

A New Deal with Europe: Labour's Immigration Policy Post-Brexit

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When Britain leaves the European Union we will need a strong relationship with Europe and new rules about migration. Our new relationship might be based on a free trade agreement (as members of the EEA) where we agree a modified version of 'free movement' rules, or a tailor-made association agreement which gives more freedom to set UK immigration policy independently. In either case there are still likely to be significant levels of EU migration: how should they be controlled?

This paper addresses this question under seven headings:

- What should be the key objectives of Labour's immigration policy?
- What limits could be put on 'free movement' under a trade agreement with the EU?
- What kind of policy might Britain adopt in negotiating a looser association agreement?
- What happens to EU nationals already here?
- What wider issues does Labour need to address?
- What other immigration issues have to be tackled?
- Will these policies significantly reduce migration numbers?

Summary

Any policy should be based on clear Labour principles as well as being practical. The difficulties to be faced are substantial and no solution is easy to implement. For this reason the issues need to be discussed at an early stage.

With a *trade agreement*, there are some options for modifying free movement rules. There is potential to:

- limit migration under the 'safeguarding measures'
- use national insurance numbers to limit worker numbers, and
- have stricter controls on entry for those without a pre-arranged job.

With a tailor-made *association agreement*, options include:

- visas or a points system to give continued entry to professional workers including those in the NHS
- a seasonal workers scheme to allow for farm work
- a sector-by-sector approach towards a broad range of skilled and low-skilled jobs for industries that are very dependent on EU workers.

The last category is the most challenging. The least problematic option is a work permit scheme, phased in carefully on a sector-by-sector basis.

All EU nationals who were here before the UK's exit from the EU should be allowed to remain, both because this is fair in itself and so that labour shortages do not occur suddenly, especially in vital services like the NHS.

A rounded policy needs to go much wider than setting immigration rules. Brexit presents a real opportunity to recast an appallingly complicated, unfair and essentially unworkable immigration system, going back to some basic principles. Labour should embrace this challenge.

Much greater investment is needed in promoting integration, ensuring that communities that receive migrants share in the economic benefits they bring and that every long-term migrant has access to English language training. Labour should continue to argue for much stronger protection of workers' rights, so that employers do not get an advantage from cheaper immigrant labour. More investment is needed in public services, especially in health and housing: people have seen services declining, even while migration has been shown to make the economy stronger.¹ There needs to be a complete switch in emphasis in enforcement towards stronger borders rather than creating a 'hostile environment' for access to services, which foster anti-immigrant attitudes and shift the cost burden to the NHS and elsewhere.

The paper concentrates on work-related migration: other types are considered only briefly. It draws on published sources and these are noted. The aim is to provoke and inform debate, not to provide technical guidance on the options.

Key objectives for a Labour immigration policy

Labour should aim to have a policy that meets some key tests. It should:

- *be a fair, humane and socialist immigration policy that respects human rights, promotes equality, and in particular balances economic imperatives (such as access to seasonal labour) with a commitment to workers' rights.*
- *represent a distinct, understandable and realistic political position, that will be attractive in comparison with those of other parties and is seen as balanced and responsible.*
- *show how policy is firmly rooted in Britain's future economic success – for example, sustaining key industries, promoting innovation and training, ensuring our universities remain world class.*
- *pave the way to restoring community relations after a government which has had little regard for them and has eroded them through its austerity policies and anti-immigrant rhetoric; as JCWI has argued, 'no community should be left behind'.²*
- *be practical – an overcomplicated policy won't be deliverable, and simplistic targets like the Tories' net migration promise have already been discredited.*
- *build public support, through clear and vigorous promotion of the policy based in the values just enunciated.*

¹ For evidence on migration and the economy, see work by NIESR (www.niesr.ac.uk/blog/brexit-migration-and-uk-economy#.WNbxSaLMKM9).

² www.jcwi.org.uk/news-and-policy/how-to-build-a-post-brexit-immigration-policy-jcwi%E2%80%99s-5-principles

Obviously it is a huge task to achieve a necessary balance between the demands of industry, the views of Brexit voters and the needs of different parts of the UK, and at the same time have a feasible negotiating position.

Policy is not simply about who is admitted, but also for how long and with what restrictions, and with what access to benefits and public services. This paper will not go into these points in any detail but they will need to be covered in order to answer questions about access to tax credits, welfare benefits, NHS services and housing.

For a fair immigration policy to gain acceptance, Labour also has to take a range of wider policy measures not addressed here, such as tackling the 'gig' economy, restoring trade union rights, investing in the NHS and building more social housing. These are taken as a given.

