “We are clear that as we leave the EU, free movement of people will come to an end and we will control the number of people who come to live in our country.”¹⁶ The UK will leave the EU on 29 March 2019; however, the Government has agreed with the EU that the Withdrawal Agreement will specify a transition period lasting until 31 December 2020, during which time free movement will continue between the UK and the EU. If the UK leaves the EU with no deal, then a new immigration system may need to be implemented from 30 March 2019 unless the UK decides that existing arrangements should continue.

19. On 6 July 2018 the Cabinet reaffirmed earlier commitments to end free movement and agreed that the Government should seek an agreement that would:

Include a mobility framework so that UK and EU citizens can continue to travel to each other’s territories, and apply for study and work—similar to what the UK may offer other close trading partners in the future.¹⁷

The Government has not said what the costs and benefits of its preferred approach might be or what it hopes to achieve—beyond general aspirations announced earlier ‘to take back control’, to introduce “an immigration system that works in the national interest”, and to continue to attract the ‘brightest and the best’.¹⁸ With regard to the Government’s ‘net migration target’, the Home Secretary refused to endorse such an approach when giving evidence as part of this inquiry:

Chair: It is a massive chain around your neck, this net migration target, is it not? Don’t you really want to ditch it?

Sajid Javid: Next question.¹⁹

14 Home Affairs Committee, Third Report of Session 2017–19, [Home Office delivery of Brexit: immigration](#), HC 421, paragraph 7

15 HM Government, [Queen’s Speech 2017: what it means for you](#), 21 June 2017

16 HM Government, [PM speech on our future economic partnership with the European Union](#), 2 March 2018

17 [Statement from HM Government](#), 6 July 2018

18 Home Affairs Committee, Sixth Special Report of Session 2017–19, [Government response to Committee’s Second Report of Session 2017–19, Immigration policy: basis for building consensus](#), HC 1075

19 Q458

20. On 12 July 2018 the Government published the White Paper, *The future relationship between the United Kingdom and the European Union*.²⁰ The White Paper sets out that the Government is seeking a UK-EU free trade area for goods with “ongoing harmonisation with EU rules on goods, covering only those necessary to provide for frictionless trade at the border,” and proposes a Joint Committee to resolve disputes. The White Paper states that the proposed framework for the future partnership should take the form of an Association Agreement.²¹ Recognising the implications of leaving the Single Market, the Government concedes that under its proposals the UK and EU will not have “current levels of access to each other’s markets” for services.²² In comparison to extensive sections on trade, security and governance, just four out of 97 pages were dedicated to the ‘mobility framework’. Despite the movement of people being one of the most prominent issues around the referendum, the White Paper provided very limited additional information.

21. The White Paper states that “free movement of people will end as the UK leaves the EU”.²³ The Home Secretary emphasised the Government’s determination on this issue when he appeared before us:

there will be a complete total end to freedom of movement. Freedom of movement, as we understand it today, will end but, also, there will be no version of that, no derivative of that, no type of free movement. There will be no backdoor version of free movement. Free movement will end.²⁴

The Government’s ambition is for EU nationals to continue to have visa free access to the UK (and vice versa) for tourism and temporary business activity—the White Paper states that in the latter case arrangements “would permit only paid work in limited and clearly defined circumstances, in line with the current business visa policy”.²⁵ For longer periods of employment, the Home Secretary told us that from January 2021 any EU national wishing to move long-term to the UK to work would likely require a visa.²⁶ He could provide no information, however, about the criteria or conditions an EU citizen may need to meet to acquire one.

22. The White Paper refers to building on current WTO GATS (mode 4) commitments:

Trade agreements which cover trade in services include provisions on the mobility of people for the provision of services (known as mode 4 commitments). Given the depth of the relationship and close ties between the peoples of the UK and the EU, the UK will make a sovereign choice in a defined number of areas to seek reciprocal mobility arrangements that the UK might want to offer to other close trading partners in the future, where they support new and deep trade deals.²⁷

20 HM Government, [The future relationship between the United Kingdom and the European Union](#), Cm 9593, 12 July 2018

21 *Ibid.*

22 [Statement from HM Government](#), 6 July 2018

23 HM Government, [The future relationship between the United Kingdom and the European Union](#), Cm 9593, 12 July 2018

24 Q398

25 HM Government, [The future relationship between the United Kingdom and the European Union](#), Cm 9593, 12 July 2018

26 Q424

27 HM Government, [The future relationship between the United Kingdom and the European Union](#), Cm 9593, 12 July 2018

We discuss the mobility arrangements usually available in the free trade agreements later in this report.

23. The Government wants the mobility framework to cover the recognition of professional qualifications held by UK and EU nationals. It also proposes a UK-EU youth mobility scheme, modelled on similar existing arrangements with other countries “to ensure that young people can continue to enjoy the social, cultural and educational benefits of living in each other’s countries”.²⁸

24. The proposals contained in the White Paper are extremely limited. The White Paper does not offer any detail with regard to long-term migration for the purposes of family reunion and little information on migration for work or study. It says that the UK would ‘facilitate mobility’ for students but provides no guarantee that conditions will not be applied. In terms of work, the White Paper does not provide any information with regard to how the recruitment of doctors and nurses from Europe by the NHS might work, or how people could come to work in social care or agriculture. Nor are there any provisions for people who are self-employed. Given that the European Commission and the UK Government have said they expect immigration arrangements to be reciprocal, this means we also have no idea what this will mean for British citizens wanting to work abroad.

25. The White Paper and the Home Secretary’s evidence appear to imply that the Government is moving towards similar arrangements for EU citizens as for other countries with similar trade arrangements. The Home Secretary explained:

we will still want to be open to talent from across the world that can help us with some parts of our economy, for example. But it should be from across the world. There is no magical reason why it should only be, for example, from the EU. There is talent across the world and being that global Britain requires us to be open to all of it.²⁹

However, we note that in practice the Government’s objectives for the trade arrangements with the EU are far deeper than with any other country. We also note that both the Prime Minister and the Home Secretary have refused to rule out preferential arrangements for EU citizens.

Limitations of the Government’s position

26. The lack of information about what Brexit will mean in practice for EEA citizens wanting to come to the UK, or for UK citizens wanting to live or work in the EEA, means that a wide spectrum of policy approaches remain open, from a very liberal to a very restrictive immigration regime. Even the statements about introducing a visa regime for long-term residency tell us nothing about what conditions—if any—a visa applicant would need to meet.

27. The Home Secretary was unwilling to provide any more details on the approach envisaged by the UK Government and told us that the Cabinet had not yet discussed or agreed what future policy would be.³⁰ The Home Secretary told us that such details would

28 HM Government, [The future relationship between the United Kingdom and the European Union](#), Cm 9593, 12 July 2018

29 Q415

30 Q416 and Qq423–425

be set out in the White Paper on Immigration, but that it would not come out until the autumn, so that it could take account of advice from the Migration Advisory Committee. He suggested that this work had not been prioritised because the future immigration system will not start until the end of the transition period. However, he confirmed that “a draft paper” for the Cabinet had already been prepared.³¹ The Home Secretary also argued that it would be a poor negotiating strategy to reveal too much information.³²

28. The lack of detail on immigration in the White Paper on the future relationship stands in stark contrast with the proposals being brought forward in the areas of customs, trade and security. It is unfortunate that by waiting so long to commission work from the Migration Advisory Committee the Government now finds itself without the information it needs for negotiations that are underway. We agree that final decisions should ideally be informed by information from the Migration Advisory Committee, but we believe that consultation on different options should still take place. In the meantime, we caution the Government against implying that the only EEA migration post-Brexit will be in the limited categories referred to in the White Paper, as that is not conducive to an open and transparent debate.

29. We repeat our recommendation in previous reports that meeting the net migration target should not be an objective of EEA migration policy. It is not working and should be replaced.

Overarching objectives for migration policy

30. In our previous report, *Immigration policy: basis for building consensus*, we set out five key areas where we believe reforms are needed to build consent around a fair, principled and effective immigration policy in the UK. These were:

- Immigration policy should be informed by honest and open debate and supported by evidence;
- Fair and clear rules need to be properly enforced;
- There should be different approaches for different types of immigration;
- Immigration should work for the economic and social interests of the UK and its citizens;
- Action is needed to address the impact of immigration on local communities.³³

It is clear that future immigration arrangements need to be capable of securing broad public support and work for our economy. In designing policy for future migration from the European Union, however, there are two added considerations: that arrangements will be reciprocated for British citizens wanting to live, work or retire in the EU, and that there will inevitably be trade-offs in the negotiations between immigration, market access and trade.

31 Q395; An Immigration Bill is expected to follow early in 2019 which will bring EU migration under UK law, enabling the UK to set out its future immigration system in domestic legislation.

32 Q402

33 Home Affairs Committee, Second Report of Session 2017–19, [Immigration policy: basis for building consensus](#), HC 500

The trade-offs

31. We heard considerable evidence that there would be trade-offs in the negotiations between immigration arrangements and the level of access to the single market. Sir Ivan Rogers, for example, told us that immigration arrangements “do not have to be part of the negotiations” but that choosing not to make it a matter of negotiation would “have consequences elsewhere in the trade discussions to come in 2019 and 2020”.³⁴

32. The EU has a surplus with the UK in goods which suggests it would be in the interests of the EU to have trade arrangements with the UK which are as frictionless as possible. The reverse is true of services—a key sector of the UK economy. Zsolt Darvas, Senior Fellow at the European think-tank Bruegel told us that whilst the UK could decide on any future immigration regime it wanted, the EU would view that decision in close association with the other parts of the deal such as access for the financial services of UK-based firms to the EU27. In his view, this might only be granted if the immigration regime of the UK were very liberal or very close to the current system of free movement.³⁵

33. Guy Verhofstadt MEP confirmed to us that he would also expect immigration arrangements to form part of the discussions on the future relationship, but that the EU was waiting for a proposal on this from the UK in the July 2018 White Paper.³⁶ In his view, immigration arrangements would be influenced by the terms of the overall agreement, and the closer the trade and economic relationships, the more “smooth and easy” the future system of migration.³⁷ He explained that:

[Immigration policy] has to be part of the total agreement on the future, in the political declaration that we are preparing for October/November. I cannot imagine a political declaration where we don’t also tackle migration and mobility, where we give an indication of how it will work.³⁸

The evidence we have taken, including from those with direct experience of negotiating with the European Commission, makes clear that extensive market access usually involves trade-offs elsewhere, for example on the movement of people, particularly when it comes to services.

