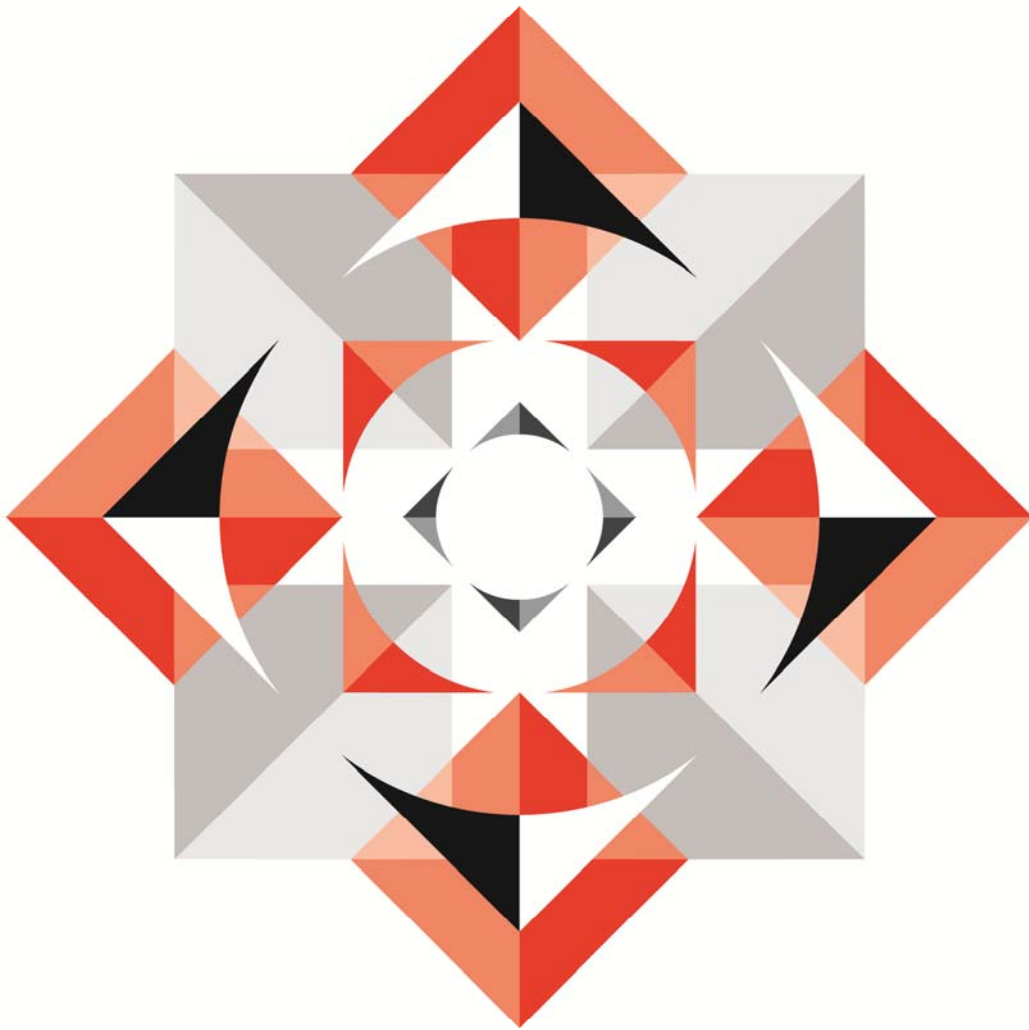


Free trade and controlling free movement - can the UK and the EU square the circle (18 months on)?



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Executive summary

This report aims to set out the various possible options for the United Kingdom's future relationship with the European Union after Brexit and analyse their likely ramifications. It focuses in particular on implications for the movement of people between the UK and EU and the UK's immigration policy more generally.

The UK's notice under Article 50 of the Treaty on European Union is due to expire on 29 March 2019, when the UK's membership of the EU will cease. The European Union (Withdrawal) Act 2018, which provides for EU laws and rules to continue to apply after that date, has received royal assent. Meanwhile, the UK and EU are continuing to negotiate the terms of the UK's departure and the terms of their future relationship.

