



JCWI Response to the Exiting the European Union Inquiry on the UK's negotiating objectives for withdrawal from the EU

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For further information, contact:

Ruth Grove-White
Policy Adviser
Direct Line: 0207 553 7463
Email: ruth.grove-white@jcw.org.uk

Chai Patel
Legal & Policy Director
Direct Line: 0207 553 7463
Email: chai.patel@jcw.org.uk



About JCWI

1. JCWI is an independent national charity established in 1967. We work to ensure justice and fairness in immigration, nationality and asylum law and policy and we provide direct legal advice and assistance to those affected by UK immigration control. Our solicitors provide representation in the Immigration and Asylum Tribunals. We have built up expertise over decades fighting for justice for those who are vulnerable and have particular experience of dealing with complex immigration issues. This expertise informs our policy and campaigns work.

Introduction and summary

2. We welcome this inquiry and its consideration of immigration issues within a broader examination of the UK's negotiating objectives for withdrawal from the European Union. We offer this submission following consideration of the Committee's recent, very helpful report on the rights of UK and EU citizens, which presented important evidence on these issues¹. Our contribution draws upon JCWI's history of legal casework and campaigning, often on behalf of the most disadvantaged migrant communities in the UK, to present a migrant-centred perspective on some of the issues raised within the report and by the wider inquiry remit.
3. The UK's imminent exit from the European Union has seismic implications for UK immigration policy. When the UK ceases to be an EU member state, a new legal and policy framework for EEA nationals currently residing in the UK, as well as for future EEA migrants, will enter into force². Designing and implementing these changes will be a significant task due to the contribution made by EEA immigration to the UK: currently 45% of our annual migrant inflow originates from EU member states³.
4. From the date of UK withdrawal, all EEA nationals will become subject to UK immigration controls and associated enforcement mechanisms. There is likely to be a substantial reduction in rights for EEA nationals and their family members entering and residing here in

¹ The Government's negotiating objectives: the rights of UK and EU citizens, Committee on Exiting the European Union, 5 March 2017. Available at:

<https://www.publications.parliament.uk/pa/cm201617/cmselect/cmexeu/1071/107102.htm>

² We use the term 'EEA nationals' in this submission to include: national of a member state of the European Union (EU) other than the UK, or a national of Iceland, Liechtenstein, Norway or Switzerland

³ Immigration data for the year ending September 2016, from Migration Statistics Quarterly Report February 2017, Office of National Statistics. Available at

<https://www.ons.gov.uk/peoplepopulationandcommunity/populationandmigration/internationalmigration/bulletins/migrationstatisticsquarterlyreport/feb2017>



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the future. This also means that there is likely to be an increase in the UK's irregular migrant population.

5. The new immigration laws affecting EEA nationals will be designed and implemented during a period of great political and economic uncertainty. Public debate about immigration issues is likely to remain highly polarised for the foreseeable future. There will be tensions between the UK's desire to maintain close relations with the rest of Europe and ensure continued opportunities for UK citizens abroad, whilst exercising the controls over immigration which were promised during the EU Referendum campaign. Media scrutiny of the government's performance on immigration will be closer than ever before. These factors are likely to make it more difficult to develop a coherent and fair post-Brexit immigration policy.
6. To date, debate on a post-Brexit immigration policy has focused on the role that EEA nationals will play in UK labour markets into the future – including how far they may be given preferential access to jobs, and whether sector-specific quotas may be set in lower-skilled occupations. But there are much wider issues at stake which also merit debate. Future rules that affect non-EEA nationals in the future will be layered on top of the current, dysfunctional immigration system which manages non-EEA immigration to the UK. In our view, it would be a disaster to introduce a panoply of rules for EEA nationals and expect them to be absorbed within the existing immigration system without significant difficulties.
7. More widely, some of the most problematic elements of existing UK immigration policy: an increasingly inequitable system which reserves rights for the highest earners; the flawed net migration target; the preoccupation with 'the brightest and the best'; the 'hostile environment' and in-country immigration controls, are all set to play a central role within post-Brexit immigration policy. We believe that, in order to meet the challenges of the coming period and move towards immigration policies which are fair and measured, politicians need to embark upon a wider rethink about their objectives in this area.
8. We urge the Committee to consider how the Brexit negotiations can play a role in re-envisioning the UK immigration system as one which offers fair rules and treatments to all migrants, whether they are EEA or non-EEA nationals. We should be seeking to move towards a more accountable approach to immigration, which can engage with – rather than alienate – the migrants and their families looking to make their lives here, and support their



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wider integration. We offer JCWI's '5 Principles for building a Post-Brexit Immigration Policy' as a starting point for a new immigration framework.