34. During the referendum over 70% of people polled said they wished to see levels of immigration reduced, however since the referendum public attitudes towards immigration may have softened.³⁹ In 2017, the think tank IPPR suggested that the UK public are more pragmatic on immigration than is often assumed. They stated that only a small minority expect full control over EEA immigration post-Brexit and that a majority accept that there is a trade-off between restricting freedom of movement and accessing the single market. They suggested that there is therefore more political scope for a compromise on UK-EU migration as part of the Brexit negotiations than many have thought possible.⁴⁰ The latest British Survey of Attitudes surveyed opinion on the trade-offs between control of EU migration and market access, it found:

34 Q222

35 Q30

36 Q244

37 Q245

38 Q250

39 YouGov, [Where the public stands on immigration](#), 27 April 2018

40 IPPR, [Striking the right deal: UK-EU migration and the Brexit negotiations](#), 28 April 2017

As many as 30% say that the UK should definitely allow people from the EU to come here freely to live and work in order to secure free trade, while another 28% state that it should probably do so. This represents a combined tally of 58% support. In contrast, just 12% say that the UK should definitely not allow people from the EU to come freely to the UK to live and work, while another 18% state that it probably should not, a total of 30%. Another 11% indicate they cannot choose which option is best.⁴¹

35. In autumn 2017, the Constitution Unit at UCL conducted a ‘Citizens’ Assembly on Brexit’ over two weekends with 50 members of the public, considering what the UK’s trade and immigration policy should be post-Brexit. The UCL team, led by Dr Alan Renwick, found overall “a mixed picture where people wanted the benefits of immigration and saw benefits from immigration but also saw that there are costs to immigration and wanted steps to be taken to address them”.⁴² Dr Renwick explained that when participants were presented with various options on immigration, a majority wanted the UK to maintain free movement of labour but also to make full use of controls so that migrants who are unable to support themselves financially cannot abuse the system. Regarding an overall deal with the EU, Assembly Members preferred a comprehensive trade deal combined with favourable access for EU citizens.⁴³

36. There is clear public appetite for debate and discussion of immigration policy. Even at this late stage in the process the Government could be doing more to consult and build public consensus on the future of EEA immigration rules. It would be wrong for the Government to make simplistic assumptions, or underestimate the public’s interest in debating and engaging with the necessary trade-offs in forging a new relationship with the European Union.

37. Overall, we heard considerable evidence that refusing to discuss reciprocal immigration arrangements in the future partnership would make it much harder to get a close economic partnership with the EU. The need for a good economic deal, the fact that the EU is our closest neighbour and trading partner, and the shared economic, social and cultural bonds that exist between the UK and the EU mean that mobility of people will remain important. The proximity geographically, economically and socially between the UK and the EU, and the need for a good overall deal, supports a distinct arrangement for EEA migration in future, linked to our economic relationship.

41 NatCen, [British Attitudes Survey 35](#), July 2018

42 Evidence taken before the Home Affairs Committee, [31 October 2017](#), HC 500, Q2

43 UCL Constitution Unit, [The Report on the Citizens’ Assembly on Brexit](#), December 2017

3 Existing applicable controls

38. In this chapter we consider the controls on the migration of EEA nationals that are already available to the Government, which could be applied immediately during the transition period, and in the future partnership with the European Union regardless of the framework that the trade relationship might take. The controls would allow the Government to address concerns over the impact of migration without or in advance of any change in the terms of trade between the UK and the European Union.

39. The UK Government's current approach to the migration of EEA nationals is governed by EU rules on freedom of movement as set out in Article 45 of the Treaty on the Functioning of the European Union (TFEU) and in the Citizens' Rights Directive, 2004/38/EC (also known as the free movement directive). The free movement of workers is a fundamental principle of the EU; the European Commission views it as the right most closely associated with EU citizenship. Freedom of movement works in parallel with the other three basic freedoms of the single market: freedom of goods, capital and services. Article 45 stipulates that EU citizens are entitled to:

- look for a job in another EU country
- work there without needing a work permit
- reside there for that purpose
- stay there even after employment has finished
- enjoy equal treatment with nationals in access to employment and working conditions.

40. Although the Treaty allows a Member State to refuse an EU national the right of entry or residence on the grounds of public policy, public security or public health, such measures must be based on the personal conduct of the individual concerned, which must represent a sufficiently serious and present threat to the fundamental interests of the state. Professor Catherine Barnard points out that recent case law suggests that Member States can impose residency requirements as a precondition to entitlement to benefits, "provided those residence requirements are justified and proportionate, and states can impose checks to verify this".⁴⁴

Registration and sanction

41. Some controls over EU immigration within the free movement rules are available to the UK Government.⁴⁵ In implementing the Citizens' Rights Directive the UK Government chose not to use powers to register EU nationals after three months. Many Member States have put in place a registration process. Belgium, for example, requires all foreigners (including other EU citizens) to register any long-term stay of more than 90 days at the town or city hall of the municipality where they reside, and to carry a residence permit valid during their stay. It also withdraws residency permits from EEA nationals whom it deems to be an 'excessive burden' on its social security system. Professor Catherine

44 Professor Catherine Barnard and Sarah Fraser Butlin, [Fair movement of people: equal treatment \(part two\)](#), 20 June 2018

45 Bruegel, [Questionable immigration claims in the Brexit White Paper](#), 8 February 2017

Barnard pointed out that registration allows Member States to have a much better sense of who is in their country, their age profile and the public service needs of the people in their country.⁴⁶ The UK Government does not know how many EU nationals are in the UK, as it does not exercise such powers to register and has not carried out comprehensive exit checks.

42. After three months an EU nationals' right to remain in their host state becomes conditional. As Steve Peers, Professor of EU and Human Rights at the University of Essex, notes:

the EU citizen must either: be a worker or self-employed person; have sufficient resources 'not to become a burden on the social assistance system'; be a post-secondary student who makes a declaration concerning such sufficient resources; or be a family member of an EU citizen satisfying one of the first three conditions.⁴⁷

Not only can Member States seek to ensure that the above conditions are satisfied before granting an application for registration but the right to residency can be withdrawn if circumstances later change: due to unemployment if they are not permanent residents, lack 'sufficient resources', or have become an unreasonable burden on the social assistance system. The UK Government does not enforce controls over self-sufficiency as a matter of routine but they are enforced in some other Member States.⁴⁸

43. Enforcement of free movement rules can therefore give Member States increased control and can lead to the expulsion of EU citizens due to unemployment or dependency but, as Professor Steve Peers points out, expulsion "is subject to tight substantive constraints, procedural rights for the persons concerned, and a case-by-case analysis".⁴⁹ Expulsion would also not ordinarily lead to a ban on re-entry.

44. Guy Verhofstadt told us that there were a number of possibilities provided by the existing EU legislation and that "it is not that everybody can walk in or walk out of a country".⁵⁰ Sir Ivan Rogers confirmed that "we could have done much more domestically on registration schemes and things that would have made access to our labour market more difficult for foreigners without any constraint from Europe and without being deliberately discriminatory".⁵¹ Guy Verhofstadt explained that,

A number of conditions can be put in place, as Belgium does, for example. One conclusion might be that in the past Britain has never used 100% this room for manoeuvre inside the EU legislation but, okay, that is a discussion of the past. It is not a discussion for the future. I repeat that my impression has always been that Britain has never used 100% the possibilities of the room for manoeuvre in the EU legislation on labour mobility, which has

46 Q6

47 Professor Steve Peers, [Can unemployed EU citizens be expelled and banned from re-entry?](#), 27 March 2014

48 Controversial initiatives such as Operation Nexus (in which the police may report to Immigration Enforcement EU nationals they come into contact with) has seen the number of people expelled from the country increase.

49 Professor Steve Peers, [Can unemployed EU citizens be expelled and banned from re-entry?](#), 27 March 2014

50 Q247

51 Q211

been used by other countries that have made a number of requests, who have a number of requirements, who have put a number of conditions. That never existed in the past in Britain.⁵²

45. Existing applicable controls, such as a registration scheme, combined with comprehensive and accurate exit checks, would give the Government information about migration from the EEA and would put in place a process of formalising employment and residency in the UK. Such a process need not be burdensome, but it would be a requirement upon citizens from elsewhere in the EEA wanting to live and work in the UK. Linking the right to residency to self-sufficiency—which would need to be defined but which the Government appears to suggest is its preferred way forward—would keep the focus on those coming to work, and is already an accepted EU principle, which could be further enforced.

Labour market reforms

46. Irrespective of the UK's relationship with the EU there are steps the UK Government could take around labour market controls and enforcement that might address some concerns over the impact of migration on jobs, wages or terms and conditions. In our report *Immigration policy: basis for building consensus* we received evidence of concerns that some employers in low-skilled sectors of the economy exploit migrant workers, breaching minimum wage and employment legislation, thereby undercutting the rights and wages of UK labour.⁵³ The MAC has previously found very limited evidence of wage undercutting overall in the UK as a result of immigration but is revisiting this area as part of its current review of the impact of EEA migration, due to be published in September. We have also heard evidence of individual employers using recruitment from abroad, and particularly through agencies, to avoid increasing wages, improving terms and conditions or increasing training.

47. We received evidence covering a range of different policies, centring on enforcement, labour rights and specific measures to curb the impact of agency work, that might constitute effective controls to address concerns about EEA migration. According to Professor Meardi from the University of Warwick there are a number of labour market policies that the UK could consider “that might address many of the concerns of leave voters with declining living standards and increased economic security”.⁵⁴ He explained to us that Norway and Switzerland have proportionately some of the highest numbers of foreign born residents and also have some of the strictest labour regulations. In preparing for the introduction of free movement both countries took steps to adapt labour laws to the risk of ‘social dumping’—the use by employers of cheaper labour from outside of the country.

