



EU Immigrants in the UK:
Their Future under the Points-Based System

by Dr Dagmar Rita Myslinska
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DEPARTMENT OF LAW, GOLDSMITHS UNIVERSITY OF LONDON

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Caitlin Boswell joined The Joint Council for the Welfare of Immigrants in 2019 as Project Officer to lead on the EU citizens project, campaigning for EU citizens' rights through reform of the EU Settlement Scheme and monitoring its impact - particularly for marginalised groups most at risk of slipping through the cracks in the scheme. Prior to this she worked as an Advocate & Outreach Worker, providing one-to-one support for migrant women affected by the criminal justice system and/or immigration restrictions. Before working in the migration sector, Caitlin studied for a Masters in Gender & Law at SOAS, writing her thesis on the UK asylum system's treatment of LGBTQ asylum seekers.



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Julie Ward served as a Labour MEP for the North West of England from 2014 to 2020, and is an expert for 'Britain in Europe' thinktank. She is also a writer, theatre-maker, cultural activist and human rights defender who began her working life on the factory floor before working in the arts. She was a member of the European Parliament's committees on Women's Rights & Gender Equality, Economic & Monetary Affairs, Regional Development, and Culture & Education where she served as Vice Chair. Julie is also a child rights champion, having been a member of the Labour Party's Children and Education Policy Commission. In 2014 she co-founded the European Parliament's cross-party Intergroup on Children's Rights and later gave evidence to the House of Lords on Unaccompanied Minors. She was a link MEP to UNCRDP and a board member of the European Internet Forum. She also co-founded the European Caucus of Women in Parliament. Since 2019 she has been co-chair of the Urban Economy Forum and a member of the national committee for Another Europe is Possible.

EXECUTIVE SUMMARY

The EU Withdrawal Bill, now in the Committee stage before the House of Lords, ends EU nationals' freedom of movement, and gives the Home Office broad discretion to create new policies applicable to all immigrants,¹ starting in 2021.

Overall, the proposed post-Brexit points-based immigration system fails to respond to the UK's economic needs and fails to protect workers. It is also at odds with the Government's 'Global Britain' strategy to attract the 'brightest and best' to work and study here. Some of the new framework's most troublesome features are as follows:

- The new system is anticipated to produce labour shortages in several sectors, including those recognised as essential during the Covid-19 crisis – notably, social care, farming, and food processing.
- Due to employer sponsorship requirements, it is also likely to increase worker exploitation.
- Lack of access to social benefits and the imposition of health surcharge fees will further negatively impact immigrants' lives.
- It also presents the risk that some immigrants will be pushed into undocumented status.
- And, of course, it overlooks the likelihood that Britons will be subjected to reciprocal restrictions imposed by the EU².

Although the new system will likely increase immigration from outside of Europe, it will significantly reduce EU immigration, especially of those from Central and Eastern Europe, and of those who do not manage to obtain 'high-skill', high-paid employment. Moreover, EU students will no longer be entitled to home-fee status or student loans, and thus their enrollment is expected to shrink by 20%, exposing the HE sector to an even greater financial crisis than it is already experiencing.

The new framework overlooks the fact that EU movers have had a significantly positive impact on many aspects of British society. Over the years, they have created a richer and more diverse British culture. By introducing new ideas, expertise, customs and art, EU nationals have helped to create the multi-cultural, vibrant country that the UK is today. Empirical studies

have consistently indicated EU movers' **positive impact** on native Britons' subjective well-being. In part due to their high rates of employment and little reliance on public services and social benefits, EU movers' **positive contribution** on the UK's public finances has also been well documented – in addition to their increasing productivity and innovation, and reducing prices of personal services. Finally, EU students have contributed to all students' learning experience and their skillsets to the UK's economy.

Since there are no specific regulations in place yet, this briefing urges the Government to **draft a comprehensive list of shortage occupations to include key workers and select positions classified as 'low-skill'**.

The Government should **take into account labour organisations' concerns over shortages**, while **recognising studies indicating EU citizens' significant contributions to the public purse**.

EU students should continue to be welcomed in the UK, to enrich the teaching and learning environment from which British students benefit and to contribute their skillsets.

Instead of implementing un-reflexive, arguably xenophobic policies in line with the anti-migrant climate exploited in the run-up to the Brexit referendum, **the UK needs to rethink the purpose of its immigration controls, and subject them to Parliamentary scrutiny rather than being left to the whims of the Home Office's fragmented and over-politicised approach**.

Furthermore, **the media and politicians should abstain from spreading misinformation** about the impact of immigrants on the UK, and should instead **acknowledge the multitude of immigrants' economic, social and cultural contributions to the UK**.

Ultimately, the Brexit-prompted policy overhaul should be seen as an opportunity to improve the UK's immigration system and the working conditions of all immigrants, and to create an environment for more responsible, transparent, and evidence-based public debates.

1 Except EU citizens who are eligible and apply for settled or pre-settled status by June 2021.

2 Currently, more than 1.2 million British-born people live in the EU.

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A CONTENTIOUS POLICY ISSUE

Immigration has long been a divisive issue in the UK, often mis-used by populist politicians and the media to prompt resentment against Brussels, Westminster and the migrant community. EU citizens' mobility to the UK began to feature more prominently in immigration debates after the EU's Eastern Enlargement, which saw the admission of ten Central and Eastern European ('CEE') states in 2004 and 2007. The subsequent increase in east-to-west mobility eventually prompted rising support for anti-immigration initiatives,³ including the Brexit referendum. The fact that Brexit is going ahead and the havoc induced by the Covid-19 crisis⁴ appear to have reduced, at least temporarily, both immigration to the UK and the salience of immigration as an issue of media concern or [public worries](#).⁵