The three main issues to be covered by the exit agreement are: (a) the "divorce" payment the UK must make to cover commitments it has already made; (b) the rights of EU citizens in the UK and vice versa; and (c) ensuring no "hard border" between Northern Ireland and the Republic of Ireland.

It is envisaged that there will be a transitional period lasting until 31 December 2020, during which the status quo would broadly be maintained. This would involve the UK continuing to make financial contributions to the EU, belonging to the Single Market and Customs Union and remaining subject to the jurisdiction of the European Court of Justice, although it would have little or no say over EU decision-making.

If the exit terms and transitional period can be agreed, the EU and UK will start working towards an agreement on their long-term future relationship. As yet, there is very little clarity on this and it is expected that detailed negotiations will continue during the transitional period.

The UK Government has sought to provide some certainty to European Economic Area ("EEA") nationals (and Swiss nationals) living in the UK about their immigration status and rights following Brexit. Different considerations will apply to: (a) those residing lawfully in the UK before 29 March 2019; (b) those arriving in the UK from 30 March 2019 to 31 December 2020; and (c) those arriving from 1 January 2021 onwards.

The question of the Irish border has become the most problematic issue in the negotiations between the UK and EU over the exit agreement (above). With the UK having committed to ensuring no hard border exists, the Government has been exploring possible solutions. These have included a "customs partnership" and "maximum facilitation", but there are major obstacles to both of those proposals – not least the EU having rejected each of them outright.

Realistically, the only possible outcomes on the Irish question would seem to be: (a) a hard border between Northern Ireland and the rest of the UK (which would seem to be politically impossible); (b) a hard border between Northern Ireland and the Republic (albeit with border controls minimised so far as possible); (c) the UK being in both the Single Market and a customs union with the EU; (d) the EU backing down from its stance that the UK cannot "cherry pick" aspects of the Single Market; or (e) a breakdown of negotiations and a "no deal" separation.

So far as the UK's long-term future relationship with the EU is concerned, there are six potential outcomes from the ongoing negotiations. These are summarised in turn below.

UK remains in the EU

This would require the UK to withdraw its notice to leave (which might not be possible unilaterally), or to leave the EU on 29 March 2019 but subsequently re-join it. A further variation might be a significantly extended "transitional" period during which the UK's relationship with the EU would

remain little changed. Staying in or re-joining the EU would be facilitated politically by the EU reforming itself – for example, by restricting free movement rights or by developing into a two-tier union (with the UK in the outer group of member states).

This outcome would mean the UK continuing to accept free movement of persons from the EEA and, conversely, British citizens retaining their free movement rights. There is some scope within existing EU laws for the UK to introduce measures to control migration. It could, for example, consider introducing a registration requirement for EEA nationals or a compulsory electronic identity card scheme.

UK leaves the EU and remains in the Single Market but not a customs union

This outcome could be achieved by way of the UK joining the EEA (the so-called “Norway model”) or reaching a bespoke agreement with the EU (the so-called “Swiss model”).

The Norway option would most likely involve the UK also joining the European Free Trade Association (“EFTA”) and as a result being subject to the jurisdiction of the EFTA Court, which is closely associated with the European Court of Justice (“ECJ”). The UK would inevitably remain subject to EU laws, over which it would have little say. Other consequences would include the need for a hard border between Northern Ireland and the Republic and the UK continuing to make financial contributions to the EU, although it would be able to enter into bilateral trade agreements with other countries.

A Switzerland-style arrangement would involve UK access to the Single Market on a bespoke basis, with the UK continuing to make a financial contribution to the EU. While the UK would not be subject to the ECJ, it would in practice have to comply with EU law for political reasons.

The Norway model and the Swiss model would both involve the UK broadly accepting free movement of persons, although under either option it might be possible to negotiate certain restrictions on migration of EEA workers into the UK.