Deterrence and enforcement

48. Professor Meardi told us that the introduction of a resident labour market permit in Switzerland had helped to reduce public concern about immigration; and that ID cards

52 Q247 and Q248

53 Home Affairs Committee, Second Report of Session 2017–19, [Immigration policy: basis for building consensus](#), HC 500, para 98

54 Professor Guglielmo Meardi, [What does migration control mean? The link between migration and labour market regulations in Norway, Switzerland and Canada](#), October 2017

indicating workers' employment status had helped prevent bogus self-employment in Norway. He also explained that Switzerland had much more extensive controls and checks on working conditions than the UK with around 10% of companies inspected annually to ensure wages and labour conditions matched the collective agreement compared to 0.2% inspected for the national minimum wage in the UK.⁵⁵

49. Focus on Labour Exploitation point out that in the UK there is currently a heavy reliance on individual workers having to enforce their rights through employment tribunals.⁵⁶ Sir David Metcalf, Director of Labour Enforcement told us he believed that “the chances of an employer being inspected are too low and, if found to be non-compliant, the penalties are too low”.⁵⁷ He called for penalties to be increased significantly to provide a stronger deterrent effect and for state enforcement of holiday pay. He has also called for the Gangmasters and Labour Abuse Authority's licensing scheme to be extended to high-risk sectors beyond horticulture and food processing—something we also addressed in our previous report *Immigration policy: basis for building consensus*. Sir David noted that when he was Chair of the MAC, they found that the tension between the UK's flexible labour market and possible exploitation of migrants and British low-skilled workers needed to be addressed. He told us that free movement of low-skilled migrants posed a greater risk to enforcement than high-skilled migration.⁵⁸

50. Sir David also advocated the introduction of joint liability in supply chains “to ensure that brand names at the head of the chain bear some responsibility for non-compliance among their suppliers”.⁵⁹ In the Labour Market Enforcement Strategy 2018/19, he suggested that one method to ensure compliance throughout supply chains might be the public naming of both the brand name and supplier where non-compliance is found.⁶⁰

Worker rights

51. Sir David recommended that “a statement of rights should be made mandatory for all workers from within week one of employment commencing” and that “the Government should develop a template for the written statement of employment to ensure transparency in information provided, and to reduce the burden on business”. He submitted that the right to a payslip should be extended to all workers, and that “for hourly paid workers, there should be mandatory inclusion of total hours worked and hourly rate of pay on payslips”.⁶¹

Collective agreements

52. The TUC recommended that the UK pursue steps on collective bargaining similar to those in evidence in Norway and Switzerland as well as EU Member States such as Germany, Belgium and Luxembourg.⁶² It raised concerns that at present, “in sectors where there is a low proportion of workers covered by collective agreements, EEA migrants, as well as non-EEA migrants and UK workers on precarious contracts, are at risk of being used

55 Q156

56 Written evidence submitted by Focus on Labour Exploitation [PBM0032]

57 Written evidence submitted by Sir David Metcalf [PBM0036]

58 Written evidence submitted by Sir David Metcalf [PBM0036]

59 Written evidence submitted by Sir David Metcalf [PBM0036]

60 HM Government, [Labour Market Enforcement Strategy 2018/19](#), May 2018

61 Written evidence submitted by Sir David Metcalf [PBM0036]

62 Q157

to undercut other workers” and reports that 810,000 workers are now employed on zero hours contracts.⁶³ The TUC also notes that the Single Market includes many regulations that protect workers’ rights and that they could be at risk should the UK chose to leave it.

Regulation of employment agencies and intermediaries

53. The Employment Agency Standard Inspectorate (EAS) is made up of 12 full-time staff and 9 inspectors. It conducted 142 inspections last year, less than 1% of the 18,000 employment agencies it covers.⁶⁴ In his Labour Market Enforcement Strategy 2018/19, Sir David Metcalf recommended significant reforms to the operation of the EAS, including an increase in resources and an expansion of its remit. Recommendations include powers over intermediaries as well as employment agencies, greater powers to impose civil penalties on non-compliant agencies as an alternative to prosecution, and powers and resources to enforce compliance with the Agency Worker Regulations 2010 (including the Swedish Derogation, which allows agencies to exempt agency workers from the right to equal pay under the AWR). Sir David also recommended that “the Swedish Derogation should either be properly enforced or abolished”, as the loophole is frequently abused by recruitment agencies who encourage workers to sign up to the Swedish Derogation but do not provide them with pay between assignments.⁶⁵

54. Stephen Clarke, Senior Economic Analyst, Resolution Foundation, suggested that addressing concerns around zero hours contracts, the Swedish derogation and bogus self-employment and increasing enforcement would improve the situation in the UK labour market and might have some benefits in people’s perceptions of migration, but “ultimately should be done because we think it is a good thing for workers in this country”.⁶⁶ Phoebe Griffith from the IPPR told us that taking regulatory steps to improve the situation in the UK labour market:

[...] could have a substantive effect on people’s perceptions. What people have reacted to is the fact that they have felt that the impacts of migration have been left to chance and that there has been quite a hands-off approach when instances such as labour market abuse have taken place. My view would be that you are looking at concrete solutions.⁶⁷

55. Other witnesses expressed concern about the potential impact on businesses of stricter labour market controls. Dr Rolfe pointed out that:

If you tackle zero-hours contracts and flexible working, you are then in danger of inflicting damage on industries which really do rely on the use of those contracts. That is quite a difficult choice to make.⁶⁸

However, as Professor Meardi has argued:

The fact that even in the more liberal Canada, co-ordinated responses have occurred in some industries (especially food processing) makes

63 TUC, [EEA workers in the UK labour market: TUC submission to the Migration Advisory Committee](#), October 2017

64 HM Government, [Labour Market Enforcement Strategy 2018/19](#), May 2018

65 HM Government, [Labour Market Enforcement Strategy 2018/19](#), May 2018

66 Q358

67 Q358

68 Q120

experimentation in the UK worth considering. It is also important to note that many Norwegian and Swiss labour market regulations have been introduced by centre-right or broad coalition governments, and that in most cases they were supported, at least conditionally by employer organisations.⁶⁹

56. The Government should not just look to immigration rules as it seeks to address public concerns over immigration. Regulation of the labour market, further measures to prevent exploitation, and increased funding for enforcement would benefit both domestic and migrant workers, subject to practical arrangements with business. That other countries inside the EU and in EFTA have far more regulated labour markets than the UK demonstrates that a close economic relationship with the EU is not a barrier for improving terms and conditions of workers in the UK. The Government should seek to improve labour market conditions as part of a holistic approach to addressing public concerns over the impact of immigration, irrespective of what the future relationship with the EU might look like. Plans to do so should be announced in or alongside the forthcoming White Paper on Immigration.

69 Professor Guglielmo Meardi, [What does migration control mean? The link between migration and labour market regulations in Norway, Switzerland and Canada](#), October 2017

4 Controls within an EFTA-style framework

EFTA and EEA membership

57. The European Free Trade Association is an intergovernmental organisation set up for the promotion of free trade and economic integration on the part of its four Member States—Iceland, Liechtenstein, Norway and Switzerland.⁷⁰ The European Economic Area (EEA) unites the EU Member States and three of the EFTA States (Iceland, Liechtenstein and Norway) into an internal market governed by the same basic rules. One EFTA member, Switzerland, has not joined the EEA, but instead has a series of bilateral agreements with the EU which allow it to participate in the internal market (although with less access than EEA members). There have been suggestions that the UK should seek to join the EEA or negotiate a bespoke EFTA style agreement with the EU in order to retain single market access.⁷¹

58. Zsolt Darvas told us that EEA membership was the only model currently open to the UK, in which it could be outside of the EU but retain single market access.⁷² However, membership of the EEA requires the full transposition of EU laws, regulations and product standards without having a vote on how these are decided and implemented, involves the ultimate interpretation of the European Court of Justice and requires ongoing payments into the EU's budget. Zsolt Darvas explained:

As an economist, I think an EEA arrangement would be good for the UK and good for the rest of the EU27, but I understand that for political reasons this is not the option that the United Kingdom will likely choose.⁷³

59. Sir Ivan Rogers suggested to us that EEA membership, whilst “implausible as the medium, longer-term destination”, could offer a short-term, transition route out of the EU. The drawback would be “rule-taking” of “significant chunks” of the single market acquis, but the potential advantages for the UK would be “not in a customs union, clear sovereignty and autonomy on trade policy, as the EFTA states have and they have their own free trade agreements”.⁷⁴ EEA countries are subject to free movement rules, but witnesses suggested that there might be more potential for the UK to control free movement as an EEA member or as part of a bespoke EFTA-style agreement than as an EU member.

60. The Prime Minister has stated that the UK will not seek to join the EEA or EFTA but will instead pursue a bespoke partnership with the EU. Nonetheless, until the negotiations are complete, an EFTA-style option remains, either as a transitional step or as a longer-term option and, as we set out below, it also contains the possibility of safeguard provisions that may merit consideration as part of future policy for managing EEA migration.

70 [European Free Trade Agreement](#)

71 Financial Times, [Oslo thaws on UK joining EEA after Brexit](#), 13 May 2015

72 Q15

73 Q15

74 Q224

Citizens' Rights Directive

61. The Citizens' Rights Directive grants to citizens of the EU and their family members the right to move and reside freely within the territory of the EU Member States, where previously such rights were limited to people who were economically active, and circumscribes the possibility of stronger controls on EU migration. While EEA members participate in the single market including free movement, those not in the EU are not bound by the same terms of the EU Citizens' Rights Directive. The Citizens' Rights Directive has been part of the EEA Agreement since March 2009 but its incorporation was accompanied by a Joint Declaration setting out reservations in the areas of Union Citizenship and immigration policy.⁷⁵ Karin Fløistad, of the European University Institute and Norwegian law firm Simonsen Vogt Wiig, draws attention to these reservations but cautions "Whether they are sufficiently different to be of interest to the UK and the EU for future association remains to be seen".⁷⁶ In Professor Meardi's view the key principle is that the Citizens' Rights Directive is not fundamental to the Single Market. He told us:

In the case of the EEA, or any single market deal outside the European Union, there will be some important changes in what can be done and what cannot be done. In particular, the Citizens' Rights Directive would not apply. It does not apply to the single market; it is within the whole citizen pillar of the European Union. Therefore, any movement for reasons that are not for work or business could be entirely regulated unilaterally by any country.⁷⁷

62. Switzerland is not in the EEA; its relationship with the EU is governed by a series of bilateral agreements within which it was able to negotiate the right to initially apply unilateral safeguards to the movement of people. Sir Ivan Rogers told us that EFTA countries are not bound to "the full panoply of citizens' rights that you have within the EU".