A snapshot view of recent migration

It is important to put the issues in perspective. High net migration is a recent phenomenon. Consistently each year around 250,000-350,000 people leave the UK and it is only since the 1990s that a gap has opened up between numbers leaving and entering (Figure 1). Any policy must be balanced or it risks restrictions on its own citizens' ability to move abroad to work or to retire.

Fig. 1: Migration trends since 1964

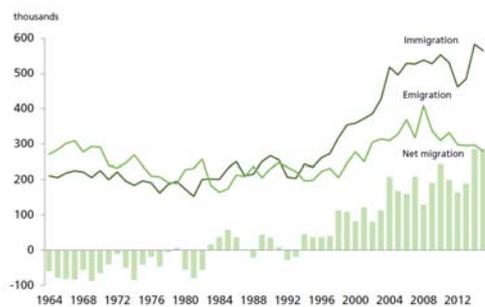
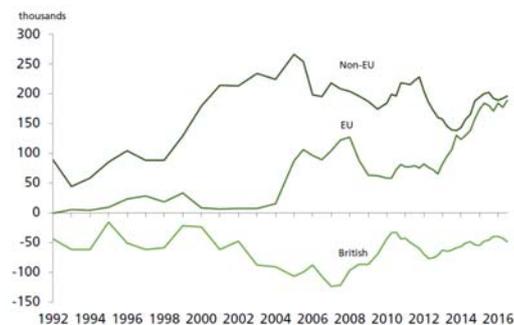
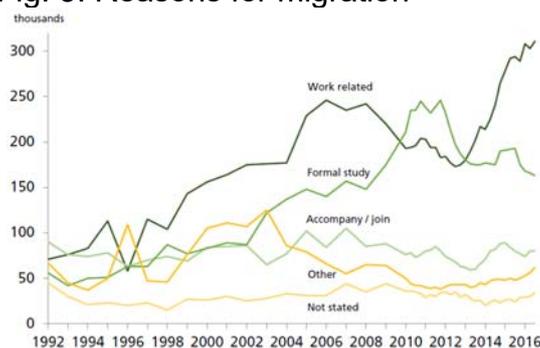


Fig. 2: EU, non-EU and British net migration



EU migration has grown in importance since 2004 but half of net migration still comes from outside the EU (Figure 2). Brexit will not in itself affect non-EU migration, and new trade deals may even lead to an increase.

Fig. 3: Reasons for migration



Work and formal study are the dominant reasons for migration, followed by family members joining relatives already here (Figure 3). Other reasons for migration are much less significant. For example, only about 5% of new immigrants in any year are asylum seekers and a tiny proportion are directly accepted refugees (such as some of those from Syria).

Access to benefits, health services and housing is a frequent point of contention in discussing immigration. It needs to be borne in mind that:

- EU nationals with jobs have similar rights to British nationals, as do the latter if they travel to EU countries. There are restrictions on benefits for those without jobs, but not on access to the NHS.
- Migrants make *less* use of welfare benefits than British nationals, but *more* use of tax credits (because more are in work).
- 80% of recent migrants live in the private rented sector; only 4% of new social housing lettings each year go to EU nationals.
- Non-EU migrants are generally not allowed access to benefits or to housing unless they eventually get permanent residence.
- Asylum seekers have no access to benefits but receive a weekly allowance of £37 per person and basic accommodation provided by private contractors. They are generally not allowed to work.

It is important to remember that migration is already ‘managed’ or ‘controlled’ and it is wrong to suggest otherwise. This paper is about how these controls will need to be overhauled when we leave the EU.

What limits could be put on ‘free movement’ under a trade agreement with the EU?

If the UK has a trade agreement with the EU like Norway or Switzerland, our room for manoeuvre is limited because some degree of ‘free movement’ will probably have to be retained. There are three ways in which limits might be negotiated. Some of these may, in the longer term, be attractive to EU member states too, given that the questioning of free movement is not confined to Britain.

Limits under ‘safeguarding measures’

Under existing EEA³ ‘safeguarding measures,’ a case could be made for a numerical limit on EEA migration, based on the argument that one has been set before (but only for Lichtenstein) and perhaps on the basis of the high level of EU migration to the UK since 2004 and that the UK has, numerically speaking, the second largest foreign-born population in the EU after Germany. Norway has an (unused) safeguard clause, so there are two, limited precedents. However, Switzerland was planning to introduce quotas on EU migrants this year and has backed down. Furthermore, Cameron bid for but failed to obtain such an ‘emergency brake’ in the pre-Brexit negotiations.