9. Finally, we welcome the recent conclusions of the Committee regarding the position of EU treaty rights holders. The lack of certainty for this group is a pressing situation which must be resolved as soon as possible. In line with the Committee's recommendations, we urge the government to take immediate action and secure the residence rights of all EU treaty rights holders currently residing in the UK. In particular, we would like to see a simplified, affordable and rights-oriented set of rules which would enable those residing in the UK under EU law to move towards permanent residence status as soon as possible.

Bringing EEA nationals under UK immigration control

10. The triggering of Article 50 and opening of Brexit withdrawal negotiations will have huge implications for UK immigration policy. Most immediately, the position of EEA nationals coming to the UK in the future will change comprehensively, bringing them into UK immigration control for the first time since the 1990s. ONS immigration statistics issued in February 2017 show that 268,000 nationals of EU member states immigrated to the UK in the year to September 2016, comprising 45% of the total in-flow of migrants for that year⁴. This gives an indication of the scale of the changes ahead.
11. Currently, and until the UK formally ceases to be a member of the EU, EEA nationals and their family members may enter and reside in the UK under the protection of free movement and residence rights as provided for in the Citizens Directive 2004/38/EC and associated treaties. EEA nationals and their family members may enter the UK with no visa, and remain here for up to three months. Beyond this period they have the right to reside in the UK under one of five qualifying categories (worker, self-employed, student, self-sufficient, job-seeker), or under rules for family members of EEA nationals exercising treaty rights. After a continuous five-year period in a qualifying category, EEA nationals may automatically acquire permanent residence status in the UK. Although EEA+ nationals may apply for an ID document demonstrating their status in the UK, they are not required to do so⁵. They may only be removed or deported in limited circumstances.

⁴ Ibid

⁵ Although extended family members of EEA nationals residing in the UK are required to hold a registration certificate.



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12. On the date that the UK withdraws from the European Union, EU law will cease to apply in the UK. The UK government will introduce a new set of immigration rules affecting EEA nationals, which will enter into force on this date. EEA nationals will become subject to UK immigration control⁶, and all rights and statuses deriving from EU treaties which have not been embedded in domestic legislation will cease to have effect. EEA nationals may from this date be required to hold a biometric identity document, as are currently issued to third country nationals. They will also be liable to removal or deportation from the UK if they breach the terms of their permission whilst here.
13. Many of the details regarding a new immigration policy, including the requirements and conditions of entry, leave to remain and settlement in the UK introduced for EEA nationals, will be decided upon during the course of Brexit negotiations. A number of considerations will determine the scope of the changes. The UK government is currently committed to reducing net migration levels, ideally to the 'tens of thousands', and so may seek more restrictive rules for some or all groups of EEA nationals than are currently in place. It is possible that EEA nationals would be treated in the future within the framework for non-EEA nationals – a change that would see the imposition of restrictive rules regarding their conditions of entry and leave in the future.
14. Conversely, the government will weigh up against this the likelihood that EU member states would be likely to reciprocate any restrictive immigration policies by imposing similar limitations on UK nationals travelling to the EU in the future. The UK government will likely seek to preserve visa-free travel for EU / UK nationals for short periods of time e.g. for tourism, work or family visits. It may also seek to offer preferential treatment to some or all categories of EEA nationals coming to the UK in the future, in exchange for equal treatment of UK citizens and/or favourable terms within a UK/EU free trade agreement.
15. The design of new policies in this area is likely to be dominated by economic imperatives, given that around three quarters of EEA nationals coming to the UK do so for work-related purposes⁷. A government consultation on policies focusing on economic EEA migrants is expected in summer 2017. Until then, it is not known whether government intends to

⁶ Defined in s.13(2) of the Asylum and Immigration Act 1996 as a person who requires leave to enter or remain in the United Kingdom

⁷ 'Work-related purposes' includes those coming to the UK with a fixed job offer and those coming here to seek employment. Migration Statistics Quarterly Report, Office of National Statistics, February 2017 <https://www.ons.gov.uk/peoplepopulationandcommunity/populationandmigration/internationalmigration/bulletins/migrationstatisticsquarterlyreport/feb2017#main-points>



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attract ‘the brightest and the best’ EEA nationals through a new set of immigration rules, or whether it will seek to bring them within the current, legal framework which applies to non-EEA nationals.