The EEA Agreement

63. The EEA Agreement contains a safeguard clause embedded in Articles 112 and 113, which provides that in the circumstances of "serious economic, societal or environmental difficulties of a sectoral or regional nature", a contracting party may unilaterally take appropriate "safeguard measures" to restrict the rights in the Agreement. This means that an EEA member can apply an emergency brake on free movement from other EEA countries. The EEA contracting party must notify and consult with the rest of the EEA. The agreement makes it clear that if measures taken create an "imbalance between the rights and obligations under this Agreement" then, under Article 114, the other EEA members are entitled to take rebalancing measures.⁷⁸

64. In practice, the procedural requirements for initiating a safeguard clause are stringent and subject to consultation. Evidence must be produced that immigration was causing "serious economic, societal or environmental difficulties", and reciprocal restrictions can

75 Simonsen Vogt Wiig, [Legal study on Norway's obligations under the EU Citizenship Directive 2004/38/EC](#), 4 January 2016

76 Karin Fløistad, [Free movement of persons in the European Economic Area \(EEA\) – different from the EU?](#) European University Institute

77 Q168

78 [The EEA Agreement](#)

be instituted if the measures taken by an EEA member are not well-justified. However, Guy Verhofstadt suggested that the EEA arrangement was significantly different to that for the EU:

in the single market the European Commission can give the green light to use the emergency brake. In the EEA that can be done by the member state itself. I think that is a huge difference.⁷⁹

Sir Ivan Rogers told us:

Can you argue, on the basis of Article 112 of the EEA Agreement, there is something you could do? I think you can argue that it must in principle be different because obviously it is a provision that does not exist in the [Lisbon] Treaty. [...] The very fact that the safeguard clause exists suggests that you must be able to use it.⁸⁰

Liechtenstein

65. Since 1998, Liechtenstein has exercised a brake on free movement on the basis that its geography makes it particularly vulnerable to high population flows. While ostensibly derived from the emergency brake provisions of the EEA Agreement, the Liechtenstein arrangement has effectively become permanent. To many the Liechtenstein example is too small to be relevant,⁸¹ but the Leave Alliance believes that it sets an important precedent. In its paper *Single Market participation and free movement of persons: The use of EEA Safeguard Measures* the Leave Alliance states that whilst the numbers involved are very small, “what matters is that a precedent has been set within the framework of the EEA Agreement for suspending freedom of movement in respect of a single country, and replacing with a quota system for what amounts to an indefinite period”.⁸²

Switzerland

66. Switzerland’s bilateral agreements with the EU deliver partial access to the single market and a closer economic relationship than any state outside the EEA. The Agreement on the Free Movement of Persons (AFMP), signed in 1999, lifted the restrictions on EU citizens wishing to live or work in Switzerland. As part of the agreement, Switzerland could unilaterally invoke a safeguard clause allowing it to reintroduce quotas on EU immigration for a specified period if inflows exceed a certain threshold.⁸³

67. In 2012, Switzerland unilaterally capped long-term residence permits for nationals from A8 Member States at 2,180. In announcing the reintroduction of quotas, the Federal Council said:

In invoking the safeguard clause, the Federal Council is seeking to apply one of the means at its disposal to control the immigration flow into Switzerland.⁸⁴

79 Q254

80 Q225

81 Migration Watch, [An ‘Emergency Brake’ on EU migration](#), 31 August 2016; Q225

82 Leave alliance, [Single market participation and free movement of persons](#), 27 July 2016

83 Swiss State Secretariat for Migration (SME), [Free movement of persons Switzerland](#)

84 Swiss State Secretariat for Migration (SME), [Agreement on the Free Movement of Persons Switzerland – EU: Invocation of the Safeguard Clause with respect to the EU-8 States](#), 18 April 2012

A year later, Switzerland imposed a cap of 53,700 on permits for citizens of the A15 Member States. Throughout this period Switzerland’s bilateral arrangements meant that it effectively participated in the single market for goods at the same time as operating caps on immigration. The right to impose immigration caps expired in 2014, after which point the AFMP stipulated that freedom of movement would apply in full to all citizens of the EU and EFTA states. In February 2014, 50.3% of Swiss citizens approved a referendum “against mass immigration”, requiring Swiss authorities to reintroduce annual immigration quotas in contravention of the AFMP. The result prompted a three-year renegotiation of the agreement which led to amended rules regarding EU migrants’ access to its labour market.⁸⁵

68. The new law, implemented from July 2018, stipulates that, in sectors where the unemployment rate exceeds a specified rate, Swiss residents (both Swiss and non-Swiss nationals) registered at a job centre be given five days advance notice of any job vacancy and that the employer who advertises a job will automatically receive the records of the unemployed workers in the region. During this period, the employer is banned from publishing a job advertisement elsewhere and subject to a fine if they do. If a suitable job applicant is not found within this period, the employer can continue with its usual recruiting process and may publicly advertise the job. Employers will remain free to hire a person residing in the EU, without having to justify the choice not to hire a local resident.⁸⁶ The EU did not object to the Swiss law and did not see it as a challenge to the applicability of free movement of people.

69. The existing safeguard measures available to EFTA states as part of their trade relationships with the European Union demonstrate that they can—in principle—exercise more controls on immigration while participating in the single market than are available to EU Member States. Were the Government to change its red lines, such arrangements might provide a basis for drawing up means of controlling EEA migration from within the single market.

Accession Arrangements

70. ‘Transitional controls’ have been available to EU Member States in recent expansions of the European Union. For example, under the Treaty of Accession 2011 between Croatia and the EU, Member States were able to restrict the access that Croatian citizens had to their labour markets for up to seven years. The restrictions have meant that, unless an exemption applied, Croatian citizens needed permission from the Home Office to work in the UK. The restrictions can be applied initially for five years, plus an additional two years if required to protect the Member State’s labour market from serious disturbance. The Home Office recently took the decision not to extend the controls on Croatian citizens.⁸⁷

85 On 8 December 2017, the Swiss Federal Council confirmed that the new law’s implementation would take effect on 1 July 2018.

86 KPMG, [How ‘Stop Mass Immigration’ may impact your recruiting process in 2018](#), 30 November 2017

87 HM Government, [Restrictions of Croatian workers to expire in June](#), 19 March

Cameron negotiations

71. Ahead of the EU referendum, the former Prime Minister David Cameron sought reforms to the UK's relationship with the EU including the extent to which the UK was subject to the full scope of Freedom of Movement rules. The final deal, agreed in February 2016, would have allowed the UK to:

- Restrict access to in-work benefits to new EU arrivals for up to four years but access would increase gradually over the period. The restriction would be limited to EU nationals arriving over a period of seven years.
- Reduce child benefit paid to EU citizens in the UK, for their children living outside the UK, but in the territory of the EU, to a rate that reflected the conditions—including the standard of living and child benefit paid—of the country where the children live. The settlement would have applied to 'new claims made by EU workers in the host Member State'; but after 1 January 2020, it 'may' have been possible to extend it to 'existing claims already exported by EU workers'.

72. Sir Ivan Rogers, then the UK's ambassador to the EU, reports that the then Prime Minister had initially wanted an agreement that curbed the number of EU and EEA nationals moving to the UK, but that it 'quickly became clear' that quotas or an 'emergency brake' would not get agreement from the other Member States.⁸⁸

73. Zsolt Darvas described the Cameron deal as "probably very close to the limit of what was possible under the current EU Treaty".⁸⁹ Mats Persson told us that he thought it was a good agreement. He explained that at the outset of the negotiations the then Prime Minister was told it would be impossible to achieve changes to secondary legislation that would differentiate between EU and UK citizens for the purpose of accessing benefits, "but we got that and the Commission, for example, showed a lot of flexibility and creativity in trying to achieve a political compromise".⁹⁰

74. Free from free movement obligations, the Government could potentially go further than the pre-referendum negotiations conducted by David Cameron, for example, by restricting access to all benefits for the first few years of an EU national's life in the UK. Professor Catherine Barnard argues that a close reading of the text of the deal suggests that other EU leaders acknowledged space for restricting migration. She suggested that widening the definition of the scope of limitations placed on the free movement of workers from "public policy, public security or public health" to include the reduction of unemployment seems to have been a fairly major concession to the UK and that "It is surprising that David Cameron did not trumpet his achievement here more loudly".⁹¹

75. Professor Meardi explained to us that Cameron had failed to obtain an emergency brake in the pre-referendum negotiations because it was incompatible with the EU, but that an emergency brake for the UK "was not incompatible with the EEA, or the single market outside the EU". He suggested that if the UK chose to remain in the single market, either in the EEA or a new arrangement, safeguard measures would be possible:

88 Q228

89 Q22

90 Q27

91 Centre for European Legal Studies, [Catherine Barnard: Could free movement of persons be confined to free movement of workers in any Brexit deal?](#), 14 September 2016

It is possible to use all possible regulatory measures that the single market allows and have a relatively controlled migration regime, which is probably not so different in terms of effect from no single market and no free movement regime, where you will still probably need some fast reaction work permit system in order to allow the needs of business or economies with a different population.⁹²

76. Overall there are a range of existing models and precedents which involve participation in the single market, but with greater immigration controls than under full EU free movement. In the course of our inquiry, we heard evidence from witnesses who have drawn on these examples and made proposals for specific safeguard measures or immigration controls that may be applicable to a future UK-EU trading relationship within the single market.

Emergency brake provisions

77. In our inquiry, we heard proposals that would permit the application quantitative restrictions on the free movement of people during periods of high inflows while allowing the UK to continue participating in the single market.

National emergency brake

78. Professor Michael Ambühl, a former Swiss State Secretary who was chief negotiator of the Bilateral II Agreements between Switzerland and the EU, gave evidence to us on his proposal for an emergency brake which would allow for “regulatory measures if statistically exceptionally high net migration numbers are encountered”.⁹³ Based on the existing safeguard clause found in article 14(2) of the Swiss-EU free movement agreement, Professor Ambühl’s proposed model would allow the activation of an emergency brake if inward migration from the EEA was exceptionally high relative to other EU member states. The threshold would be based on concrete and clear criteria. He explained:

What I would propose is to have a clear definition of what the trigger should/ could be, what would enable the country, if the conditions are fulfilled, to go unilaterally—without retaliatory measures from the other side—to take appropriate measures. The appropriate measures would also have to be predefined so that it is useful. [...] I think there would be slightly an advantage to negotiate—if one wants to negotiate and if the EU would also be willing to go into such a negotiation—and to do it within a new framework, a bespoke framework of a bespoke agreement and not within an existing given framework, such as the EEA.⁹⁴

79. As Professor Ambühl’s paper sets out, were relative inward flows to exceed the threshold, the UK would be permitted to adopt measures to:

- Temporarily limit immigration, and/or

92 Q170

93 Professor Michael Ambühl and Daniela S. Scherer, [Free movement of persons - is regulation possible?](#)

94 Q183

- Reduce the incentives of immigration (e.g. limit the access to social security systems as already agreed between the EU and the United Kingdom on 19 February 2016).⁹⁵

Calculations accompanying his model indicated that the comparatively high levels of EEA migration to the UK during the Eurozone crisis in 2013 to 2015 would have justified measures to reduce net migration in 2016 by tens of thousands.

Regional emergency brake

80. We heard from Professor Catherine Barnard that “With some imagination, it could be possible to design an emergency brake which took account of regional criteria, looking at county level indicators”.⁹⁶ She told us that ‘buried in the text’ of the ‘New Settlement Agreement’ negotiated by David Cameron in February 2016 was language which might permit “some sort of not just emergency brake on benefits, which is very clear on the face of the text, but even an emergency brake on actual migration”.⁹⁷ We heard that:

There is language in the text that talks about where there is a need to reduce unemployment or protect vulnerable workers or avert the risk of seriously undermining the sustainability of social security systems, it might be possible to impose discriminatory restrictions. This is not fleshed out in a lot of detail but there is language there that does create a bit of wriggle room.⁹⁸

81. Professor Barnard proposes that an emergency brake mechanism could be devised “at the level of devolved administrations or other regional groupings, to take account of the substantial variation in the needs of the regions”. She explains:

Relying on both economic data (such as labour market criteria e.g. relative levels of unemployment, demands for unemployment benefits, wage levels), demand for public services (e.g. population growth, population churn, waiting lists) and political experience (e.g. what constituents are saying through the ballot box and in person at surgeries), these regions could make a request to national government to impose restrictions on migration for a time limited period. These restrictions might be sectoral, based on skill levels, or more general and for a defined period of time.⁹⁹

82. In its strategy for negotiations with the European Union, the Government has not considered the range of possible safeguard provisions that could be applied to a trade agreement that allowed the UK to participate in a single market after Brexit, which would combine new immigration controls and maintain economic benefits. It should immediately do so.