UK leaves the EU and remains in a customs union but not the Single Market

The UK cannot remain part of *the* Customs Union when it leaves the EU, but it could seek to negotiate a customs union largely replicating similar arrangements. This option, which is advocated by the Labour Party leader Jeremy Corbyn, presents a number of challenges.

Not only would the UK’s freedom to negotiate its own trade agreements be significantly restricted, but it is uncertain whether it could continue to benefit from trade existing agreements negotiated by the EU with other countries. Moreover, the UK would be bound by future trade agreements reached by the EU while having little role in the negotiations and no veto over any final agreement before it came into force. Finally, this outcome would not dispense with the need for a hard border between Northern Ireland and the Republic.

Being outside the Single Market, the UK would no longer be subject to free movement obligations and rights. Subject to the terms of the UK’s agreement with the EU on customs union, it would be able to impose whatever rules on migration it wished.

UK leaves the EU and remains in both the Single Market and a customs union

While advocated by many across the political spectrum, this outcome is unlikely to be an acceptable long-term solution. It would very substantially mirror the UK’s current membership of the EU, perhaps with limited differences – for example, the ECJ’s jurisdiction being replaced by another court and the

UK making lower financial contributions to the EU. Crucially, however, the UK would have to forfeit any say in EU decision-making and the rules that applied to it.

In terms of free movement, the position would be similar to the UK remaining in the Single Market but not a customs union (outcome 2 above).

UK negotiates a trade agreement with the EU

If the UK is to leave the Single Market and not be in a customs union with the EU, it could negotiate a trade agreement with the EU. This could be based on an existing agreement, the most likely model being the Comprehensive Economic and Trade Agreement (“CETA”) between the EU and Canada. Alternatively, the UK could seek to negotiate a “bespoke” agreement.

Under a “Canada-style” EU/UK trade agreement the UK would not have to make financial contributions to the EU, supremacy of EU law would not prevail and the ECJ would have no jurisdiction. Free movement would not apply so the UK could control its borders although, like CETA, the agreement would most likely contain certain preferential rights for EEA nationals entering the UK to work or start a business (and reciprocal rights for UK workers entering the EEA).

Turning to the bespoke model, the UK Government says it is seeking to negotiate the “deepest possible trade agreement” with the EU while leaving both the Single Market and any customs union. Details of the Government’s preferred outcome are expected to be published in a white paper soon. The EU, however, has consistently stated that will not countenance UK being allowed to “have its cake and eat it” by cherry picking beneficial aspects of the Single Market. Other obstacles to such an arrangement include the fact that the absence of a customs union and the UK’s non-participation in the Single Market would mean there would need to be customs controls between the EU and the UK and a hard border between Northern Ireland and the Republic.

If it does prove possible for the UK to reach a post-Brexit trade agreement with the EU that does not include any customs union, one advantage is that the UK would have freedom to negotiate new trade agreements with non-EU countries such as the USA, China and India. There are, however, very significant practical, political and technical hurdles that would need to be overcome in order to secure such trade deals.

A bespoke trade agreement between the UK and the EU could potentially include preferential rights of migration for EEA citizens to enter the UK and vice versa.

No agreement is reached with the EU

The so-called “cliff-edge” scenario of the UK crashing out of the EU without a deal on 29 March 2019 is a distinct possibility (with or without a transitional period). This would mean that the UK would fall back on World Trade Organisation (“WTO”) rules governing trade. This would be far from straightforward and extremely challenging as detailed terms would need to be negotiated and approved by the WTO.

In this outcome, current UK immigration laws would continue to apply, but the Government would urgently need to take steps to address employers’ needs for skilled and unskilled migrant workers including EEA nationals.

Given the uncertainty of the UK political landscape, it is impossible to predict how Brexit might unfold. The Conservative Party is deeply divided between “Hard” Brexiteers resistant to any compromise and “Soft” Brexiteers fighting for a close relationship with the EU. If this schism can no longer be managed, it may ultimately lead to the downfall of the Government, another general election and the possibility of a new government.