However, immigration remains a highly contentious and complicated policy issue today, which became apparent again this summer. [The Immigration and Social Security Co-ordination \(EU Withdrawal\) Bill](#), which ends EU nationals' freedom of movement, was introduced to the House of Lords in July and is now in the Committee stage. Other than ending free movement, its purpose and goals are not clear, and it does not comprise substantive immigration law. Being skeletal and vague, the Bill gives the Home Office the responsibility to flesh out new policies regarding how all immigrants are to be approached in the future. Notably, the Home Secretary is given the power to amend primary and secondary laws through any regulations considered 'appropriate' in connection with any part of the Bill. Such an approach provides little legal certainty to the migrant community. Furthermore, immigration returned to the forefront of hotly debated topics after the Home Office published ['The UK's Points-Based Immigration System - Further Details'](#) and after Home Secretary Priti Patel issued an accompanying statement to present the new points-based immigration system ('PBS') that is to apply to all immigrants, including EU citizens who lack settled or pre-settled status,⁶ when the Brexit transition period ends.⁷

ORIGINS OF THE CURRENT POINTS-BASED SYSTEM

The current PBS was first discussed in some detail in Theresa May's long-awaited December 2018 White Paper on 'The UK's future skills-based immigration system'. That proposal would have ended EU citizens' free movement⁸ and replaced it with a new sponsored system for all immigrant workers, with a salary threshold of £30,000. Unlike the pre-existing system for non-EU migrants, the plan would have reduced skills threshold to

The Immigration Bill may create new problems for the UK tomorrow without resolving the challenges Britain faces today.

Roger Casale, Secretary General & CEO, New Europeans; 'Britain in Europe' thinktank expert

The bill makes use of undemocratic so-called 'Henry VIII powers', providing a skeleton structure rather than substantive law, thereby leaving the Home Office to flesh out the manner in which the migrant community will be treated. In this way, the Home Office will be able to allow immigration policy to shift according to the changing politics of the day, maintaining the over-politicised nature of this issue.

Julie Ward, Member of the European Parliament (2014 – 2020); 'Britain in Europe' thinktank expert

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- 3 At the time of the Eastern Enlargement, no direct transitional mobility restrictions were imposed in the UK because the anticipated CEE mobility was insignificant and one of Tony Blair's aspirations was to be seen as leading Europe. Concerns regarding CEE movers were only picked up in political debates after the results of the 2010 Census were published, in the midst of an already tumultuous environment due to the 2008 economic crisis.
 - 4 If anything, Covid-19 actually increased support for immigration, at least into health and social care sectors.
 - 5 Public concern might be on the rise again, however, due to the recently increased Channel crossings by undocumented migrants, fuelled at least in part by refugee camp evictions in France.
 - 6 EU nationals currently present in the UK have until 30 June 2021 to apply for settled or pre-settled status under the EU Settlement Scheme.
 - 7 Unless extended, 1 January 2021.
 - 8 Notably, the free movement right has not been consistently supported by any of the mainstream political parties, albeit it has been used as a rallying cry to garner support for other political goals.

RQF3 (A-level), removed the resident labour-market test ('RLMT') under which employers have to show that there is no suitably qualified British candidate for the role, and would have been uncapped. Also unlike pre-existing rules, the White Paper envisioned a route, likely capped but not requiring work sponsorship, for temporary workers from designated 'low-risk countries' (including at least some EU countries) who could apply for one-year visas. This transitional route targeted to low-waged workers – conflated by the Government with occupying 'low-skill' and 'unskilled' positions⁹ – was to be reviewed in 2025. Workers on these one-year visas would not be able to bring family members, and would need to return to their home countries for a one-year cooling-off period before being eligible for another visa. Although the Migration Advisory Committee did not recommend any provisions specifically for 'low-skill' workers, the Home Office included this transitional route in recognition of the fact that many British employers had become reliant on EU workers for certain low-paid jobs and would find it difficult to adapt their recruitment models, particularly in sectors like agriculture, hospitality, construction and social care. If implemented, the White Paper's framework was predicted to reduce the UK workforce by approximately 300,000 EU nationals during 2021-25, and the GDP in 2025 by 0.4-0.9%, with a cumulative fiscal cost of £2-4 billion. The proposal was critiqued for deterring EU citizens from coming to the UK and for encouraging EU nationals living in the UK to leave.¹⁰ The EU withdrawal bill which embodied these proposals was introduced under May's minority government in December 2018, but stalled after the Committee stage and then fell when Parliament was prorogued in September 2019.

THE CURRENT PBS PROPOSAL

The currently proposed PBS framework, as [first detailed in February 2020](#) and further explained [in July](#), lowered the general salary threshold to £25,600 for the 'skilled' (RQF3) employer-sponsored route, and added the English-language requirement. As outlined in the 2018 White Paper, there is no RLMT and no numerical cap on 'skilled' workers. Further points are awarded for meeting various non-mandatory criteria, such as holding a PhD relevant to the job or earning more than £25,600. Those with a job offer in a 'shortage occupation' (to be designated later this year by the Migration Advisory Committee), such as nursing or civil engineering, are awarded extra points and are eligible for a visa at lower salary thresholds. In part as a response to the pandemic, within the 'skilled' worker route, there will be a fast-track entry for eligible healthcare workers,¹¹ with reduced application fees, no immigration health surcharge fees,¹² and dedicated support with the application process. Similarly to the current system, most employers of 'skilled' workers will have to pay the Immigration Skills Charge for each skilled worker.¹³ The Government is