95 Professor Michael Ambühl and Daniela S. Scherer, [Free movement of persons - is regulation possible?](#)

96 Q16 and see paper Professor Catherine Barnard and Sarah Fraser Butlin, [Fair movement of people: emergency brake part 3](#), 25 June 2018

97 Q15

98 Q15

99 Professor Catherine Barnard and Sarah Fraser Butlin, [Fair movement of people: emergency brake part 3](#), 25 June 2018

Limits on equal treatment

83. Professor Jonathan Portes submitted that “quantitative targets and caps, either for net migration overall (as with the Government’s target) or for highly skilled workers (as with the cap on Tier 2 visas) have no place in a sensible immigration policy”. Instead, he argues in favour of a “Swiss-style system of temporary and targeted regional and/or occupation specific controls” that would “enable a targeted, temporary and proportionate response to migration pressures”.¹⁰⁰

84. Professor Portes suggests that the Swiss system of prioritising domestic recruitment could provide a potential model for the UK. He explains that:

In the UK context, it would be, for example, possible to state that in sectors and/or regions where unemployment was high, or significantly above the national average, or where wages were low and/or falling, employers would be required to recruit via Jobcentres, and to give initial preference to those claiming unemployment-related or disability benefits. This would, by definition exclude, recent arrivals from elsewhere in the EU (although not longer-term non-UK residents).¹⁰¹

Accession-style controls

85. Professor Barnard and Sarah Fraser Butlin propose a scheme, broadly based on accession arrangements for Croatian nationals coming to the UK, in which employers issue a job offer certifying that the position pays above a minimum threshold with a minimum number of hours. The prospective employee is then able to apply for a residence permit at negligible cost. Their proposals leave employers with the power to determine who they want and in what field, subject to a salary threshold, rather than being subject to quotas and criteria drawn up by the Home Office, and avoid the need for a bureaucratic visa process. They further propose that an individual should have to work for a period of three months before they can bring family members with them (parents, spouse, dependent children). The Barnard and Butlin paper makes reference to a leaked draft Home Office proposal of a salary threshold of £20,500.¹⁰²

‘Prior job offer’ system

86. The IPPR has suggested that jobseekers from the EU should no longer have the right to reside in the UK unless they already have a job offer.¹⁰³ There would be little to prevent an EU national from entering the UK as a visitor, searching and applying for jobs, returning home, and then if successful coming back to the UK with the right to reside as a worker. Professor Portes argues that a ‘prior job offer’ system, even if it were less restrictive than the current Tier 2 model for non-EEA migrants, would be likely to impose a significant bureaucratic hurdle for employers, would present significant enforcement issues and that there would be a risk of intermediaries (employment agencies) being set up purely to offer

Note: see [corrigendum](#) regarding this paragraph

100 Professor Jonathan Portes, [Free movement after Brexit: policy options](#)

101 Professor Jonathan Portes, [Free movement after Brexit: policy options](#)

102 Professor Catherine Barnard and Sarah Fraser Butlin, [The future of free movement of persons in the UK \(part 1\)](#), 19 June 2018

103 IPPR, [Striking the right deal: UK-EU migration and the Brexit negotiations](#) (2017) P3

jobs to EEA nationals and potentially facilitating abuse of the system. The Government has proposed a “mobility framework so that UK and EU citizens can continue to travel to each other’s territories”.

87. While we are not recommending any particular model for future migration from the EU, we do note that—based on the evidence we have received—there are options for controlling migration within the single market which go much further than the previous Prime Minister’s negotiation with the European Union. We recognise that these options have not been the subject of negotiations between the UK and the EU, and that negotiations would be complex, but we believe these options should be explored.

5 Other free trade options

88. Under free trade agreements there are a wide range of options for immigration policy—whether as part of an association agreement or a free trade agreement. This chapter explores some of those options, drawing on the examples of Canada’s free trade agreement (known as ‘CETA’), and Ukraine’s Association Agreement.

89. Any kind of ‘deep and comprehensive free trade agreement’ will, based on precedent, require at least a minimum of immigration provisions—mode 4, business visitor visas, tourist and students. The Government has recognised this in its proposals for the White Paper which refers to those minimum provisions. Beyond that, free trade agreements can potentially include a wide range of immigration options with different implications for market access.

90. A trade deal with the EU could be negotiated in line with existing off-the-peg arrangements, such as within an Association Agreement or as a standalone free trade agreement (FTA). EU deals with Ukraine and Canada respectively are often used as examples of these types of agreements which include market access (to different degrees) while not requiring the free movement of people. Negotiations on immigration policy could be kept largely separate from negotiations on trade and economic co-operation, as suggested by Lord Green and David Goodhart,¹⁰⁴ with the acceptance that any hope of deep involvement with the single market would likely be off the table.

Ukraine-style Association Agreement

91. The White Paper states that the Government intends for the future relationship between the UK and the EU to “take the form of an Association Agreement” that would provide an “overarching institutional framework” and include “components of the economic partnership such as a core Free Trade Agreement”. As set out in the White Paper, the proposed structure draws on precedents including both the EU-Canada Comprehensive Economic and Trade Agreement (CETA) and the EU-Ukraine Association Agreement, the economic component of which is called the Deep and Comprehensive Free Trade Area (DCFTA).¹⁰⁵

92. An Association Agreement is a treaty between the European Union and a non-EU country that creates a framework for economic and political cooperation between them. Its legal basis is defined in Article 217 of the Treaty of the Functioning of the EU which provides for “an association involving reciprocal rights and obligations, common action and special procedures”.¹⁰⁶

93. Under the DCFTA that provides the framework for the economic component of the EU-Ukraine Association Agreement, the EU and Ukraine have reciprocal access to each other’s markets to a far deeper extent than a typical FTA, including near complete access to the Single Market in goods and significant access to services. Ukraine is not a party to the EU’s customs union, common commercial policy or external tariff regime or

104 Qq360–1

105 HM Government, [The future relationship between the United Kingdom and the European Union](#), Cm 9593, 12 July 2018

106 The Institute for Government explains in a [briefing on Association Agreements](#) on its website that the EU has more than 20 association agreements, mainly with its neighbours.

the free movement of people. The agreement offers gradual access to the Single Market with access to the different segments of the Single Market dependent on its alignment (or “approximation”) to EU relevant acquis.

94. The DCFTA does not entail the free movement of people and nor does it include a substantive provision on labour mobility. The immigration issue is dealt with by subjecting the movement of labour to a visa liberalisation and work permit system. The Committee was told by Professor Barnard that “there are provisions on migration in that agreement but they are incredibly light-touch”.¹⁰⁷ It is noteworthy, however, that the specific circumstances in which the DCFTA was struck, as part of the EU’s “neighbourhood policy” with Eastern European states, do not apply to the UK.

95. The Institute for Government note that the DCFTA provides “opportunities for unprecedented levels of access to the EU’s Single Market—particularly in financial services—for a non-EU country” while proving that such integration is “technically and legally possible without undermining the functional integrity of the Single Market”.¹⁰⁸ In a presentation to the European Council on 15 December 2017, Michel Barnier included the DCFTA with Ukraine as a model for a future UK-EU relationship that was precluded by the UK’s red lines on ‘no ECJ jurisdiction’ and ‘regulatory autonomy’, but which satisfied the UK Government’s red line on ‘no free movement’.¹⁰⁹ Despite initially expressing reservations to us that Ukraine could be a model for future UK-EU relations as ‘the aim of the Ukraine is to enter the European Union’, Guy Verhofstadt later told the Committee that, provided UK negotiators altered their red lines, “you will never have a problem with [a similar agreement] because we did it with the Ukraine”.¹¹⁰ When asked whether a deal that provided the same level of integration with the single market would be a possible option for the UK-EU future partnership, he confirmed that it would.¹¹¹

96. Guy Verhofstadt explained that the EU had many different Association Agreements with different countries, including Chile and Mexico, as well as Ukraine.¹¹² He told us that the benefit of an Association Agreement was that the detail of the content could be negotiated, but that it had a single ratification process and governance structure:

An Association Agreement is a framework, in our opinion, with four pillars. Inside the trade and economic pillar there could be an EEA. There could be a customs union. There could be a combination of both. There could be the single market. There could be only a small trade agreement. The economic pillar of an association agreement gives a lot of flexibility for a very small partnership or a very broad, intense partnership.¹¹³

The advantage of the Association Agreement is not that it gives you a solution for what the trade or economic relationship should be between the EU and the UK. The advantage of the association agreement lies in the

107 Q29

108 Institute for Government, [Association Agreements](#), 7 February 2018

109 EU Commission, [Slide presented by Michel Barnier, European Commission Chief Negotiator, to the Heads of State and Government at the European Council \(Article 50\) on 15 December 2017](#)

110 Q261

111 Q263

112 Q256

113 Q251

fact that you create one governance structure in all co-operations. You also create one ratification cycle in this, so that you don't have 10 agreements that need to be ratified in all 27 member states.¹¹⁴

97. The DCFTA negotiated between the European Union and the Ukraine provides a precedent for partial integration in the single market without requiring the free movement of people. Despite the European Commission's repeated claim that there can be no 'cherry-picking' of the four freedoms of the single market, this is a political judgement rather than a technical or legal obstacle. We note that the EU-Ukraine package was agreed in the context of Ukraine moving towards the EU, rather than away, and the European Commission has so far insisted that, for the UK-EU negotiations, the four freedoms of the single market are indivisible.

Canada-style FTA

98. On 1 March 2018, Michel Barnier outlined the Commission's view that the UK's red lines (no single market, customs union or ECJ oversight) had left a free trade agreement as the only available option. A free trade agreement (FTA) is an agreement between countries to reduce barriers to trade between them.