³ The European Economic Area (EEA) covers the members of the EU plus Iceland, Liechtenstein and Norway. Switzerland is not in the EEA but is in the single market.

Even so, 'safeguarding measures' could be more readily attainable under EEA rules than EU rules, since the corresponding provisions are more flexible, and can be triggered if 'serious economic, societal or environmental difficulties of a sectorial or regional nature liable to persist are arising'.⁴ It is possible that a free-movement compromise would be easier to achieve as an EEA member than as a full EU member, especially as the counter-argument that it would open a precedent for others would be weaker (and arguably Lichtenstein did so already).

Use of national insurance numbers

Paul Mason has suggested a variant of this in which a 10-year brake under the safeguarding rules enables the UK to develop a new system of national insurance numbers (NiNos).⁵ This would be designed to allow controls over numbers of NiNOs emitted for private sector jobs below certain wage levels, starting when the 10-year brake ends. A variant on this would be to put annual caps on new NiNos issued to non-UK nationals. Another variant would be annual caps using the existing NiNo system followed by a more selective cap later using a redesigned NiNO system.

These would be new points of negotiation with EU partners and their likely response is uncertain. The measure would of course not apply to EU nationals abroad who have NiNos already (believed to be 1.5m⁶). Once any annual quota is reached, further entry could be via work permits (see below).

Limit entry to those with job offers

A third option could be to allow free entry only to EEA citizens with a job offer, and to their family members. The 73% of EU migrants who come for work reasons are made up of 41% with jobs already fixed but also 32% who are looking for work.⁷ John Hodgson of Nottingham Law School argues that the EU Citizens Rights Directive could be tightened while still respecting free movement, by requiring those who enter without work to find a job within three months.⁸ The UK could then require migrants to register — as they do in Italy, Austria and other EU countries — and demand their return home if they are not in work. Another variant of this would be to deny entry to those with no job offer at all, as was the case EU-wide before 1993. There is some suggestion that other EU members would be amenable to a general rule-tightening of this kind.

The above options all depend, of course, on their successful negotiation as part of a trade agreement with the EU. None offer the degree of new control over immigration that some might want, but all (either singly or in combination) are defensible as measures which would offer more control than now, in

⁴ See article by Richard North: <http://eureferendum.com/blogview.aspx?blogno=86148>

⁵ <https://www.theguardian.com/commentisfree/2017/jan/16/we-can-escape-brexit-doom-with-one-small-tweak-to-free-movement>

⁶ <https://www.ft.com/content/e03bde3a-4f39-11e6-88c5-db83e98a590a>

⁷ Based on NiNo applications, rather more than one-third come from the older (EU15) member states, under a third from A8 countries and over a third from Romania, Bulgaria and other recent accession states (the latter group has been increasing recently).

⁸ <http://www.bcllegal.com/the-brief/opinion/john-hodgson-legal-education-nottingham-law-school-why-we-are-still-in-the-phoney-war-phase-of-brexit>

return for the prize of continued access to the single market (or a bid to re-join it by Labour if we had already left). There are major administrative complexities attached to all of them that don't exist with current free movement arrangements, and these have been analysed by Jonathan Portes.⁹ But arguably even these are not as serious as those attached to the controls needed under a looser association agreement, to which we now turn.

What kind of policy might Britain adopt in negotiating a looser association agreement?

Labour migration is a key issue under a looser association agreement. It seems reasonable to assume that policy will be based on industry needs, and that these will broadly continue to be as they are now (in terms of occupations and skill levels). However, while this can be a working assumption, in practice overall policy towards economic migrants should be reviewed post-Brexit, as currently much of the demand for low-skilled labour flows automatically from the EU under free movement rules. In future, EU nationals will potentially be on the same footing as non-EU nationals are now. New trade agreements may also depend on opening up new, non-EU migration routes.

We look at policy options for economic migration under three headings – professionals, skilled/non-skilled workers, and seasonal labour.