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- 9 In line with the approach taken by the Migration Advisory Committee, the 'high', 'low', and 'un'-skilled labels are based on the skill of the job rather than of the worker, i.e., the length of time it takes to train workers to do a specific job.
- 10 E.g., Casale, Roger, UK White Paper sounds death knell for freedom of movement, *The Parliament Magazine: Politics, Policy and People*, 21 December 2018, <https://www.theparliamentmagazine.eu/news/article/uk-white-paper-sounds-death-knell-for-freedom-of-movement>.
- 11 Deceptively named 'health and care visa', despite not including social care workers.
- 12 The Government's promise to remove NHS surcharge fees for healthcare workers was made during the Covid-19 lockdown and, as of the writing of this paper, has not been implemented yet, although healthcare workers can now apply for a refund of immigration health surcharge paid on or after 31 March 2020. See <https://www.gov.uk/healthcare-immigration-application/refunds> (last visited 22 August 2020).
- 13 £1,000 per skilled worker for the first 12 months, with an additional £500 charge for each subsequent six-month period.

also contemplating an unsponsored route within the PBS for ‘highly skilled’ workers, which will be capped. The pre-existing uncapped routes for innovators, exceptional talent and investors from non-EU states will become available to EU nationals as well. None of such workers will qualify for public benefits or for a waiver of the health surcharge fees,¹⁴ although they will be able to bring their dependents here. Furthermore, a dedicated, capped programme for seasonal agricultural workers might become implemented, based on agreements with specific countries.¹⁵ There is no designated programme for self-employed individuals (although those with exceptional talent or UK ancestry may be self-employed), and no provisions for ‘unskilled’ workers. Dependents joining immigrant workers will be able to undertake employment at any skill level. Unlike the 2018 White Paper, the current proposal has no route for short-term ‘low-skill’ workers.

Aside from strictly work-based visas, the capped Youth Mobility Scheme for those aged 18-30 is likely to be extended to include at least some non-English speaking countries, pursuant to which young adults from participating countries will be able to undertake employment or study in the UK for 2 years. Moreover, international students will be able to remain in the UK for two years (or three years, for PhD graduates) after finishing their studies to work or to seek employment. EU tourists will not need a visa for stays of less than six months.

GENERAL CRITIQUE OF THE PROPOSED FRAMEWORK

What is immediately striking about this PBS is that, despite the Conservative Party’s ongoing promises to reduce immigration, the new framework imposes no numerical cap and no RLMT on ‘skilled’ labour. It has made it easier for employers to sponsor migrant workers than it has been to sponsor non-EU migrants. It is difficult, of course, to predict the overall impact of the new system on immigration numbers. Given the fact that the [British economy is likely to suffer](#) more severely from the Covid-19 crisis than any other economy in the developed world, it is uncertain how likely the UK will be able to attract the ‘brightest and best’ to work and study here as part of the Government’s ‘[Global Britain](#)’ strategy. What is clear, however, is that historically, non-EU immigration has been [higher than EU mobility](#)¹⁶ and has been increasing¹⁷ in recent years, while EU migration has been notably decreasing since the Brexit referendum in June 2016. The proposed immigration framework will likely exacerbate these trends. Given how many British nationals have become unemployed or furloughed (and at risk of subsequently losing their jobs) due to the pandemic, noticeably increased immigration numbers might prompt a future backlash against immigration policies. This is especially

The de-standardisation of professional qualifications, such as those for doctors, lawyers, accountants, architects, etc., may limit the attraction of the UK for ‘highly’ skilled EU professionals, whilst the increased bureaucracy and high penalties for infractions will deter sole traders, the self-employed and business entrepreneurs, as well as students who will increasingly look to the EU where a common education area is being developed.

Julie Ward, Member of the European Parliament (2014 – 2020); ‘Britain in Europe’ thinktank expert

The PBS fails to address any of the problems of our immigration system - including extortionate visa fees, the NHS health surcharge and the exclusion of migrants from public support - and instead is extending these rules to EU citizens. We need a fair immigration system which treats migrants with flexibility and dignity, including the lower paid. The only way to do this is to end these inhumane policies and the Hostile Environment which upholds them.

Caitlin Boswell, Project Officer (EU Citizens), The Joint Council for the Welfare of Immigrants

14 Other than for eligible healthcare workers.

15 Any such temporary or seasonal migration schemes present significant risks of labour abuse and exploitation, including human trafficking. See Focus on Labour Exploitation, Disposable Workers: the Future of the UK’s Migrant Workforce, March 2019, <https://www.labourexploitation.org/publications/disposable-workers-future-uks-migrant-workforce>; Focus on Labour Exploitation, Preventing exploitation in the shadow of Brexit: The risks of temporary migration programmes, September 2018, <https://www.labourexploitation.org/publications/preventing-exploitation-shadow-brex-it-risks-temporary-migration-programmes>.

16 In fact, net non-EU migration has been noticeably increasing since 2013 and is currently at the [highest level](#) since arrivals began to be recorded in 1975, in part due to the relaxation of the cap on Tier 2 skilled visas in late 2018.

17 In line with UKIP’s tactic to appeal to BAME referendum voters by promising that Brexit would enable increased non-EU immigration.

likely since, despite pre-referendum populist allegations of how EU movers have been stealing (low-skill) British jobs, immigrants will now be more likely to displace British workers from 'skilled' and higher-paid jobs.

Furthermore, despite being hailed by the Government as employer-driven, the new PBS framework is anticipated to produce labour shortages in several sectors, including those recognised as essential during the Covid-19 crisis (i.e., social care,¹⁸ farming,¹⁹ and food processing), as well as in hospitality and construction.²⁰ The Home Secretary has suggested that, rather than relying on foreign labour, British employers should turn to automation technologies or should invest in British workers²¹ - especially given the recently increasing rates of unemployment (currently at 4%, but expected to rise to 11-15% by the end of the year). But how realistic is that?