99. Modern FTAs often cover areas such as technical barriers to trade (eg. technical standards and regulations). Such barriers can be reduced by countries agreeing to have the same standards (harmonisation) or recognising each other's standards (mutual recognition). Despite the move towards deeper trade agreements, they do not go as far in removing barriers to trade when it comes to financial services.¹¹⁵ As Mr Barnier has previously warned, in a free trade agreement "There is no place [for financial services]. There is not a single trade agreement that is open to financial services. It doesn't exist".¹¹⁶

100. Free trade agreements generally only have limited immigration provisions, so a relationship based on an FTA would allow the UK room to design its own immigration system. Pauline Mathewson, from Fragomen LLP, explained that immigration provisions within an FTA fall into three main categories: intercompany transfers, business travellers and independent service providers.¹¹⁷ Fragomen LLP point out with regard to the Canada-EU FTA that "as favourable as the CETA immigration rules may be, they are nowhere near the rules that will be needed between the EU and the UK to avoid major economic disruptions". They note that CETA only tackles temporary migration directly linked to the free provision of services, which would limit the UK-EU movement of people for business purposes to certain categories of people, and it does not address long-term work-related migration.¹¹⁸ FTAs also typically do not include low-skilled workers. TechUK caution that FTAs are negotiated on the basis that any provisions with an FTA reached with a current negotiation partner are likely to be included in future FTAs with other parties:

For the EU, this presents a significant risk in the UK negotiations as providing a preferential system to the UK could mean having to offer similar terms in subsequent negotiations, including with countries outside of Europe. [...] The same is true for the UK. However, for businesses

114 Q255

115 House of Commons Library Research Briefing, [Brexit: trade aspects](#), 9 October 2017

116 Politico, [Michel Barnier Financial services excluded from Brexit trade deal](#), 19 December 2018

117 Q205

118 Fragomen LLP, [Is CETA a model for EU-UK business migration post-brexite?](#)

seeking to recruit from across the world, there may be value in establishing a model that could be replicated in other future FTAs, with countries such as India. However, this would mean offering countries with which we have previously had restricted migration significantly liberalised terms. This would likely have political implications.¹¹⁹

101. There are a wide range of options for immigration rules within a free trade agreement. So far there have not been many proposals put forward on how EEA migration should operate in future if the UK is outside the scope of single market provisions. Options would include a points-based system, other forms of preferential rules for EEA recruitment, or extending the existing non-EEA Tier structure.

102. A free trade agreement along the lines of CETA would only require limited immigration provisions. However, such an outcome does not remove the need for the Government to make decisions about long-term migration from the EU. UK universities will still want to take on students from EU Member States, employers will still want to be able to recruit the—to use the Government’s phrase—‘brightest and best’, as well as low-paid workers in key sectors, and family migration will remain of huge importance. It is not the case, therefore, that an FTA would necessarily mean limited migration. A number of complex, important and inter-related policy decisions would still need to be made by the Government.

Extending the Non-EEA tier structure

103. Controls already in place for non-EEA nationals involve obligations for businesses that may include an application for a sponsorship licence, a resident labour market test, an immigration skills charge and ongoing compliance and reporting requirements. The employee may need to pass an English language test and achieve sufficient points to pass the threshold of the UK’s points-based immigration system. Points are allocated according to qualifications, English language skills, sponsorship, expected earnings and available funds. Visas for family reunion are subject to strict conditions and students wishing study in the UK must satisfy criteria including self-sufficiency and proficiency in English. In September 2016 the Prime Minister appeared to rule out a points-based system for EU nationals.¹²⁰

104. Businesses want to minimise costs and bureaucracy around immigration procedures. Many employers warn against extending the non-EEA system to cover EEA nationals. In their submission to the MAC, the CBI describe the non-EEA system as “not just burdensome for business, but arduous for individual applicants as well”.¹²¹ Pauline Mathewson from the immigration law firm Fragomen LLP told us that it was too complex.¹²² Employer representatives, such as the Institute of Directors, raised particular concerns that small businesses do not have the resources to cope with a system for EEA nationals that would have similar bureaucratic structure to the Tier 2 approach.¹²³

105. Fears of an increased administrative cost and burden is one of the reasons that many, but not all, employers were also calling for preferential treatment of EEA workers.

119 Written evidence submitted by TechUK [[PBM0023](#)]

120 BBC, [Immigration: May rejects points-based system for EU nationals](#), 5 September 2016

121 CBI, [CBI submission to the Migration Advisory Committee](#), 17 November 2017

122 Q210

123 Written evidence submitted by the Institute of Directors [[PBM0031](#)]

However, the Advertising Association told us that “If a skill shortage can be addressed then nationality should not be a concern so in principle it would make no sense to differentiate between EEA and non-EEA citizens post-Brexit”, but they caution that replicating the Tier 2 system for EEA workers “would drastically reduce the attractiveness of the UK to young professionals wanting a career in advertising or other creative industries”.¹²⁴

106. Lord Green suggested that the non-EEA ‘Tier’ structure should be extended to include EEA nationals but with temporary arrangements in crucial sectors, such as construction, which would face an immediate shortfall if limits were suddenly imposed. In such arrangements Lord Green proposed that employers would be heavily taxed and the workers become increasingly expensive to incentivise training and investment in the domestic labour market.¹²⁵

107. Lord Green argued that extending the non-EEA system has the advantage that it is already familiar to employers.¹²⁶ However, while some large employers, and universities for student applications, may be used to dealing with the non-EEA system, there are many employers, particularly small and medium-sized enterprises, who may have no experience employing non-EEA nationals and who would find the non-EEA obligations burdensome if replicated for EEA nationals. For example, the Federation of Small Businesses points out: “It is crucial that small firms will be able to take on employees from the EU easily and with as few financial costs, administrative burdens and risks as possible [...] Small businesses are often not equipped with HR departments to manage a complicated or costly process”.¹²⁷ Indeed, dislike of the Tier 2 structure was one of the issues that came out most strongly in the written evidence we received. Professor Barnard told us that:

the reality is that if we go for very strong controls and a very bureaucratic system, employers, local abattoirs and small businesses who have never employed non-EU staff before, will have to set up a whole complex system in their own businesses to manage the applications for visas. I do some of this work in my own college and so I have a taste of just how complicated it is. We have a whole team of people at the university to support us in applying for these visas. At the moment that applies to only non-EEA nationals but if it is extended to all EEA nationals as well, there will be a significant administrative load.¹²⁸

108. Lord Green, while recognising the potential for additional burdens on businesses and organisations, suggested that this could act as an incentive for employers to take on and, where necessary train and develop, UK workers.¹²⁹ As we set out below there are many businesses, particularly in the low-paid sector who fear they might struggle if EEA citizens were included within the Tier 2 structure. It should also be noted that incorporating EEA nationals into the non-EEA system would also significantly increase the burden on the Home Office visa and enforcement teams.

124 Written evidence submitted by the Advertising Association [[PBM0024](#)]

125 Written evidence submitted by Migration Watch [[PBM0007](#)]

126 Written evidence submitted by Migration Watch [[PBM0007](#)]

127 Federation of Small Businesses, [A Skilful EU Exit: what small firms want from Brexit](#), April 2017

128 Q35

129 Written evidence submitted by Migration Watch [[PBM0007](#)]

109. **We note the many complaints we have received about the existing immigration policy toward non-EEA nationals. Whatever the Government’s intention for post-Brexit immigration policy it should include an overhaul of the UK’s immigration arrangements for non-EEA nationals.**

110. There was consensus amongst our witnesses that there should be no restrictions on EEA nationals travelling to the UK as visitors and that residency rights should be available for workers, students, family members and the self-sufficient. Professor Portes commented that whilst the UK could choose to end preferential immigration arrangements for EEA citizens, there could be unwelcome consequences:

A fully-fledged visa regime for EEA nationals would be hugely disruptive to trade, travel and tourism, even leaving aside the obvious point that this would mean UK nationals would require visas to travel to continental Europe. Moreover, it would mean that they were treated materially worse than, for example, Americans or Australians, who do not need a visa to enter the UK.¹³⁰

Alternative bespoke options

111. We have heard some evidence of alternative bespoke options aimed at particular sectors of the labour market. We note that the White Paper included reference to “temporary mobility of scientists and researchers, self-employed professionals, employees providing services, as well as investors”.¹³¹ These could also be preferential arrangements for EEA citizens linked to the economic partnership, or geographical proximity, or they could be arrangements that operate more widely.

112. We did not hear convincing arguments as to how low-paid yet vital sectors, such as social care, could cope if their ability to recruit EEA workers was restricted. In their March 2018 Interim Report, the Migration Advisory Committee notes that wages are not irrelevant to an employer’s ability to recruit and retain staff: “individual employers would almost always be able to recruit resident workers if they paid wages sufficiently above the going rate. More credible is the claim that small margins and rising other cost pressures mean that higher wages are unaffordable”.¹³²

113. Lord Green acknowledged that the care system was one of the most difficult aspects of his approach of extending the non-EEA system. He suggested that one solution to sectors that could struggle with recruitment might be for them to do more to accommodate people who are currently underemployed and who seek more hours.¹³³ Of 8.4million part-time workers, 1 million reportedly would like to find full-time work. In addition, nearly 800,000 18–24 year olds are not in employment, training or education.¹³⁴

114. David Goodhart told us that demand in some of the low-paid sectors, particularly hospitality, could be accommodated by extending the Tier 5 temporary workers and youth mobility scheme for 18–30 year olds to include EEA citizens. Extending the youth

130 Professor Jonathan Portes, [Free movement after Brexit: policy options](#)

131 HM Government, [The future relationship between the United Kingdom and the European Union](#), Cm 9593, 12 July 2018

132 Migration Advisory Committee, [EEA workers in the UK labour market: Interim update](#), March 2018

133 Q373

134 David Goodhart, [Immigration after Brexit](#), January 2018

mobility scheme is one of the proposals put forward in the Government’s White Paper. The existing youth mobility scheme is limited to two years. Successful applicants have no recourse to public funds. David Goodhart suggested that with the right incentives, such as an extension of two years, it might be possible to nudge youth mobility workers towards sectors with shortages such as social care.¹³⁵ However, he explained that some parts of the country “may have to give up” on sectors such as fishing if they could not source labour in the future.¹³⁶

115. Focus on Labour Exploitation and others raise concern over calls to replace free movement with more restrictive and temporary work visas, especially in low wage sectors. In their view visa restrictions “tend to heighten workers’ risk of exploitation by increasing worker dependence on their employer and reducing bargaining power”.¹³⁷ They argue that workers on tied visas are more likely to accept poor working conditions and are less likely to make complaints about abusive employers if the loss of employment could result in loss of residency rights.

116. As we noted in our previous report, ‘Immigration policy: basis for building consensus’, we believe any future migration system should ensure that high-skilled—not just highly-paid—workers can come to the UK to provide skills that are needed in our economy, society and public services like the NHS. Immigration rules should allow UK businesses and organisations to attract easily workers from across the globe, with the skills they need in internationally competitive fields.