Professional workers

The current entry requirement for non-EU migrants in professional occupations is a Tier 2 visa, dependent on salary levels (currently £20,800; soon to be £30,000). Only 18% of EU migrants have jobs that would potentially qualify them for entry with current Tier 2 visas.¹⁰

As an initial policy, it seems reasonable to set a broad definition of professional work and allow access to all EU workers who have a pre-arranged professional job, based on a Tier 2-style visa system. Alternatively, there could be free entry for those qualifying under an Australian-style points scheme which allows entry dependent on passing educational and career criteria. This would include the 10% of registered NHS doctors and 5% of nurses who are from the EU.¹¹

Skilled and non-skilled workers

Between professionals and (see below) seasonal workers sit the broad range of current EU migrant workers, on which some industry sectors are heavily dependent. For example, more than a quarter of workers in food processing, hotels and the domestic personnel sector are migrants.¹² Other critical sectors include lorry drivers (10% of EU origin) and building workers (175,000, or 8%). The economic and social effects of losing such workers would be very

⁹ <http://www.niesr.ac.uk/blog/eea-minus-option-amending-not-ending-free-movement#.WKDIcH8ZF01>

¹⁰ Vargas-Silva, C. (2016) EU Migration to and from the UK after Brexit.

¹¹ <http://blogs.lse.ac.uk/eurocrisispress/2016/08/11/how-reliant-is-britain-on-eu-migrant-workers/>

¹² Resolution Foundation (2016) A Brave New World.

significant and the government's white paper recognises this. A points-based scheme is unlikely to meet the needs for people doing such skilled and semi-skilled jobs.

Obviously, if those already here are granted residency rights then the majority are likely to stay, and their presence will cushion the effects of a change, but policy will need to allow for their replacement. British Future and MPs Emma Reynolds and Stephen Kinnock have proposed a permit scheme¹³ for low-skilled and semi-skilled EU workers, whose numbers would be restricted by sector-based quotas, negotiated between government, industry and trade unions, and covering sectors such as farming, food processing, retail, construction and hospitality. Quotas would be phased in over time and designed to strike a balance between maximising opportunities for local workers and avoiding sudden shortages.

However, although apparently logical and attractive, there are considerable problems to be addressed by a work permit scheme.¹⁴ For example, in the social care sector there are believed to be 75,000 EU workers in low-skilled jobs, while there are also said to be 70,000 vacancies.¹⁵ How would work permits address this? Presumably to be attractive to workers the scheme would have to offer long-term placements. But would this fit with the increasing flexibility required by employers? If better conditions had to be offered in the sector to attract employees, this would be beneficial to workers (whether migrant or not) but would further strain a sector already under immense financial pressure. Essentially the use of migrant labour in the sector is a political decision that cannot be separated from issues about care funding and commissioning, adherence to the minimum wage and care workers' contract conditions.

The warnings about complexity have to be addressed. As the House of Lords has said, a sector-based scheme could turn out to be:¹⁶

"...the worst of all worlds, failing to deliver a meaningful reduction in immigration while also proving more onerous and costly for employers, prospective applicants, and those charged with enforcement."

In the absence of a modified version of free movement (see above), the most workable answer appears to be a work permit scheme. But it would need to be phased in carefully, and be based on wider considerations of the policy implications for each sector, and then monitored carefully and evaluated as it proceeds.

¹³ British Future (2016) Britain's immigration offer to Europe; and <https://www.theguardian.com/commentisfree/2017/jan/07/labour-must-introduce-fair-immigration-system>

¹⁴ The problems are discussed in detail in a briefing by the Migration Observatory (<http://www.migrationobservatory.ox.ac.uk/resources/reports/labour-immigration-brexite-trade-offs-questions-policy-design/>)

¹⁵ <http://www.economist.com/news/britain/21702650-immigration-said-stretch-services-reducing-it-may-strain-them-more-somebody-call>

¹⁶ www.publications.parliament.uk/pa/ld201617/ldselect/ldcom/121/12102.htm

Seasonal workers

Some sectors such as farming are heavily dependent on EU labour: the NFU for example has called for a Seasonal Agricultural Permit Scheme.¹⁷ There is a precedent for this in that workers from Bulgaria and Romania could enter the UK until 2013 under such a scheme, which set an annual quota of around 21,000 entrants. A new scheme could admit workers with permits for less than twelve months and not affect long-term migration figures.

What happens to EU nationals already here?

It is essential that existing EU workers and family members are granted guaranteed rights as early in the Brexit process as possible, and with a late cut-off date (e.g. the date of leaving the EU). This would help prevent a double draining away of key workers (current ones leave, new ones face delays or uncertainty in applying). An early announcement along these lines together with confirmation of the rights of EU nationals already here, would help stem the fall in numbers of EU professionals – exemplified by the 90% fall in nurse registrations from the rest of the EU since the referendum and the numbers of nurses already leaving the NHS.¹⁸ Such an announcement would also pave the way for a similar deal for UK residents elsewhere in Europe, including their entitlement to benefits.