16. In February 2017, the White Paper released to accompany the European Union (Notification of Withdrawal) Bill 2016-17 gave an indication of government’s priority areas. It wishes to continue to attract skilled economic migrants and students from across the EU in particular:

“We will create an immigration system that allows us to control numbers and encourage the brightest and the best to come to this country, as part of a stable and prosperous future with the EU and our European partners”⁸.

17. In practice, this could be pursued in different ways. The UK could adopt a very restrictive approach by extending current entry requirements for non-EEA economic migrants within the Points Based System, to EEA nationals. This would include a numerical cap on skilled EEA economic migrants, and/or applying a work permit/employer sponsorship scheme with high skills, education and earnings requirements for potential applicants. Grants of leave for EEA skilled workers with a job offer could be capped at three years, as is the case for some non-EEA skilled workers. Employment opportunities could be limited to European nationals who could secure a firm job offer from a UK employer recognised by the UK Border Agency as a registered sponsor.
18. Alternatively, and perhaps more likely, the UK may opt to implement a more flexible settlement for future economic migrants from the EU. This might include preferential access to the UK labour market for some EEA nationals – particularly those considered ‘the brightest and the best’. It would also be likely that sector-specific schemes targeting skills shortages e.g. in agriculture, hospitality, construction and the care sector, will be put in place to direct EEA nationals into lower paid employment.
19. Regardless of the entry requirements for future EEA economic migrants, however, this group can expect to see their rights in the UK heavily curtailed, with lower-earners and those in lower-skilled occupations receiving a more limited set of entitlement. Looking to the existing system for non-EEA nationals, this could include limiting progression towards

⁸ Department for Exiting the European Union, The United Kingdom’s exit from and new partnership with the European Union White Paper, 2 February 2017. Available at: <https://www.gov.uk/government/publications/the-united-kingdoms-exit-from-and-new-partnership-with-the-european-union-white-paper>



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settlement or indefinite leave to remain in the UK after the standard five years of relevant leave in the UK to higher earners e.g. those earning £35,000 per annum. A pre-entry English language requirement could be put in place for all EEA workers as is currently demanded for non-EEA economic migrants. EEA workers, and in particular lower-earning migrants, could be subject to more restrictive rules on family reunion than are currently permitted under EU law.

20. In addition to EEA workers, it is likely that the UK will wish to continue to attract international students here into the future. However, given the context of restrictive reforms to non-EEA student immigration rules expected in the near future, it seems likely that rules will be considerably less generous than at present⁹. In particular, current student finance rules permit EEA undergraduate students to pay the same tuition fees and receive the same tuition fee loans as UK residents. EEA nationals residing in the UK for over five years are also able to apply for undergraduate maintenance support and postgraduate loans. It is not yet clear whether the UK will introduce a tougher stance towards EEA national students, potentially jeopardising the significant income for UK universities and colleges currently generated by these students.
21. The UK will also need to decide its policy stance in relation to other groups of EEA nationals, including migration of EEA and non-EEA family members, children and carers of UK nationals. In the area of family migration the UK now has among the toughest rules on family migration in Europe, with lower-earning British citizens prevented from bringing a non-EEA spouse to live with them here. The £18,600 earnings threshold has since 2012 prevented thousands of British citizens from bringing a non-EEA spouse or partner to reside in the UK with them, with around 15,000 British children affected by the rules. We anticipate that similar rules might be applied to British citizens with EEA family members under a future set of immigration rules and urge the Committee to instead advocate a fairer settlement for all British people with foreign family members, regardless of whether they are EEA or non-EEA nationals.
22. In future, the ability of EEA nationals to settle within local communities will be largely dictated by the terms of their permission to enter and remain in the UK. This could mean that some communities see higher levels of short-term economic migration, without being

⁹ As indicated by Home Secretary Amber Rudd in a speech to Conservative party conference, 4 October 2016. Available at: <http://press.conservatives.com/post/151334637685/rudd-speech-to-conservative-party-conference-2016>



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able to benefit from the longer-term investment in the area that can be made by a migrant with flexibility and security. Similarly, migrants who are able to be joined by family members may not only be happier but more able to be involved in local communities through, for example, school networks. A new cohort of single migrants, unable to settle and plan for the future, might well struggle to integrate within local communities.