Seasonal workers

117. Many countries, including other EU countries, have some form of seasonal agricultural workers scheme that gives the agriculture sector privileged access to a source of labour that does not have many high-wage alternatives.¹³⁸ In our report, *Immigration policy: basis for building consensus*, we referred to evidence from employers in the agriculture sector who said that they were struggling to recruit sufficient low skilled UK workers, particularly for seasonal work moving from farm to farm.¹³⁹ Many employers in agriculture urgently want a seasonal workers scheme similar to the Seasonal Agricultural Workers Scheme (SAWS) that ended in 2013 but which will also allow for the employment of workers from outside the EEA. The National Farmers Union, for example, argues that: “The UK food supply chain will be substantially less competitive if restrictions are placed on labour after Brexit. For successful farm businesses, continued access to non-UK seasonal and non-seasonal workers on-farm is critical”.¹⁴⁰

118. Matthew Fell expressed a general note of caution about sectoral deals on immigration, because of the interdependencies between some sectors such as logistics and the food sector.¹⁴¹ Dr Rolfe, whilst generally not favouring short-term seasonal visa schemes said that “there is probably a very strong case in the agricultural sector to have seasonal work

135 David Goodhart, [Immigration after Brexit](#), January 2018

136 Q387

137 Written evidence submitted by Focus on Labour Exploitation [[PBM0032](#)]

138 Q89

139 Home Affairs Committee, Second Report of Session 2017–19, [Immigration policy: basis for building consensus](#), HC 500

140 NFU, [National Farmers Union Manifesto](#), 2017

141 Q136

visas”, a view echoed by both Lord Green and David Goodhart.¹⁴² The Association of Labour Providers suggest that a seasonal scheme could be extended to include beyond the tradition areas of agriculture and horticulture to include salad packing and meat and fish processing.¹⁴³ While Focus on Labour Exploitation reiterate their concern that temporary visas increase the risk of worker exploitation. Sunder Katwala suggested that businesses employing seasonal workers should address the impact on the community of temporary migrant workers, saying that “employers have to step up and deal with those [local integration] impacts to make it politically a good and viable idea to have the seasonal schemes they will need.¹⁴⁴ We note that the Migration Advisory Committee reported in 2013 that most parties had gained from the Seasonal Agricultural Workers Scheme (SAWS). It found that it was well managed by the Home Office, growers got a supply of efficient labour, migrants received a good wage, British workers were not displaced and integration issues were limited as SAWS workers usually lived on the farm.¹⁴⁵

119. The Immigration Minister told the Scottish Affairs Committee on 27 March 2018 that the Government was “listening to the calls for a seasonal workers scheme very closely”, but explained that any such scheme would need to be tightly time-limited and restricted migrants to working in agriculture.¹⁴⁶ We note the evidence we received in our previous inquiry into immigration that extended growing seasons can mean workers being required for up to ten months of the year. The Home Secretary told us in June 2018 that the Government was considering a range of options for the future immigration system, and that issues relating to needs for seasonal workers would be covered in the MAC’s report in September. He stated that “Should the need arise to introduce a Seasonal Agricultural Workers Scheme, the Home Office could introduce the necessary changes to the Immigration Rules within approximately six months”.¹⁴⁷

120. In our previous report we noted that there was more public support for low-skilled workers in sectors in which the UK public do not typically wish to work, such as seasonal farm work. We concluded that there was already evidence that access to UK and EEA labour markets was insufficient to meet current demand. We also noted that the New Zealand seasonal scheme was held in high regard. The New Zealand High Commission reports that its introduction has led to a more stable workforce and better quality and more productive workers.¹⁴⁸ **In our report, ‘Immigration policy: basis for building consensus’, we called on the Government to consider a new Seasonal Agricultural Workers Scheme. We noted evidence that access to the EEA labour market is already insufficient to meet demand. We are concerned that the Home Secretary has said that no new scheme will be introduced until after the transition period. We believe this is far too late—it should be introduced as soon as possible. We also recommend that it should be accompanied by measures to prevent seasonal workers being exploited, such as increased funding for the Gangmasters and Labour Abuse Authority, and enforcement of Modern Slavery legislation.**

142 Q135, David Goodhart, [Immigration after Brexit](#), January 2018

143 David Goodhart, [Immigration after Brexit](#), January 2018

144 Q136

145 Migration Advisory Committee, [Migrant Seasonal Workers](#), May 2013

146 Evidence taken before the Scottish Affairs Committee, [27 March 2018](#), Qq650, 653

147 Letter from the [Home Secretary to the Chair](#), 26 June 2018

148 Written evidence submitted by the New Zealand High Commission [[PBM0037](#)]

Regional immigration system

121. There have been calls for the Government to adopt a regional immigration policy, particularly from the Scottish and Welsh Governments and the Mayor of London.¹⁴⁹ Our predecessor Committee took evidence on this issue and heard, for example, how the current Scottish Government wanted different post-Brexit immigration arrangements for Scotland. These arrangements included the continuation of freedom of movement and the flexibility to tailor non-EEA rules to Scotland, for example by reducing salary thresholds for spouse and Tier 2 workers and to introduce a post-study work visa.¹⁵⁰

122. In our report, *Immigration policy: basis for building consensus*, we noted that much of the British public want to have a say over the volume and type of immigration in their own area, and that different priorities exist in different parts of the country.¹⁵¹ We recognised that any regionally-specific policies must address any public concerns about their credibility and workability, so as to build broader consensus on immigration. We welcomed the Home Office’s commissioning of the MAC to examine regional distribution in its work on the contribution of EEA workers, and recommended that the Government remain open-minded to regional immigration approaches until the MAC has concluded its work.¹⁵²

123. An IPPR report noted that attitudes to EEA immigration vary considerably by region and local area, and concluded that building regional flexibility into the immigration system for EEA (and non-EEA) nationals could therefore effectively reflect the divergent attitudes to EEA immigration across the country. Phoebe Griffith, Assistant Director at the IPPR, told us that in general, the IPPR had been a leading proponent of a more regionalised approach to immigration, in part to address geographical imbalances such as the disproportionate flow of skilled migration to London and the South East of England.¹⁵³

124. The results of a survey published by the CIPD in February found that only 5% of employers would be in favour of a regional immigration policy that gives preferential arrangements to some areas over others but many of the written submissions we received suggested that a regional approach merited consideration.¹⁵⁴ Concerns that were raised included challenges in identifying regional need, and additional complexity to the enforcement and administration of the system. Migration Observatory conclude “that whether regions have more say over immigration policy is more a matter of principle and politics than of economics”.¹⁵⁵

149 See for example written evidence submitted by the Scottish Government [[PBM0008](#)]

150 Evidence taken before the Home Affairs Committee, [2 March 2017](#), HC (2016–17) 864

151 Home Affairs Committee, Second Report of Session 2017–19, [Immigration policy: basis for building consensus](#), HC 500, Para 131

152 Home Affairs Committee, Second Report of Session 2017–19, [Immigration policy: basis for building consensus](#), HC 500, Para 132

153 Q339

154 Written evidence submitted by Migration Watch [[PBM0007](#)]

155 Written evidence submitted by Migration Observatory [[PBM0009](#)]

6 Conclusion

125. In this report we have put forward a range of broad options for the future immigration arrangements of the UK and suggested how each option might interact with negotiations over a trade deal. We have done this in the absence of any detailed policy proposals coming forward from the Government. We do not put forward a preferred option but we call on the Government to note the high level of dissatisfaction with the existing arrangements for non-EEA nationals. Extending the non-EEA structure to include EEA citizens is simply untenable and unworkable.

126. As well as considering the future for EEA migration, we recommend that the Government reconsiders its approach to non-EEA migration. The Government should also reconsider the recommendations in our earlier report and actively seek to build public consensus behind its chosen approach.

Conclusions and recommendations

Introduction

1. This is an interim report published to inform Parliament and the public about the limited statements so far from the Government on future migration policy, the range of options for EU/EEA migration during, and after, the transition period that have been raised with us in evidence hearings, and the potential trade-offs between future immigration policy and future economic and trade relationships. We will await the conclusions of the Migration Advisory Committee in the autumn, and—we hope and expect—some substantive proposals from the Government before making recommendations on the future shape of EU migration policy. (Paragraph 3)
2. We welcome the Government's efforts to secure the status of EU citizens currently living in the UK—and we join the European Parliament in urging the Member States to provide clarity and support for British citizens living in the European Union. However, we are extremely concerned about the current lack of information over future UK immigration policy towards EEA nationals. The shifting timetable for the publication of a long-awaited White Paper on Immigration—and the Immigration Bill announced in the 2017 Queen's Speech—is not the result of design, but indecision. Whilst we recognise the need for evidence from the Migration Advisory Committee to inform final decisions, we believe that public consultation on broad options is needed. So, it is shocking that it has taken more than two years since the referendum for the UK Government to set out any information on future arrangements at all. (Paragraph 7)
3. It is a serious disappointment that in the two years since the referendum there has been no attempt by the Government to build a consensus on immigration reform, to consult the public on options for change. We welcome the Home Office commissioning evidence from the Migration Advisory Committee and the work it is doing to consult employers on their needs. However, we are concerned that the Government has left a wider debate until late in the process. (Paragraph 10)
4. Geography and the shared economic, social and cultural bonds between the UK and the European Union mean that the movement, or mobility, of people will remain vital. It is therefore imperative that the debate about our future EEA migration policy does not see a resurgence of the polarisation that characterised some elements of the 2016 referendum campaigns. We warn all those involved in the debate on the Brexit Withdrawal Agreement over the next few months not to exploit or escalate tensions over immigration when it should be possible to hold a sensible debate and build greater consensus instead. (Paragraph 12)

Objectives for a future EEA migration policy

5. The lack of detail on immigration in the White Paper on the future relationship stands in stark contrast with the proposals being brought forward in the areas of customs, trade and security. It is unfortunate that by waiting so long to commission work from the Migration Advisory Committee the Government now finds itself without the information it needs for negotiations that are underway. We agree

that final decisions should ideally be informed by information from the Migration Advisory Committee, but we believe that consultation on different options should still take place. In the meantime, we caution the Government against implying that the only EEA migration post-Brexit will be in the limited categories referred to in the White Paper, as that is not conducive to an open and transparent debate. (Paragraph 28)

6. We repeat our recommendation in previous reports that meeting the net migration target should not be an objective of EEA migration policy. It is not working and should be replaced. (Paragraph 29)
7. There is clear public appetite for debate and discussion of immigration policy. Even at this late stage in the process the Government could be doing more to consult and build public consensus on the future of EEA immigration rules. It would be wrong for the Government to make simplistic assumptions, or underestimate the public's interest in debating and engaging with the necessary trade-offs in forging a new relationship with the European Union. (Paragraph 36)
8. Overall, we heard considerable evidence that refusing to discuss reciprocal immigration arrangements in the future partnership would make it much harder to get a close economic partnership with the EU. The need for a good economic deal, the fact that the EU is our closest neighbour and trading partner, and the shared economic, social and cultural bonds that exist between the UK and the EU mean that mobility of people will remain important. The proximity geographically, economically and socially between the UK and the EU, and the need for a good overall deal, supports a distinct arrangement for EEA migration in future, linked to our economic relationship. (Paragraph 37)