The government's present approach towards EU nationals already in the UK is a high-risk strategy for several reasons:

- It risks haemorrhaging workers from key industries and services, such as the NHS and care services.
- It has imposed enormous bureaucratic hurdles on EU nationals trying to regularise their status, creating a backlog of applications.
- It has failed to put in place effective measures for EU nationals to easily register their presence and their entitlement to stay, post-Brexit.

Unless special provisions are made for EEA nationals after Britain leaves, they become 'persons subject to immigration control' and will face the same immigration controls as non-EEA nationals do. Setting up different arrangements is legally challenging and needs action early in the process if it is to be in place when Britain actually leaves the EU.

What wider issues should Labour take into account?

Brexit presents a huge opportunity to recast an appallingly complicated, unfair and essentially unworkable immigration system, going back to some basic principles. As Chi Onwurah MP has said, 'We need an approach which shouts both our principles and our pragmatism'.¹⁹

¹⁷ <http://www.nfuonline.com/news/latest-news/nfu-presidents-talks-with-defra-secretary-on-brexit-and-bps/>

¹⁸ <http://www.bbc.com/news/uk-england-london-38817425;www.theguardian.com/society/2017/mar/18/nhs-eu-nurses-quit-record-numbers;>

¹⁹ www.theguardian.com/commentisfree/2017/feb/23/labour-proper-immigration-policy-immigrants-trump-uk

Labour should embrace this challenge. Here are some key points:

- *First principles.* Policy must be based on principles and on the country's needs and capacities, not artificial targets. Some were suggested earlier in this paper, based partly on proposals from JCWI.²⁰ In addition, it must relate to other policy needs. For example, as Alison McGovern has argued, immigration policy must fit with a revamped policy on industry and services, otherwise it will fail.²¹
- *Integration.* A massive effort is required to give proper opportunities to long-term migrants to integrate, for example by reversing the cuts in English-language training and by investing in the communities most changed by immigration and which have often been most affected by austerity policies. The government has largely abandoned integration as a policy objective and is doing no long-term thinking on how to build strong communities. Labour must fill this gap.
- *Strong borders.* Because the government has cut back on spending on the Border Force and other agencies, it has shifted the job of policing our borders to people who aren't equipped to do it, such as NHS administrative staff, councils and private landlords. This simply pushes the costs elsewhere and is ineffective and unfair. It creates a 'hostile environment' not just for 'illegal' migrants but for migrants generally and even British nationals. As Yvette Cooper has said, there needs to be a significant switch back to 'firm and effective border controls'.
- *Tackling complexity.* The current system is unbelievably complex and difficult for even experts to understand. One reason for this is that it is essentially negative, intended to restrict entry, limit people's ability to stay and limit their entitlements if they do. For this reason there are very prescriptive rules with tightly defined and therefore highly complex exceptions, which are then made more complex by case law, etc. A long-term aim must be a simpler system and a short-term aim must be not to make it any worse than necessary.
- *Enforcement of working conditions and workers' rights.* Government has also cut resources for agencies like HM Revenue and Customs, the Gangmasters Licensing and Labour Abuse Authority and Employment Standards Agency Inspectorate. There are only around 350 staff enforcing labour market rules such as the minimum wage, i.e. one for every 20,000 working-age migrants.²² These agencies must be properly resourced.
- *Benefit entitlement.* This issue is not covered here but is also very complex. For example, EU countries are generally covered by wider, non-EU treaties entitling those who are legitimately in another signatory

²⁰ www.jcwi.org.uk/news-and-policy/how-to-build-a-post-brex-it-immigration-policy-jcwi%E2%80%99s-5-principles

²¹ <http://labourlist.org/2017/01/alison-mcgovern-on-trade-and-immigration-why-theresa-may-was-wrong-yesterday/>

²² See <http://www.resolutionfoundation.org/media/blog/what-might-lower-migration-mean-for-workers-employers-and-government-policy/>

country and have habitual residence to claim benefits. Unless the UK renounces these treaties they will continue to apply after exiting the EU.²³