Employers' organisations²² and many MPs worry that the impact (at least short-term) on many businesses, especially small and medium-sized²³ ones, will be catastrophic because many of such 'low-skilled' positions are unappealing to British workers due to low pay, demanding work, and poor career prospects. Moreover, many of such jobs require skills for which few domestic workers have been trained. These skills typically also cannot be replaced by automation (which, ironically, would further displace British workers). Although 'low-skill' labour needs might continue to be at least in part filled by the more than three million EU citizens and their dependents already working in the UK with settled or pre-settled status, it is not clear how many of them will actually decide to live here permanently, especially given the propensity of EU workers in low-skill jobs to engage in temporary and circular migration, and the fact that the remaining 27 EU countries will remain wide open to them. The resultant anticipated labour shortages are likely to increase consumer costs or even prompt some British businesses to move overseas or outsource parts of their operations abroad. Some might even be forced to close, especially given the fallout from the Covid-19 crisis.

18 Due to the minimum income threshold barriers and not falling under the new fast-track arrangement for healthcare workers. Casale, Roger, UK immigration policy casts shadow over social care sector, EU Today, 16 July 2020, <https://eutoday.net/news/politics/2020/uk-immigration-policy-casts-shadow-over-social-care-sector>.

19 For example, the National Farmers' Union has been vocal about its labour shortages, further exacerbated by Covid-19. See NFU, Media coverage on immigration and access to labour, <https://www.nfuonline.com/news/latest-news/media-coverage-on-immigration-and-access-to-labour/> (last accessed 7 Aug 2020).

20 Economic concerns aside, what is also troubling is that the new immigration framework has been rushed during the pandemic, with little oversight. Moreover, the Bill gives the Home Secretary sweeping powers to effectuate the new framework through Immigration Rules and secondary legislation. In addition to being overly complicated and disjointed, akin to secondary legislation, Immigration Rules are subject to lesser parliamentary scrutiny than primary laws, and tend to reflect priorities of the Home Office rather than political consensus. They are also more likely to be changed over time than primary law is, further undermining legal certainty in the new system.

21 In April, the Government launched 'Pick for Britain' programme, and agricultural providers launched 'Feed the Nation' campaign to entice British nationals to work on farms over the busy harvest period.

22 Including UK Hospitality, National Farmers' Union, and Association of Labour Providers.

23 Big businesses will find it easier to fill any gaps in EU migration with non-EU migrants.

The rewriting of immigration legislation in this way is the final death knell, in law, to the liberal approach to mobility that Freedom of Movement represented. The removal of privileged rights for EU citizens, while cast by the Home Office as making the system fairer, is a levelling down for all those seeking to live and work in the UK. As such, it is the legal enactment and institutionalisation of an increasingly exclusionary political project of belonging in Britain in the hands of the Conservative Government.

Dr Michaela Benson, Reader in Sociology, Goldsmiths, University of London; expert and advisory board member, 'Britain in Europe' thinktank

A sponsorship process creates an imbalanced power dynamic between the sponsor and the sponsored, with the potential of leaving the sponsored migrant worker in a vulnerable situation. For example, any employer that sponsors migrant workers needs to comply with robust sponsorship license rules. These can be costly, and some employers will not be able to afford legal compliance advice. If the employer fails to comply, then the sponsored worker immediately becomes at risk, and may be deemed to be of 'irregular' immigration status. [Moreover,] ... the sponsorship scheme ... is likely to exacerbate exploitation and modern slavery because employers who have invested significantly in the sponsorship will want to ensure they recoup the investment, and ensure they do not move to an alternative employer.

Fizza Qureshi, Chief Executive Officer, Migrants' Rights Network

What is especially troublesome from workers' perspective is that the employer-sponsorship route might increase exploitation.²⁴ After all, an employer who had invested in sponsoring a worker is incentivised to exert pressure on that worker to remain in their employment or may seek to recover the costs of sponsorship. In addition, if an employer fails to correctly comply with sponsorship requirements,²⁵ sponsored workers become at risk of having 'irregular' immigration status.

WHERE DO EU NATIONALS STAND?

The Brexit referendum and the impending end of free movement have already changed the mobility patterns of EU citizens to the UK. In addition to an increase in hate crimes against EU nationals, the referendum caused legal uncertainties and a resultant **increase in EU workers' exploitation** in the labour market. Although overall there are still more EU nationals arriving in the UK than leaving,²⁶ EU net migration has fallen substantially, following peak levels in 2015-16. In 2019, net EU migration stood at **49,000**. No accurate estimates exist of how many EU nationals currently present in the UK are eligible for the EU Settlement Scheme. As of now, however, more than **3.8 m applications**²⁷ have been made under the Scheme - with Polish (700,000), Romanian (600,000), and Italian (400,000) nationals submitting the highest numbers of applications.²⁸ Slightly more than 2 m have been granted settled status, entitling them to the same rights to live, work, and access healthcare and public funds as UK citizens, and making them eligible for UK citizenship after one year. Moreover, 1.4 m have received pre-settled status, available to EU citizens who have not lived in the UK for five years by the end of 2020. This limited leave to remain allows them to continue to live and work here for five years, but they must re-apply to change to settled status—available as soon as they accrue five years of 'continuous residence'—before their pre-settled status expires. Notably, pre-settled status carries risks and provides EU nationals with only limited rights. For one, it does not constitute 'right to reside' for the purposes of welfare benefits. It will be revoked if its bearer is away from the UK for two consecutive years, and the 'continuous residence' period required to change to settled status cannot be met if more than 6 months are spent overseas in any 12-month period.

The Home Office states that 'Brexit should mean "a robust and consistent approach to applying the UK criminality thresholds rules", treating EU citizens in the same way as arrivals from elsewhere'. But this is diametrically opposed to, and defies the logic of, the "settled status" promise, that EU citizens in the UK would be treated the same as UK citizens, that there would be no material change to the rights they were exercising before. With deportation for the commission of minor offences as the Sword of Damocles hanging over their head, EU citizens cannot possibly feel they are treated as UK citizens. In the aftermath of the EU referendum, EU citizens have invariably reported feeling "in limbo", emotionally and as reflected in law (in the face of the UK government's initial continuous long-term refusal to recognise their rights). Now the UK government is, once again, proving they were right to be worried; this "greyness of things", where everything is "tangled, mingled, not perfect anymore" - to speak like a character from Anne Tyler's "Dinner at the Homesick Restaurant" - is how they are being made to feel, at best, about their right to stay in the UK.