23. JCWI supports the most fair and generous future policy framework possible for EEA nationals into the future. We are concerned that the UK government will continue to need the economic contribution of EEA migrants, but under a new system will deny these migrants the rights and security that they need to build their lives here and contribute towards local communities. That a hostile policy agenda which limits rights and impedes integration does not work is clearly evidenced by the experience of non-EEA nationals coming here, who have been subject to such an alienating approach over recent decades.
24. However, adopting a negotiating stance with the European Union that offers particularly generous or preferential treatment to EEA nationals could be problematic. We would struggle to endorse a two-tier system whereby EEA nationals are granted greater rights to access UK labour markets, study in the UK, enjoy family reunion or move towards settlement than non-EEA nationals. In our view this would create a post-Brexit immigration system which is even more complex and confusing than the rules currently in place.
25. In addition, a 'two tier' system of rights would exacerbate the sense of injustice experienced by many non-EEA nationals currently residing in the UK. Over the past fifty years, non-EEA nationals, despite the long-standing establishment of many Commonwealth communities in the UK, have been subject to increasingly punitive immigration rules. We fear that, were EEA nationals to be privileged through a future settlement, many non-EEA nationals would experience even greater marginalisation and discrimination than they presently face, effectively becoming 'third class citizens'. This could generate resentment, and potentially further undermine community cohesion.

The opportunity for wider immigration reform

26. **Our view is that the development of any future immigration policies should be accompanied by a wider review and reform of the UK immigration system to make it fairer and more effective for *both* EEA and non-EEA nationals. The immigration system needs a new set of objectives to inform policies which will be viewed as fair and equitable**



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by migrants as well as UK residents, and which can support long-term community integration.

27. In this submission, we highlight the following three areas as in need of urgent review:

- Firstly, current **UK immigration policy objectives** are problematic and contribute towards short-sighted policy making. They must be reviewed and re-envisaged.
- Secondly, the UK immigration system has become blighted by unnecessary **legislative and administrative complexity** – an issue compounded by the lack of accountability within the system. We advise that the legislation and bureaucratic processes in this area are reviewed and rationalised before new rules affecting significant numbers of migrants are introduced.
- Finally, we highlight key immigration policies which have problematic implications for **integration and stable communities**, and should be reformed.

UK immigration policy objectives

28. Immigration rules and regulations are all informed and framed by the overarching policy objectives to which the government has committed. In our view, the government's key objectives for post-Brexit immigration policy – and in particular the emphasis on driving down levels of immigration, coupled with an emphasis on continuing to attract 'the brightest and the best' to the UK – will prove to be increasingly problematic. These goals for policy-making will direct the post-Brexit immigration agenda away from changes which could create a fairer, better functioning system. Given the scale and complexity of the changes which lie ahead, we believe that the government's current objectives for UK immigration policy should be fully reviewed.

29. Since the election of the coalition government in May 2010, policy has been driven by the aim of reducing the levels of immigration to the UK. The government has (until now) focused on introducing a series of policy restrictions affecting non-EEA nationals, with limited effect. The target of reducing net migration levels to the tens of thousands has remained in place, despite significant political pressure to abandon it. The target has, however, been consistently exposed as a flawed benchmark for UK immigration policy. In February 2017, ONS immigration data showed that, despite widespread policy restrictions across non-EEA immigration categories since 2010, net migration continued to stand at 273,000 in the year ending September 2016 – well above the government's intended



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level¹⁰. Ministers now acknowledge that the net migration target will not be met in the foreseeable future.

30. In our view, the disparity between the net migration target and actual net migration levels in recent years has been a predictable outcome of the way that the internationally open and growth-oriented UK economy has operated in the modern world. If the UK continues to pursue a global economic model in the post-Brexit era, then it will need to continue to invite high levels of migrants. Any drop in net migration levels into the future would be less likely to arise from government policy than from a loss of confidence in UK economic growth and jobs leading migrants to seek opportunities elsewhere.
31. Retaining the net migration target in the context of a post-Brexit immigration policy will lead to an unhelpfully restrictive approach towards immigration, which will not take into account the wide range of economic, legal and human rights considerations which must also play a role. We are particularly concerned that, if the UK continues to attract significant numbers of economic migrants from the EU, then government would introduce even more restrictive policies aimed at vulnerable groups including family migrants and refugees in pursuit of its net migration target.
32. The UK government currently designs immigration policy with a view to attracting ‘the brightest and the best’ to the UK. In our view this approach has been associated with the development of an elitist immigration system in the UK, where rights are often determined by the resources held by the applicant and their perceived ability to generate wealth within the private sector.
33. The evidence of this can be seen through the Points Based System (PBS) for non-EEA immigration. The PBS has become increasingly inequitable, with rules that now place lower earners, regardless of their contribution to the economy and/or public services, at a significant disadvantage in the UK. Non-EEA workers who undertake lower-paid jobs, including providing essential services within the NHS, schools and care sector, and who earn below £35,000 per annum, are now ineligible for indefinite leave to remain (‘settlement’) in the UK. Certificates of sponsorship issued by migrant employers under Tier 2 of the PBS, including for key occupations where shortages have been identified, are increasingly limited to just three years, further preventing migrant workers from building a life here in security.