Existing applicable controls

9. Existing applicable controls, such as a registration scheme, combined with comprehensive and accurate exit checks, would give the Government information about migration from the EEA and would put in place a process of formalising employment and residency in the UK. Such a process need not be burdensome, but it would be a requirement upon citizens from elsewhere in the EEA wanting to live and work in the UK. Linking the right to residency to self-sufficiency—which would need to be defined but which the Government appears to suggest is its preferred way forward—would keep the focus on those coming to work, and is already an accepted EU principle, which could be further enforced. (Paragraph 45)
10. The Government should not just look to immigration rules as it seeks to address public concerns over immigration. Regulation of the labour market, further measures to prevent exploitation, and increased funding for enforcement would benefit both domestic and migrant workers, subject to practical arrangements with business. That other countries inside the EU and in EFTA have far more regulated labour markets than the UK demonstrates that a close economic relationship with the EU is not a barrier for improving terms and conditions of workers in the UK. The Government should seek to improve labour market conditions as part of a holistic approach to addressing public concerns over the impact of immigration,

irrespective of what the future relationship with the EU might look like. Plans to do so should be announced in or alongside the forthcoming White Paper on Immigration. (Paragraph 56)

Controls within an EFTA-style framework

11. The existing safeguard measures available to EFTA states as part of their trade relationships with the European Union demonstrate that they can—in principle—exercise more controls on immigration while participating in the single market than are available to EU Member States. Were the Government to change its red lines, such arrangements might provide a basis for drawing up means of controlling EEA migration from within the single market. (Paragraph 69)
12. In its strategy for negotiations with the European Union, the Government has not considered the range of possible safeguard provisions that could be applied to a trade agreement that allowed the UK to participate in a single market after Brexit, which would combine new immigration controls and maintain economic benefits. It should immediately do so. (Paragraph 82)
13. While we are not recommending any particular model for future migration from the EU, we do note that—based on the evidence we have received—there are options for controlling migration within the single market which go much further than the previous Prime Minister’s negotiation with the European Union. We recognise that these options have not been the subject of negotiations between the UK and the EU, and that negotiations would be complex, but we believe these options should be explored. (Paragraph 87)

Other free trade options

14. The DCFTA negotiated between the European Union and the Ukraine provides a precedent for partial integration in the single market without requiring the free movement of people. Despite the European Commission’s repeated claim that there can be no ‘cherry-picking’ of the four freedoms of the single market, this is a political judgement rather than a technical or legal obstacle. We note that the EU-Ukraine package was agreed in the context of Ukraine moving towards the EU, rather than away, and the European Commission has so far insisted that, for the UK-EU negotiations, the four freedoms of the single market are indivisible. (Paragraph 97)
15. A free trade agreement along the lines of CETA would only require limited immigration provisions. However, such an outcome does not remove the need for the Government to make decisions about long-term migration from the EU. UK universities will still want to take on students from EU Member States, employers will still want to be able to recruit the—to use the Government’s phrase—‘brightest and best’, as well as low-paid workers in key sectors, and family migration will remain of huge importance. It is not the case, therefore, that an FTA would necessarily mean limited migration. A number of complex, important and inter-related policy decisions would still need to be made by the Government. (Paragraph 102)

16. We note the many complaints we have received about the existing immigration policy toward non-EEA nationals. Whatever the Government's intention for post-Brexit immigration policy it should include an overhaul of the UK's immigration arrangements for non-EEA nationals. (Paragraph 109)
17. As we noted in our previous report, 'Immigration policy: basis for building consensus', we believe any future migration system should ensure that high-skilled—not just highly-paid—workers can come to the UK to provide skills that are needed in our economy, society and public services like the NHS. Immigration rules should allow UK businesses and organisations to attract easily workers from across the globe, with the skills they need in internationally competitive fields. (Paragraph 116)
18. In our report, 'Immigration policy: basis for building consensus', we called on the Government to consider a new Seasonal Agricultural Workers Scheme. We noted evidence that access to the EEA labour market is already insufficient to meet demand. We are concerned that the Home Secretary has said that no new scheme will be introduced until after the transition period. We believe this is far too late—it should be introduced as soon as possible. We also recommend that it should be accompanied by measures to prevent seasonal workers being exploited, such as increased funding for the Gangmasters and Labour Abuse Authority, and enforcement of Modern Slavery legislation. (Paragraph 120)

Formal minutes

Wednesday 18 July 2018

Members present:

Rt Hon Yvette Cooper, in the Chair

Christopher Chope	Alex Norris
Stephen Doughty	John Woodcock
Stuart McDonald	

Draft Report (*Policy options for future migration from the European Union: Interim report*), proposed by the Chair, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 126 read and agreed to.

Resolved, That the Report be the Eighth Report of the Committee to the House.

Ordered, That the Chair make the Report to the House.

Ordered, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134

[Adjourned till Tuesday 4 September at 2.15 pm]

Witnesses

The following witnesses gave evidence. Transcripts can be viewed on the [inquiry publications page](#) of the Committee's website.

Tuesday 27 February 2018

Mats Persson, Head of International Trade, Ernst and Young, **Zsolt Darvas**, Senior Fellow, Breugel, and **Catherine Barnard**, Professor of European Union Law, University of Cambridge [Q1–42](#)

Wednesday 18 April 2018

Professor Alan Manning, Chair, Migration Advisory Committee [Q43–109](#)

Tuesday 22 May 2018

Matthew Fell, Chief UK Policy Director, Confederation of British Industry (CBI), **Sunder Katwala**, Director, British Future, and **Dr Heather Rolfe**, Association Research Director for Employment and Social Policy, National Institute of Economic and Social Research [Q110–150](#)

Rosa Crawford, Policy Officer, EU and International Relations, Trades Union Congress, and **Professor Guglielmo Meardi**, Professor of Industrial Relations, University of Warwick [Q151–178](#)

Tuesday 12 June 2018

Professor Michael Ambühl, former Swiss State Secretary for Foreign Affairs, **Pauline Mathewson**, Managing Partner for Europe, Middle East and Africa, Fragomen LLP [Q179–221](#)

Sir Ivan Rogers KCMG, former Permanent Representative of the UK to the European Union [Q222–243](#)

Wednesday 20 June 2018

Guy Verhofstadt MEP, Brexit Co-ordinator and Chair, Brexit Steering Group, European Parliament [Q244–316](#)

Tuesday 26 June 2018

Phoebe Griffith, Associate Director for Migration, Integration and Communities, Institute for Public Policy Research, **Professor Jonathan Portes**, Economics and Public Policy, King's College London and Senior Fellow, UK in a Changing Europe, and **Stephen Clarke**, Senior Economic Analyst, Resolution Foundation [Q317–358](#)

Lord Green of Deddington, Chairman, Migration Watch, and **David Goodhart**, Head of Demography, Immigration and Integration, Policy Exchange [Q359–409](#)

Published written evidence

The following written evidence was received and can be viewed on the [inquiry publications page](#) of the Committee's website.

INQ numbers are generated by the evidence processing system and so may not be complete.

- 1 Advertising Association ([PBM0024](#))
- 2 Association of Dental Groups ([PBM0006](#))
- 3 Association of Professional Staffing Companies (Global) Ltd ([PBM0013](#))
- 4 Association of Professional Staffing Companies (Global) Ltd ([PBM0014](#))
- 5 Association of the British Pharmaceutical Industry and UK BioIndustry Association ([PBM0017](#))
- 6 British Beer & Pub Association ([PBM0005](#))
- 7 British Dietetic Association ([PBM0027](#))
- 8 British Horseracing Authority ([PBM0033](#))
- 9 British Veterinary Association ([PBM0021](#))
- 10 Campaign for Science and Engineering ([PBM0004](#))
- 11 Cavendish Coalition ([PBM0026](#))
- 12 Downs Solicitors ([PBM0039](#))
- 13 Engineers Professors' Council ([PBM0016](#))
- 14 English UK ([PBM0011](#))
- 15 Focus on Labour Exploitation ([PBM0032](#))
- 16 Immigration Law Practitioners' Association ([PBM0012](#))
- 17 Institute of Directors ([PBM0031](#))
- 18 Law Society of Scotland ([PBM0025](#))
- 19 London First ([PBM0038](#))
- 20 Migration Observatory at the University of Oxford ([PBM0009](#))
- 21 Migration Watch UK ([PBM0007](#))
- 22 Mr Thomas Shelton ([PBM0003](#))
- 23 New Zealand High Commission ([PBM0037](#))
- 24 Professor Jonathan Portes ([PBM0002](#))
- 25 Professor Sir David Metcalf CBE ([PBM0036](#))
- 26 Reunite Families UK ([PBM0010](#))
- 27 Royal College of Nursing ([PBM0019](#))
- 28 Scottish Government ([PBM0008](#))
- 29 techUK ([PBM0023](#))
- 30 Textile Services Association ([PBM0022](#))
- 31 The British Takeaway Campaign ([PBM0020](#))
- 32 The Law Society ([PBM0034](#))
- 33 The Publishers Association ([PBM0029](#))

- 34 The Russell Group ([PBM0015](#))
- 35 UKHospitality ([PBM0018](#))
- 36 Universities Scotland ([PBM0028](#))
- 37 University and College Union ([PBM0035](#))
- 38 University of Sheffield ([PBM0030](#))

List of Reports from the Committee during the current Parliament

All publications from the Committee are available on the [publications page](#) of the Committee's website. The reference number of the Government's response to each Report is printed in brackets after the HC printing number.

Session 2017–19

First Report	Home Office delivery of Brexit: customs operations	HC 540 (HC 754)
Second Report	Immigration policy: basis for building consensus	HC 500 (HC 961)
Third Report	Home Office delivery of Brexit: immigration	HC 421 (HC 1075)
Fourth Report	UK-EU security cooperation after Brexit	HC 635
Fifth Report	Windrush: the need for a hardship fund	HC 1200
Sixth Report	The Windrush generation	HC 990
Seventh Report	UK-EU security cooperation after Brexit: Follow-up report	HC 1356
First Special Report	The work of the Immigration Directorates (Q1 2016): Government Response to the Committee's Sixth Report of Session 2016–17	HC 541
Second Special Report	Asylum accommodation: Government Response to the Committee's Twelfth Report of Session 2016–17	HC 551
Third Special Report	Unaccompanied child migrants: Government Response to the Committee's Thirteenth Report of Session 2016–17	HC 684
Fourth Special Report	Home Office delivery of Brexit: customs operations: Government Response to the Committee's First Report	HC 754
Fifth Special Report	Immigration policy: basis for building consensus: Government and Office for National Statistics Responses to the Committee's Second Report	HC 961
Sixth Special Report	Home Office delivery of Brexit: immigration: Government Response to the Committee's Third Report	HC 1075