Prof Dimitrios Giannouloupoulos, Head of the Department of Law, Goldsmiths, University of London; founder and director, 'Britain in Europe' thinktank

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- 24 More generally, suddenly restricting lawful migration and expanding temporary-visa routes (such as in agriculture) results in more undocumented work, which leads to increased vulnerability and hence exploitation. Farron, Tim and Lucila Granada, Government immigration plans risk increase in modern slavery, Politics, 19 May 2020, <https://www.politics.co.uk/comment-analysis/2020/05/19/government-immigration-plans-risk-increase-in-modern-slavery>.
- 25 Small and medium-sized businesses, in particular, will struggle to meet the onerous sponsorship compliance requirements. This will also expose them to civil and potentially criminal penalties.
- 26 Latest available data indicates that, in December 2019, there were more than **800,000 Poles**, **400,000 Romanians**, **300,000 Irish**, **280,000 Germans**, and **230,000 Italians** living here.
- 27 During the Covid-19 lockdown, the Home Office was not accepting documents for ID verification purposes. As a result, EU nationals were unable to apply for pre-settled or settled status for a period of approximately 2 months.
- 28 An ongoing concern is that even if a small percentage of EU citizens in the UK fail to register before the deadline on 30 June 2021, this will translate into thousands becoming irregular migrants, including groups especially vulnerable. See, e.g., Jabłonowski, Kuba, EU Settlement Scheme: the cliff-edge approach puts many vulnerable applicants at risk, LSE Brexit Blog, 27 January 2020, <https://blogs.lse.ac.uk/brexit/2020/01/27/eu-settlement-scheme-the-cliff-edge-approach-puts-many-vulnerable-applicants-at-risk/>. Especially vulnerable groups of EU citizens include children in the care system (see, e.g., CORAM, Children left out? Securing children's rights to stay in the UK beyond Brexit, July 2020, https://www.childrenslegalcentre.com/wp-content/uploads/2020/06/CCLC-Children-left-out_July-2020_final.pdf) and the Roma community (see, e.g., Williams, Luna, What will Brexit mean for the Roma community?, 19 February 2020 (Electronic Immigration Network) <https://www.ein.org.uk/blog/what-will-brexit-mean-roma-community>).

Notably, the new immigration framework states that, after the end of the transition period, even those with settled status ‘[must be considered for deportation](#)’ if they are sentenced to 1 year or more of imprisonment for conduct committed after 1 January 2021. Where this deportation threshold is not met, settled EU nationals may be considered for deportation if it is conducive to the public good, including if they have serious or persistent criminality. This is despite repeated Government promises that settled EU nationals would have the same rights as British nationals. One wonders if the spectre of the Windrush scandal might reappear in this new context, as EU migrants will now be swept under the UK’s overarching hostile environment policy towards immigration.

Such concerns appear especially worrisome given that neither the settled nor pre-settled status includes physical documentation. Instead, status can be confirmed only through access to an online account, which inspires little security for its holders and has already made it difficult for some EU nationals to [prove their entitlement to enter and access basic rights like housing](#) in the UK.

When it comes to newly arriving EU nationals or those who will not obtain settled or pre-settled status, access to the UK after 1 January 2021 will become much more restrictive and more expensive than it has been. The new PBS is [predicted to](#) reduce to zero arrivals of EU workers seeking employment in low-skill occupations (such as process, plant and machine operatives) and in elementary occupations, while inflows of EU workers into caring and leisure services are likely to be cut by 90%, and into skilled trades occupations by approximately 50%. Notably, while recent public and media support for migrants in key sectors might have helped to drive certain policy changes beneficial to immigrants working in the NHS,²⁹ the new PBS would have likely excluded many of those same key workers from entering the UK. Many sectors that have been designated as filled with ‘key workers’ during the Covid-19 crisis are likely to be significantly impacted – with an anticipated reduction of almost half in EU medical services workers, 70% of EU social workers, 80% of EU care workers, and more than 90% of EU warehouse and transportation staff.³⁰ Such predictions are based on PBS eligibility criteria alone. These reductions in EU key workers are likely to be even more severe in practice given how unappealing the UK will become. Ending new EU workers’ eligibility for public benefits³¹ and requiring them to pay immigration health surcharge will likely significantly reduce EU workers’ interest in entering the UK, particularly given their continuing access to the right of free movement and ancillary rights in the remaining EU states.

EU STUDENTS’ ACCESS TO THE UK

In addition, EU students will no longer be entitled to home-fee status or student loans. This is anticipated to reduce [EU student enrolment by 20%](#), although the Covid-19 crisis might have further diminished EU students’ interest in studying in the UK. This policy change will especially impact students from EU states with lower GDPs and average wages, such as from the CEE region. Overall, withdrawing home fee status from EU students will expose the HE sector to an even greater financial crisis than it is already experiencing.

29 Such as the proposed cancellation of the NHS surcharge, and assurances that dependants of NHS workers who die as a result of Covid-19 will receive indefinite leave to remain.

30 Although EU-born workers comprise 7% of the British workforce, they have been over-represented among key workers in the manufacturing (22%), scientific and professional (11%), and transport and storage (11%) sectors.

31 They will have ‘no recourse to public fund’ conditions on their visa.

From January 1st 2021 EU citizens will be the only group of foreign residents in the UK who have a digital-only immigration status and no backup option of physical proof.... Not having a biometric ID document could result in a person’s failure to open a bank account, get a driving licence, secure housing or a job, perhaps being passed over for an applicant with the ability to produce an actual passport. Years down the line, remembering your computer-generated code and the original email address that was linked to it could become a serious stumbling block, particularly for vulnerable people.