¹⁰ Migration Statistics Quarterly Report, Office of National Statistics, February 2017
<https://www.ons.gov.uk/peoplepopulationandcommunity/populationandmigration/internationalmigration/bulletins/migrationstatisticsquarterlyreport/feb2017#main-points>



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34. Conversely, the system offers a fast-track to citizenship for high net worth investors, who may be able to secure indefinite leave to remain after as little as two years in the UK, and a British passport after a further year here. Migrants and employers within highly-paid strata of the private sector also benefit from more generous rules. Intra-company transfers (ICTs), used by multinational companies to move staff across borders, have been exempted from the net migration target altogether. The rules for ICTs allow non-EEA nationals who earn over £155,300 per annum to live here for up to nine years, in contrast to the much more restrictive rules for those coming to do lower-paid work in the UK.
35. In our view, the government's continued emphasis on 'the brightest and the best' is particularly unfortunate in the context of Brexit. It is clear that EEA migrants will be needed across the UK economy, in both the private and public sectors, into the future, particularly as Tier 3 of the PBS for unskilled non-EEA migrant workers has never been brought into operation. A range of UK employers, NHS bodies and trades unions have argued strongly that EEA nationals will continue to be needed in lower-skilled occupations in the UK – as such the government has conceded that provision may need to be made via sector-specific / seasonal work routes, to enable EEA nationals to continue to come for low-skilled employment.
36. Our concern is that large numbers of EEA nationals (many of whom will be highly skilled themselves) may be given permission to come here to do low-skilled jobs, but will not be given equal or fair treatment under the UK immigration system. In our view, the right to enter the UK for extended periods in order to work is problematic if it is not accompanied by other rights including the ability to bring family members here, progress towards settlement and enjoy treatment conducive to longer-term integration. We are additionally wary of any approach that promises to continue to attract EEA nationals into low-paid and unskilled work in the UK, without making any regulatory reforms which would reduce worker exploitation in key sectors of the economy.
37. Rather than focusing immigration policy around migration objectives which have been shown to be fundamentally flawed, we propose that a wholly new set of objectives which prioritise fairness, equality of treatment and active support for longer-term integration of all migrants coming to the UK.



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38. As a starting point, we suggest that new immigration policies could be informed by key principles. JCWI has identified what, in our view, are the 5 key principles which should underpin future immigration policy to the UK¹¹. In summary:
- a. New laws and policy must be led by evidence and pursue realistic and deliverable goals;
 - b. Immigration policy and law in the UK must promote and respect the requirements of the rule of law;
 - c. No community should be left behind: the economic benefits of migration should be shared amongst us all through reinvestment in communities, infrastructure, jobs, and education;
 - d. Immigration policy should encourage long-term integration and the formation of stable, cohesive communities of migrants and non-migrants alike; and
 - e. Respect for human rights and equality must be integral to our immigration system.
39. We would welcome the opportunity to present these five principles in more detail to the Committee and discuss their implications for future immigration law.

Legislative and administrative framework

40. It is our view that, unless significant reforms are made, a new post-Brexit EEA immigration policy is likely to place unmanageable pressures on the UK's over-stretched and complex immigration system. The foundation for contemporary immigration law is the Immigration Act 1971. Since then, no fewer than 13 acts of parliament have been passed which have overlaid the 1971 Act¹², accompanied by numerous pieces of secondary legislation. The UK Immigration Rules further supplement the 1971 Act, stating how the powers granted in the Act may be exercised: since 1994 over 125 statements of changes to the Immigration Rules have been introduced. Multiple guidance documents for Home Office decision-makers are in operation and are regularly reviewed and reissued. All primary and secondary legislation must be made and applied in accordance with the Human Rights Act, EU law, refugee law and other international instruments to which the UK is a signatory.