- *Destitution.* There is a need to review rules which lead to increasing numbers of migrant rough sleepers, people living in ‘beds in sheds,’ etc, both because this is iniquitous in its own right and because it is another factor eroding community relations. Non-UK born people account for 21% of destitution in the UK.²⁴
- *Use of detention.* Detention is inhumane and its use should be minimised and time-limited. Alternatives should be investigated.
- *Employment law.* Exiting the EU could provide the opportunity for reforms to favour genuine ‘localism’, for example allowing contracts to specify the use of local labour.
- *Time-limited migration.* Some time-limited migration is inevitable (e.g. for farm work) but its use should be restricted as it is a real disincentive to migrants to invest in integrating in the UK. For example, recent changes to refugees’ leave to remain prolong the uncertainty of their situation and make it difficult for them to find stable housing and employment.
- *Regional differences.* There has been some discussion about ‘regional’ immigration policies, e.g. making London different.²⁵ However the risk is that this would add even more complexity to the system and very difficult to enforce. It is an issue warranting more detailed investigation, possibly as part of a radically overhauled NiNo system.
- *Proper systems are needed.* No controls can work effectively with the current failed bureaucracy. A new system has to be designed and properly resourced, especially because routes of entry will become more complex with additional work permit or similar systems.

What other immigration issues will need to be tackled?

It is helpful to put some lines in the sand on other aspects of migration (with detailed policy to be developed elsewhere):

- *Ireland.* We should maintain the Common Travel Area and the same wide-ranging rights for Irish nationals as apply now.
- *Refugees.* We should maintain our international obligations and improve our policy/practice towards refugees and asylum seekers. This will require open and honest explanation.
- *Family migration.* We should continue to allow EU family migration linked to resident British/EU nationals (7% of the total). Current very restrictive rules cause hardship and arguably violate human rights (e.g. very restrictive spouse rules and those for bringing in elderly relatives). They should be reviewed.

²³ These are the Council of Europe Social Charter and European Convention on Social and Medical Assistance. Immigration rules protect the benefits of residents of signatory states when living legitimately in other signatory states. Different regulations offer access to benefits to nationals of any state with which we have reciprocal agreements, whether in Europe or not.

²⁴ Fitzpatrick, S. *et al* (2016) *Destitution in the UK*. JRF.

²⁵ See for example work by ippr: <http://www.ippr.org/publications/regionalising-migration-the-north-east-as-a-case-study>

- *Students.* We should encourage international students, even if numbers have to continue to be included in migration counts in order to meet international standards (they account for 15% of the EU total).²⁶
- *Visitors.* We should allow unrestricted access for up to three months for all EU passport holders.
- *Non-EU migration.* Current controls on migration from the rest of the world will presumably continue, although it should be noted that when negotiating bilateral trade agreements there may well be demands from potential partner countries for more generous visa arrangements.

Will these policies significantly reduce migration numbers?

The media frequently ask politicians 'do you think numbers should come down and by how much?' Labour must avoid a simplistic target like reducing net migration to less than 100,000, adopted by the Tories and quickly discredited. The real answer is that Labour wants the economy to prosper and people to have jobs: policy should be driven by such considerations not by artificial targets. New controls will be needed but so will changes to employment and other policies. The result may well be lower immigration, but it is unrealistic and irresponsible to set a target when – because of Brexit – Britain is entering unknown territory in which new agreements, inevitably including immigration, will be needed both with the EU and with other trading partners.

Estimates of the effects of Brexit on net migration numbers already vary considerably. The biggest estimated effect is from the NIESR, who make a central estimate of a fall of 91,000, possibly even of 150,000 with tighter rules.²⁷ Migration Watch have published two estimates giving a reduction of 100,000.²⁸ However, Global Future suggests the cut might be only 50,000.²⁹

Even the biggest of the NIESR projections, however, would still leave net migration of over 100,000, the level promised by the Conservative government. The reality is that projections or targets are politically foolhardy and raise unrealistic expectations that migration can be very substantially reduced simply by ending free movement. Without major damage to the economy, this remains a very unlikely outcome.

Indeed, experience shows that the British economy is itself the biggest driver of migration. If Brexit were to lead to significant economic contraction, which is a possibility, this could (paradoxically) be a far more important factor in bringing down net migration than simply 'taking back control' of Britain's borders. As this paper argues, it is vital that a proper balance is struck, rather than pursuing of a largely meaningless immigration target.

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²⁶ www.ft.com/content/a1b695da-07e7-11e7-97d1-5e720a26771b?emailId=58c9e37d8256310004a75e37

²⁷ Portes, J and Forte, G. (2016) The Economic Impact of Brexit-induced Reductions in Migration.

²⁸ Migration Watch UK (2016) UK immigration policy outside the EU.

²⁹ Global Future (2017) The Brexit Immigration Myth.