Julie Ward, Member of the European Parliament (2014 – 2020); ‘Britain in Europe’ thinktank expert

The COVID pandemic has revealed that the people previously considered ‘low-skilled’ such as carers, cleaners and delivery drivers, are in fact the backbone of our society. And yet the Government has introduced a new PBS which will make it impossible for many essential workers to live and work safely in the UK.

Caitlin Boswell, Project Officer (EU Citizens), The Joint Council for the Welfare of Immigrants

On 23 June 2020, the Minister of State for Universities, Michelle Donelan, used a blunt, unceremonious statement to the House of Commons to confirm that “[f]ollowing [the UK’s] decision to leave the EU, EU, other EEA and Swiss nationals will no longer be eligible for home fee status, undergraduate, postgraduate and advanced learner financial support from Student Finance England for courses starting in academic year 2021/22”. She went on to briefly acknowledge that “EU, other EEA and Swiss students, staff and researchers make an important contribution to our universities” and that she “want[s] that contribution to continue and [is] confident - given the world-leading quality of our higher education sector - that it will”.

Not many will have taken notice of the announcement that brought to an abrupt end a relationship that benefited more than a million students in the last ten years alone (according to HESA student records relating to 2008-09 to 2017-18, as reported by Universities UK, the total number of EU students in the UK ranged from 117,850 in 2008-09 to 139,145 in 2017-18, with an overall population of 1,282,775 students in this ten-year period). The minister did not make any announcement on social media or other official platform; there was simply no effort to reach out to - and empathise with - EU students who might be making plans to come study in the UK from 2021-22 onwards, to reassure them that the minister’s statement, that she “want[s] that contribution [from EU students] to continue”, is not going to be an empty promise.

Just the day before her statement in the House of Commons, the minister had written an open [letter](#) to all international students (to reassure them of the measures that the UK had taken to safeguard their health, safety and wellbeing, in light of the global impact of the Covid-19 pandemic), and spoken about it in her social media. But there was no sign of a similar intention to communicate with EU students, to explain to them how the Brexit-induced changes, on student fees and loans, would - severely - affect their ability to study in the UK in the future. Or perhaps to communicate to them that the UK government would ensure strategies would be adopted that would facilitate the transition to the new post-Brexit world.

There has been no visible effort to connect with EU students since then either. No looking back, at all the attributes, skillsets and cultural diversity this vibrant community of students had brought to the UK, and no looking forward, at how they would be supported in continuing to make these invaluable contributions to British society in the future.

No looking back, and no looking forward, in relation to what this change in policy would mean for our Universities either, not just from a financial perspective, where there will undoubtedly be substantial damage, but culturally and educationally too; students from the EU have become an indispensable part of the student experience in our Universities, and losing them, or losing a significant number of them, will inevitably have a dire effect. As Nick Hillman, the Director of the Higher Education Policy Institute (HEPI), [said](#) in responding to the minister’s announcement on tuition fees and loans:

In the past, we have shown that higher fees and no more access to student loans could risk a decline of around 60% in the number of EU students coming to the UK to study. If that happens, our universities will be less diverse and less open to influences from other countries.

The statement from HEPI’s Director went on to predict that if “we adopt sensible post-Brexit migration rules and if universities work very hard to recruit from other EU nations, it is likely that many of our fellow Europeans will still wish to study here”, concluding that “[a]bove all, we need to make it abundantly clear to people from the EU and beyond that our universities remain open to all”.

There are simply too many “ifs” here, when looking at how we might avoid EU students deserting our Universities, and recent trends do not leave much room for optimism: we are already experiencing a significant reduction in the number of EU student enrolments. As [reported](#) in the Financial Times, “the Russell Group recorded 23,310 EU students starting studies for the 2018/19 academic year, down 3 per cent on 2017/18”, which came “after a 7 per cent rise in enrolment in 2016/17 and increases in most years during the past decade”.

A narrative of openness and connectedness with EU member states - and their citizens - should, of course, be an absolute starting point, for the Minister of State for Universities, and the UK government, more broadly, if the UK is interested in remaining a primary academic destination for EU students.

Unfortunately, there are so far no signs of such a narrative, regardless of whether we look at high level policy - with remaining uncertainty on the future relationship with the EU and a “no deal” outcome still a possibility or the new point-based immigration system leading to a significant decrease of EU migration, as Dr Myslinska concludes in this report - or whether we take a more impressionistic view; as mentioned above, there has been virtually no effort from the Minister of State for Universities to communicate the changes of fees and student loans to a wider audience, primarily EU students, as if these are not going to affect EU students or as if these students do not matter.

Let us assume, for the moment, that this is going to change, and that the government, with support from universities, will do an outstanding work sharing with EU students the seeming inevitability of the new approach to fees and loans, and their commitment to EU students continuing to be a vital part of the international student community in UK universities. Still, it will not be enough to enable them to come study in the UK. For a significant number of students from the EU, studying in the UK will simply no longer be a financially viable choice. A 2019 survey of typical fees for overseas students (included in a recent House of Commons Library briefing [paper](#) on international and EU students in higher education) gave averages of £14,900 (classroom-based) and £17,000 (lab-based) for undergraduate programmes, and, similarly, averages of £15,100 (classroom-based) and £17,500 (lab-based) for postgraduate programmes. To take the example of studying for the LLB Law degree at one of

the Law Schools at the University of London, EU students will now be likely to face tuition fees that will range between £15,000 and £23,000, as opposed to the annual fees of £9,250 that they were paying until now. The vast majority of these students were relying on tuition fee loans from the British government; an estimated 69 percent of eligible EU full-time undergraduates took out fee loans in 2014-15, according to the same House of Commons Library paper mentioned above, which also reports that though EU students “are not generally eligible for maintenance loans [...] some students may qualify if they meet residency criteria”.