¹¹ Joint Council for the Welfare of Immigrants, How to Build a post-Brexit Immigration Policy: JCWI's 5 principles, 1 November 2016, Available at: https://www.jcwi.org.uk/sites/jcwi/files/201612/2016_12_15_PUB%20JCWI%205%20Principles%20Immigration.pdf



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41. In addition to the tangle of legislation in place in this area, the heated nature of policy debate has created a chaotic context for law-making. New legislation is sometimes introduced before the impacts of previous changes have had time to bed in, or been assessed. When reviewing the last Immigration Bill, now the Immigration Act 2016, the House of Lords Constitution Committee issued a stark warning about the dangers of this approach for the rule of law¹³:

“That the law be clear, certain and predictable are central requirements of the rule of law. It would be difficult, however, to argue convincingly that these requirements are satisfied by UK immigration law which stands out as a particularly Byzantine field... This issue of complexity is compounded by the frequency with which the law changes in this area... Our view [is] that further thought must be given to this matter so as to make immigration law accessible and fit for purpose.”

42. The rate and complexity of the changes to immigration law in recent years have resulted in a system which is often opaque for the migrants directly affected by it, generating confusion and anxiety. Access to state-funded legal support that would enable migrants to navigate the system has been eroded. Reforms to the legal aid system have withdrawn state funding for immigration advice (excepting asylum cases). Good quality immigration advice is now too costly for some migrants seeking clarity on their rights and responsibilities in the UK. The paucity of reliable immigration advice will be compounded by the additional demands generated by a cohort of EEA nationals newly subject to immigration controls.

43. The right of appeal for immigration decisions has now been substantially reduced. The Immigration Act 2014 limited migrants’ right to bring an independent appeal against immigration decisions to just three groups: those making requests for international protection; human rights claims; and EEA claims. Although migrants may challenge immigration decisions via administrative review, the scope for challenge is limited and the process – carried out by the Home Office itself – lacks independence.

44. The erosion of migrant appeal rights has been deepened by the controversial ‘deport first, appeal later’ scheme, initially introduced by the 2014 Act and extended under the

¹³ Immigration Bill, House of Lords Constitution Committee, December 2015. Available at: <https://www.publications.parliament.uk/pa/ld201516/ldselect/ldconst/75/7506.htm>



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Immigration Act 2016¹⁴. Under these changes, some non-EEA nationals may now only appeal against a decision to remove them from the UK from outside the country, unless removal would cause them ‘serious, irreversible harm’. In 2016, the government attempted to increase fees for immigration appeals heard in the Immigration and Asylum Chamber of the First Tier Tribunal by approximately 500%. This plan was abandoned after judicial review was threatened, on the basis that the increases would have put judicial oversight of immigration decisions beyond the reach of all but a small minority of applicants¹⁵.

45. As accountability has been reduced within the system, so the costs of immigration applications have soared in recent years. It now costs a non-EEA national a minimum of £7,000 in Home Office fees (plus any immigration advice costs) to progress through the immigration system, from pre-entry to naturalisation as a British citizen. Despite the high fees paid by migrants, the Home Office has been criticised for its poor decision-making, inadequate complaint-handling and long delays. In 2015, the Parliamentary and Health Service Ombudsman criticised the Home Office, finding among a casework sample that these deficiencies had meant *“that people had to endure prolonged uncertainty, were not able to be with their loved ones, were denied access to education or unable to work, or had to pay unnecessary legal fees and/or application fees”*¹⁶.
46. It is clear that the Home Office will need a significant increase in its resourcing in order to deal with the significant increase in workload following Brexit. Not only will the Home Office need to process applications from up to 3 million EEA nationals currently residing in the UK whose status remains uncertain, but it will need to be able to handle a significant increase in the number of applications, administrative reviews and enforcement actions relating to EEA nationals coming here in the future. In recent years, however, the Home Office has been subject to budget cuts (in 2015 the UK Border Force budget was cut by 15%), and staffing levels have declined, placing more pressure on existing staff and systems¹⁷. It is not

¹⁴ See House of Lords Second Reading Briefing Immigration Bill 2015: Appeals, JCWI, 16 December 2015. Available at: <https://www.jcwi.org.uk/policy/parliamentary-briefings/immigration-bill-2015-house-lords-2nd-reading-briefing-appeals>

