Immigration after Brexit

What is the current situation?

The UK currently treats citizens of the European Economic Area (EEA) (plus Switzerland) and those from outside the EEA entirely differently for immigration purposes. Free movement of persons means that EEA citizens have the right to enter, live, study and work in the UK. These rights are not unqualified - entry can be denied on certain limited grounds relating to public protection (public policy, public security and public health) and those who have no realistic prospect of finding work can in principle be removed. However, in practice EU citizens are treated very much like UK citizens. Non-EEA nationals who wish to migrate to the UK to live, work or study generally require permission to do so and may well need a visa for which substantial fees are charged. There are four main routes: work, family, study and refugee or asylum, with many different sub-categories for each. In the year immediately prior to the referendum, about 300,000 people from the EU, and about the same number from outside the EU, migrated to the UK (that is moved to the UK with the intention of staying for at least a year). Net immigration – the figure which also takes into account those emigrating – was about half that.

Entry to the UK is controlled separately from the entitlement to seek and take up employment. Nationals from some countries (e.g. India or Nigeria) require a visa to enter the UK, which may be for a short-term visit (tourism, family, business) or longer-term (study or work). However, nationals of other countries (e.g. Brazil or the US) do not require a visa for a short-term visit.

What has the British government indicated it wants?

The government has stated that free movement of people “as it is now” will end in March 2019. However it has also stated that it will seek to avoid a “cliff edge” at this date and to negotiate a “transitional period” of two to three years, during which very little will change. If so, then free movement will end in a legal sense, but in practice will continue more or less as now, except that new arrivals will have to register. Since most EU nationals coming here to work already register for a National Insurance number (at least) and any new system would likely be an extension of this, the practical impacts are likely to be limited. Those already living and working in the UK are likely to be protected by a special system based on giving those with five years residence the chance to apply for ‘settled status’.

In parallel with the negotiations, the UK government will also be taking steps towards introducing a new immigration system. At present, the likely timeline is as follows:

- The UK government has published a white paper setting out its proposals for the ‘Great Repeal Bill’ (now EU (Withdrawal) Bill), which will incorporate EU legislation into UK law, so that there is, as far as possible, no step change on the date of Brexit;
- The bill will allow the UK government to make some changes through secondary legislation. However, the white paper commits the UK government to implement any new system through a separate immigration bill;
- The government will publish a white paper on immigration later in 2017. Regardless, the timing of any subsequent legislation, and its implementation, remains unclear; it is also currently unclear whether the new system will be part of the negotiations with the EU-27.

What are the possible outcomes?

The main route for non-EEA migrants at present for work purposes is known as ‘Tier 2’; this is open to those who have a job offer and fulfil various other criteria (relating to skills, occupations, salaries, etc.). Significant visa costs are imposed. There is a cap on overall numbers (currently set at 20,700 per year). For family migrants (in particular spouses) there is an income threshold. Students have to show some knowledge of English and prove they have sufficient funds to cover study and living expenses. The basic
structure of this system could be extended to EEA migrants. However, this still leaves a number of key questions:

i) European preference.
Will the new system give a considerable degree of preference to EEA citizens, even if not full free movement, compared to those outside the EEA, or will it treat all non-UK citizens equally; and how will this be operationalized?

ii) Individual versus sector based system.
The current system for non-EU workers is primarily based on individual and job-related characteristics (salary, qualifications, skill level for the job in question) although there are a number of ‘shortage occupations’, which are largely sector-specific. However, there has been considerable speculation that the UK government is considering sector-specific schemes, such as for agriculture;

iii) Targets, quotas and caps.
Currently, although the UK government has an overall target to reduce net migration to the tens of thousands, most immigration categories have no actual overall limits (caps), except for Tier 2 skilled. If the objective of a new system is to take the opportunity of Brexit to exert greater control over numbers, will it incorporate more such caps, in particular for any sector-specific schemes? If so, how will they be set?

iv) Regionalisation.
There has been considerable interest from London and Scotland in the possibility of some degree of regionalisation of the immigration system. This would not involve any regionalisation of border controls, either external or internal, but rather would relate to the conditions required for a migrant worker to obtain a work permit, which would be differentiated by the geographical location of the workplace;

v) Administrative and enforcement aspects.
It does not seem likely or feasible that we would restrict EEA nationals’ right to enter the UK without a visa, given that we do not do so for most other developed countries. This means that control over how many and which EEA nationals are allowed to work in the UK will not, in practice, be applied at the border in the vast majority of cases. As with other non-visa nationals, like Americans, it will be applied in the workplace. Employers will have to verify that EEA nationals are entitled to work in the UK, just as they currently do for non-EEA nationals (similarly, landlords and administrators of public services will have to perform similar checks).

Beyond all these specific questions, perhaps the most important issue from a broad economic perspective is the overall objective. Will the new system be relatively liberal, prioritising the UK’s economic needs, and accepting perhaps an increase in skilled migration from outside the EEA at the same time as reducing EU migration? Or will it be restrictive, with the overarching objective still being to hit the target, set out in the Conservative manifestos of 2010 and 2015, to reduce net migration to the tens of thousands, accepting that some economic damage is inevitable? The tone of the leaked Home Office paper on immigration suggests the latter.

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1 With the possible exception of Irish citizens, not discussed here, who have a special status in the UK which predates the UK’s membership of the EU.