Losing access to loans and facing *estimated* tuition fee increases of between 75 and 125 percent is likely therefore to emerge as an insurmountable obstacle for EU students wishing to study in the UK in the near future, especially for those coming from the economies with low GDP and average wage in the European South and in Eastern European member states.

The reaction from Cyprus, with *reports* of “students writ[ing] off UK Universities”, and Cyprus “hoping to strike a bilateral agreement with Britain, to allow Cypriot students to continue with their studies at English Universities without paying higher tuition fees”, provides a good illustration. I have been similarly raising red flags about this in the Greek press for a few years now, in the context of the Brexit debate, and discussing the arising complications with educational experts in the country, and everyone seems genuinely puzzled about how it might be possible to secure for Greek students continued access to UK higher education institutions in the future. It is useful to remind here that there are approximately ten thousand students from Greece that enrol with UK Universities every year (if we look back at statistical data between 2014-15 and 2018-19), and the same number for students from Cyprus is approximately nine thousand per year. Greece is also in the *top 10* of countries of origin for all international students, in the same group with major countries of origin such as China, India, the United States and Germany, which occupy the top four places in that list.

Eastern European students seem to have reacted with the same level of disbelief and pessimism about access to UK higher education in the future, with some of them *reporting* that the loss of home fee status “will be a full stop for [them]”. Gábor Csontos, a recent graduate of Cambridge University, who worked for a year as access officer at the Cambridge University Hungarian Society, boldly *put* it in the Guardian that the Minister of University’s statement, that she was confident that the contribution of EU students would continue (despite the change in fee status), simply “ignored the material reality of the situations most of [Eastern Europeans] studying in the UK come from”; Csontos had in mind “anyone coming from an average family from Poland, Romania or Hungary”.

Csontos’ key emphasis was also rightly placed on how these changes would be “a blow for social mobility in Europe”. The minister may be right to say that the “world-leading quality of British higher education will

keep attracting students from all the world and Europe”, he pointed out, “[h]owever, fewer [can] now afford it, and those who can will be members of established elites”. That will be as true for Poland, Romania and Hungary as it will be for Greece and Cyprus; those from privileged backgrounds will perhaps still be able to pursue academic studies in Oxbridge and Russell group Universities, but everyone else will have no option but to pursue academic excellence in parts of Europe where they will still be welcome, in practice, not just in words. It must be added here that EU member states that already are, or now emerge as, leading academic providers in Europe are alert to the radical transformation UK higher education is undergoing, mainly as a result of Brexit. They appear ready to increase the competition to UK higher education institutions, and stand to *benefit* from the unprecedented lack of planning and support from the part of the UK government.

Serious questions can also be raised about why the decision to change the fee status of students from the EU could not have been delayed, to give higher education institutions in the country some much needed “breathing space”, when they are faced with extraordinary challenges in the light of the global pandemic, and at a time when no one still knows what the future relationship with the EU is going to be. Or about why there has been no apparent attempt to investigate reciprocal agreements with the EU on tuition fees. Spain, France, Germany and the Netherlands are amongst the top international destinations for mobile UK students, whose access to Universities there could have been facilitated by such reciprocal agreements; we are rather currently faced with uncertainty about the type of arrangement that is going to apply to UK students wishing to study abroad in the future. We must underline that *currently* 7.8 percent of UK undergraduate students work, study or volunteer overseas as part of their degree; attempts to increase this number (such as in the context of the UUK *Go International’s* campaign, which aimed to bring international mobility up to 13 percent by 2020) will by definition considerably slow down, if they are not halted altogether.

This quick overview inevitably leads one to conclude that the UK government must change tack, on EU students in the UK, if we are to avoid losing one of the most intellectually and culturally vibrant parts of the student community in our universities: collaborative work with EU member states, efficient, empathetic communication with students from the EU but, more importantly, programmes facilitating access to our Universities for those, in our European neighbourhood, most in need of financial and practical support to study here, should be obvious points of departure.

Prof Dimitrios Giannouloupoulos,
Head of the Department of Law, Goldsmiths,
University of London; founder and director of the
‘Britain in Europe’ thinktank

IMPACT ON MIGRATION FROM CENTRAL AND EASTERN EUROPE

CEE nationals had experienced the most antagonistic public climate in the run-up to the referendum and a post-referendum spike in hate crimes against them.³² Despite having been the greatest net contributors to the British public purse among all the immigrant groups (and significantly greater net contributors than native British workers), they have been targeted by Brexit supporters and populist rhetoric. Perhaps not surprisingly, CEE nationals have been turning away from the UK in the past few years. Since the Brexit referendum, more CEE nationals have been leaving the UK than arriving here. For example, at the end of 2019, there was a net loss of 12,000 in migration from the eight CEE states that had joined the EU in 2004. This will likely be further exacerbated by Covid-induced job losses, especially high among those precariously employed, as many CEE nationals have been.³³

Looking ahead, newly arriving CEE migrants are especially likely to be negatively impacted by the PBS, which prioritises 'high-skill', high-paid employment. CEE movers have tended to be over-represented in lower-skilled and low-paid jobs – which are often precarious,³⁴ and for which they are often overqualified³⁵ – including as key workers in the social care sector, farming, and food processing, as well as in hospitality and construction sectors. Seventeen per cent of all CEE workers are in key low-skilled jobs,³⁶ the highest share among all migrant groups other than from Sub-Saharan Africa. Notably, most workers in agriculture – which is 98% staffed by foreign workers – are Bulgarian and Romanian. Employers' reliance on CEE workers in this sector is perhaps most poignantly illustrated by agricultural companies' chartering of planes in recent months to bring seasonal Romanian farm workers to the UK. After the PBS becomes implemented, newly arriving CEE workers will no longer be able to access most of such positions. Furthermore, CEE nationals' access to self-employment, especially common in the construction sector, will no longer be available.