¹⁵ Challenge to the five-fold increase to Immigration Tribunal fees
<https://www.crowdjustice.org/case/immigration-tribunal-fees-challenge/>

¹⁶ Complaints about UK government departments and agencies, and some UK public organisations 2014-15, Parliamentary and Health Service Ombudsman, November 2015. Available at: [https://www.ombudsman.org.uk/sites/default/files/Complaints about UK government departments and agencies and some UK public organisations 2014-15.pdf](https://www.ombudsman.org.uk/sites/default/files/Complaints%20about%20UK%20government%20departments%20and%20agencies%20and%20some%20UK%20public%20organisations%202014-15.pdf)

¹⁷ In 2016 the Home Affairs Committee reported a 7% decrease in the number of full-time staff in UK Visas and Immigration between Q1 2015 and Q1 2016. The work of the Immigration Directorates, Q1 2016, Home Affairs



yet clear what plans are in place to address any Home Office capacity issues in order that they do not negatively impact future applicants.

47. Any post-Brexit immigration strategy must consider the need to implement wide reforms to the legislative and administrative framework currently in place. The complexity and scale of demands placed on the immigration system will be greatly intensified post-Brexit, with a need for an accompanying increase in resources. The weakening of accountability in the system must be addressed, in order to ensure that both EEA and non-EEA nationals are able to understand the rules and navigate the system with dignity.

Integration and stable communities

48. An essential component of immigration policy regards to its longer-term impacts within local communities – an area much debated in the wake of the EU referendum. We are concerned that the UK government is prioritising a tough approach to immigration which creates a ‘hostile environment’, over a more considered, long-term approach aimed at fostering strong local communities.
49. Although the UK government has the stated objective of promoting integration and British values¹⁸, it currently lacks an integration strategy to guide its work. In early 2017, an independent review into social integration and opportunity carried out by Dame Louise Casey called for a major new government programme to support local integration, including community empowerment and more English language courses, in a ‘spirit of compassion and kindness’. However, the majority of government resources invested in migration at local level since 2015 have been oriented towards immigration enforcement within local communities. This approach, we believe, directly undermines any wider integration work.
50. Under the Immigration Acts in 2014 and 2016 the UK government built on previous legislation introducing some in-country immigration controls in workplaces and NHS hospitals, to consolidate a ‘hostile environment’ approach aimed at making life difficult for irregular migrants in the UK and encouraging them to leave the UK. This has resulted in employers, private landlords, and healthcare providers being required to check immigration status documents prior to providing jobs, housing or services. This approach has been further resourced through the new ‘Controlling Migration Fund’, which aims to ‘mitigate

Committee. Available at:

https://www.publications.parliament.uk/pa/cm201617/cmselect/cmhaff/151/15106.htm#_idTextAnchor039

¹⁸ As stated in the Conservative Manifesto 2015. Available at: <https://www.conservatives.com/manifesto>



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the impacts of immigration on local communities' by, among other objectives, directing enforcement action against irregular migrants¹⁹.

51. In our view, the creation of a 'hostile environment' towards migrants within local communities, particularly when accompanied by an aggressive message from national government, increases divisions and tensions instead of supporting integrated communities. Local in-country immigration controls potentially impact upon everyone resident in the UK – including many British citizens, and British citizen children – who are also required to produce identity documents, and many of whom are at risk of discrimination as a result of document checks. We have looked particularly at the 'Right to Rent' scheme which was piloted in 2015 and rolled out from 2016, and requires private landlords to check the immigration status of prospective tenants. If a landlord has rented a property to an adult who does not have the required immigration status, they could face a fine of up to £3,000 or, from December 2016, a criminal sentence. We have collected evidence through research that this is leading to unlawful racial discrimination²⁰.
52. We urge the Committee to consider the emerging impacts of the hostile environment approach, which risks being further cemented into policy through the outcomes of Brexit negotiations. As previously outlined, a significant number of EEA nationals will be brought under immigration control following the UK's withdrawal from the European Union. This is likely to result in a significant increase in the irregular migrant population overnight, following Brexit. It is likely that post-Brexit UK immigration policy will rely even more heavily upon in-country immigration controls in order to identify and remove irregular EEA and non-EEA nationals living in the UK.
53. More widely, we urge government to look seriously at the divisive impact of local immigration controls on communities, and particularly on ethnic minorities, and take steps to address these problematic outcomes. This is a chance to critically question whether it has thus far generated positive outcomes in terms of increasing public confidence, reducing levels of migration or delivering on the UK's human rights obligations.