(Boldly) assuming that the UK continues to be appealing to new CEE workers, what is their likely fate given their pre-Brexit propensity to engage in low-paid, precarious employment? Unlike the 2018 White Paper, the current PBS framework provides no route for short-term 'low-skill' workers. It is possible that the PBS will simply divert CEE workers into low-skill jobs via other migrant routes – especially the Youth Mobility Scheme or as family members joining EU immigrants. Perhaps it will

32 See, e.g., Rzepnikowska, Alina (2019) Racism and xenophobia experienced by Polish migrants in the UK before and after Brexit vote, *Journal of Ethnic and Migration Studies* 45(1): 61-77; Virdee, Satnam and Brendan McGeever (2018) Racism, Crisis, Brexit, Ethnic and Racial Studies 41(10): 1802-19.

33 See, e.g., Barslund, Mikkel and Matthias Busse (2014) Labour Mobility in the EU: Dynamics, Patterns and Policies, *Intereconomics* 49(3): 116-158; Ciupijus, Zinovijus (2012) EU Citizens or Eastern European Labour Migrants? The Peculiar Case of Central Eastern Europeans in Britain, *Politeja* 2/3: 29-46; Cook, Joanne et al (2011) The Experiences of Accession 8 Migrants in England: Motivations, Work and Agency, *International Migration* 49(2): 54-79; East European Advice Centre (2013) East Europeans in London: A Peer Led Study of the Issues Faced by East Europeans in London Relating Housing, Employment, Household Income and Support Needs; Kofman, Eleonore et al (2009) The Equality Implications of Being a Migrant in Britain, Research Report 19 (EHRC); Office for National Statistics (2016) *International immigration and the labour market*, UK: 2016.

34 Sirkeci, Ibrahim et al (2018) Barriers for Highly Qualified A8 Immigrants in the UK Labour Market, *Work, Employment and Society* 32(5): 906-24; Johnston, Ron et al (2015) East versus West? Over-qualification and Earnings among the UK's European Migrants, *Journal of Ethnic and Migration Studies* 41(2): 196-218.

35 It does beg the question of how much the UK actually values 'skilled' labour.

36 Seventeen per cent of CEE and 10% of EU-14 workers are in key low-skill jobs; 9% of CEE workers and 19% of EU-14 workers are in key high-skill positions.

even push some into unlawful temporary employment (while on six-month tourist visas). After all, harder borders do not stop people from entering, but instead push them into undocumented status and into exploitative labour and living arrangements. Although any such indirect effect of the PBS is unlikely to result in substantial numbers, it might exacerbate modern slavery issues.

Incidentally, there might be a silver lining to the new system: since employers will not have access to an unlimited pool of revolving temporary workers, such workers' pay and work conditions might improve. Moreover, those who have been willing to suffer de-skilling might now be forced to demand that their skills be recognised so that they are eligible to enter the UK under the PBS. On the other hand, the fate of skilled EU workers might worsen since their employment will be tied to specific sponsors, opening the door to potential exploitation - albeit with minimum pay requirements (assuming they are effectively enforced). And of course, not qualifying for social benefits or for healthcare without a surcharge will make living here much more challenging for all immigrants.

THE ROAD AHEAD

Will the PBS prove to be an inflexible trap? It is too early to tell, and the new system will certainly need to be adjusted to respond to the UK's economic needs (perhaps with some regional flexibility) and to the priorities of workers, consumers and businesses. What appears evident, however, is that in its current incarnation, the system is not as it has been advertised. Neither is it truly employer-driven nor does it seek to reduce overall immigration. Moreover, it does not appear particularly 'fair' or 'modern' or conducive to a 'global Britain' strategy. Although the new PBS will likely reduce labour gaps for 'highly' skilled positions, it will likely create a new gap for 'low' skilled employment. Regardless of where a 'shortage' of workers exists, it will result in an unstable, inefficient economy. Moreover, the new framework is likely to increase worker exploitation.

What is also clear is that the PBS will significantly decrease EU migration, especially of CEE workers – the same workers who have been used as scapegoats by successive Governments for various failures of domestic policies and who have been demonised the most in the run up to the Brexit referendum, despite having made substantial contributions to the public purse.

What can be done now? Since there are no specific regulations in place yet,³⁷ advocacy groups should exert pressure on the Government to draft a comprehensive list of shortage occupations to include key workers and select positions classified as 'low-skill'.³⁸ To be truly employer-driven, the Government should take into account labour organisations' concerns over shortages, the same concerns that had driven the UK to support the Eastern Enlargement process and the admission of CEE workers in the first place. Ultimately, the Brexit-prompted immigration policy overhaul should be seen as an opportunity to improve the UK's immigration system and the working conditions of all immigrants.³⁹ Hopefully, not only economic, but also ethical and human rights concerns will become a part of this conversation.

A functional society needs to value all its workers rather than obsess about out-dated notions of skill level. An unbalanced economy will not work smoothly; bankers can't go to work without train drivers, scientists can't work in labs that aren't also a workplace for cleaners.

Julie Ward, Member of the European Parliament (2014 – 2020); 'Britain in Europe' thinktank expert

Designed to feed a xenophobic undercurrent in the Government's political narrative, ... the Immigration Bill sets a new benchmark for how far Britain has moved away from the open society that welcomed the world to the UK for the London Olympics in 2012. No longer a beacon of freedom and human rights, the UK's message to the world is now about as hostile and negative as it could be. The new Immigration Bill represents the culmination of that transition and may also lead to a significant decline in Britain's international standing.

Roger Casale, Secretary General & CEO, New Europeans; 'Britain in Europe' thinktank expert

³⁷ And in fact, they might not even be finalised before the end of the year.

³⁸ Of course, such lists pit industries against each other and tend to benefit employment sectors that have the resources and are organised sufficiently to influence policymaking.

³⁹ This, of course, would benefit British workers as well - by preventing leveling down of labour conditions and by not displacing Britons with more easily exploitable foreign labour.

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