¹⁹ Controlling Migration Fund: mitigating the impacts of immigration on local communities, Department for Communities and Local Government, November 2016. Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/566951/Controlling_Migration_Fund_Prospectus.pdf

²⁰ No Passport equals No Home, JCWI, <https://www.jcwi.org.uk/policy/reports/no-passport-equals-no-home-independent-evaluation-right-rent-scheme>



54. In particular, we emphasise the instability and distress caused to migrants and their families by a rapidly changing constellation of rules, which consistently seeks to erode their rights in the UK. Future immigration policy in the post-Brexit era, whether it targets EEA or non-EEA nationals, should be able to deliver fair, rights-based and stable outcomes for migrant communities so that they and their families can plan their lives here in security. Brexit negotiations could provide a vital opportunity to develop a different direction of travel.

The position of EU treaty rights holders in the UK

55. Finally, a stand-alone issue which we believe must be tackled immediately relates to the position of EU treaty rights holders in the UK. Residence rights for EEA nationals and their family members are currently derived from European Union law – primarily Directive 2004/38/EC (the ‘Citizens Directive’), which has been implemented into UK law via the Immigration (European Economic Area) Regulations 2006. Following Brexit, EU treaty rights holders, including those who have already attained permanent residence status, will rely upon new UK immigration legislation to recognise and confirm their status in the UK. Although the government has offered informal assurances regarding the continuation of rights for EEA+ nationals and their family members after Brexit, in our view this will only be meaningful following a change in the law.

56. It is our view that a unilateral guarantee should immediately be given by the UK government confirming that everyone living in the UK under the protection of EU treaty rights (including EEA nationals, non-EEA family members, those with derived rights and those with residual rights of residence) will be granted the right to remain here after Brexit, with no less favourable residence rights than they currently hold. This should include the opportunity to progress towards permanent residence status if not already acquired.

57. The detail and implementation of a settlement resolving the status of EU treaty rights holders currently residing in the UK will be of vital importance. The current permanent residence application process for EEA nationals is already problematic – as acknowledged in the Committee’s recent report, current refusal rates suggest that up to one million of the estimated three million EEA nationals could expect to have their application refused²¹.

58. We advocate that any new settlement for EU treaty rights holders should grant residence rights for up to five years, with the option to secure permanent residence, to those already residing in the UK when the new rules enter into force. The current permanent residence

²¹ Exiting the European Union Committee, *ibid*



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application process should be substantially simplified, in order to enable the widest possible number of EU treaty rights holders residing here to secure their status into the future. We propose that the government establishes a new, shorter application process for permanent residence, which requires only limited evidence from applicants (a short list of satisfactory evidence could include: proof of nationality, proof of residence in the UK on/prior to the date when the settlement enters into force, plus any additional limited proof of circumstances within particular categories). Permanent residence application costs should be capped at the current cost of £65.

59. We would additionally highlight to Committee members that any settlement regarding EU treaty rights holders must accommodate those individuals likely to experience particular difficulties in meeting current permanent residence requirements. This includes a significant number of EEA national students and self-sufficient persons, unless the Home Office changes its position and accepts access to the National Health Service as adequate to meet the Comprehensive Sickness Insurance (CSI) requirement for these categories. It may also include part-time/low-paid workers, self-employed migrants, and some family members, students and self-sufficient persons.
60. In our view, the cut-off date for rights to be granted to EEA nationals should be the date when the UK ceases to be a member of the European Union. After making an announcement the government will need to pass primary legislation to replace EU law in this area. Not only should any new rules not be applied retrospectively, but EEA nationals currently residing in the UK must be given adequate time in which to understand and prepare for the change in the rules, before any changes enter into force.
61. An earlier cut-off date than the date of the UK's withdrawal from the EU would generate a new layer of uncertainty into the process, as it would create a further tranche of EEA nationals with precarious status. In the time period until Brexit, EEA nationals will continue to come to the UK in significant numbers in order to work, study or join family members here. Until Brexit they will continue to benefit from residence rights provided by Directive 2004/38/EC. However, unless they too are included in any settlement, this group would lose their rights when EU law ceases to apply in the UK and any time accumulated towards qualifying for permanent residence during a 'limbo period' would count for nothing. This would be legally irregular and highly undesirable. In order to avoid these outcomes, it would be more sensible to grant all EEA nationals residing in the UK prior to the date of Brexit the same rights as one another.



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