Otherwise, the requirement to avoid a hard border in Ireland is likely to lead the UK to agree, effectively, to continued membership of the Single Market and a customs union unless and until an alternative can be found. If so, that arrangement could end up extending beyond the two-year transitional period currently envisaged.

In the longer term, the two most likely outcomes would seem to be: (a) a “Canada plus” agreement between the UK and the EU, similar to CETA, involving a hard border between Ireland and the Republic which would be made to appear as frictionless as possible; or (b) the UK eventually reverting to membership of the EU after the latter has implemented certain reforms in the meantime (such as introducing limited restrictions on free movement).

On this analysis, the upshot is that free movement rights would remain very largely unchanged for several years, although the long-term uncertainty would inevitably have a negative impact on migration of EEA nationals and the ability of UK businesses to employ skilled migrants.

1. Introduction

Our first in-depth analysis of Brexit - *Free trade and controlling free movement: can the UK and the EU square the circle?*¹ - was published in January 2017. In this brand new report, we revisit the various possible scenarios to see whether the fog has lifted at all. Are we any clearer about the UK's future relationship with the EU? What might the implications be for free movement of people between the UK and the EU and for the UK's immigration policy more generally?

Much has been written about the Brexit negotiations and the potential outcomes and ramifications. Less common are commentaries that comprehensively set out the various options for the UK, their respective viability and their likely implications - particularly for EU migration. This is what our report aims to do and we hope it helps to inform and elucidate the ongoing debate.

2. Latest developments

Notice to leave

The UK gave its notice of withdrawal under Article 50 of the Treaty on European Union on 29 March 2017. This notice is due to expire on 29 March 2019, when the UK will leave the EU. In July 2017, the Government introduced the European Union (Withdrawal) Bill (the "Bill") to Parliament to repeal the European Communities Act 1972 (the law by which EU law applies in the UK) and ensure the continuity of EU laws and rules as UK domestic law from the day after the UK leaves the EU. In completing its journey through Parliament, the Bill finally returned to the House of Commons for a third reading on 13 and 14 June 2018 to consider various amendments proposed by the House of Lords. Tense negotiations ensued with "soft Brexit" Conservative MPs and, aside from one amendment on the Irish border, the rest of the amendments were rejected. The Bill received Royal Assent on 26 June 2018 and became the European Union (Withdrawal) Act 2018 ("the Withdrawal Act").

In parallel, the UK and the EU are in the process of negotiating the terms of the UK's departure and the terms of any future relationship between them.

Withdrawal terms

The EU has been consistently clear that "sufficient progress" needed to be made on the exit terms before any negotiations take place on the terms of the future relationship.

Political agreement was reached in December 2017 on the three issues on which the EU had insisted needed to be covered by the exit agreement, namely: (a) the "divorce" payment the UK must make to cover commitments it had already made; (b) the rights of EU citizens in the UK (and vice versa); and (c) ensuring no "hard border" between Northern Ireland and the Republic of Ireland. The EU considered that this amounted to "sufficient progress".

This draft agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community ("the Draft Withdrawal Agreement")² currently extends to 130 pages; 168 articles and a protocol on Ireland/Northern Ireland ("the Irish Protocol"). Negotiations are continuing to finalise the outstanding details.

The divorce payment and citizens' rights appear largely resolved, although issues remain concerning the continued jurisdiction of the European Court of Justice ("ECJ"). The Irish border has, however, proved to be much more problematic. The EU remains resolute in its stance³ that the Irish border issue must be resolved before meaningful negotiations on the EU's relationship with the UK can progress.

At the time of writing Theresa May is due to host her cabinet colleagues at Chequers to seek to agree the UK's approach to the issue of the Irish border.

Transitional period

Assuming negotiations over the exit arrangement do not come to a halt over the Irish border, the EU and UK negotiators will then move on to the terms of what the EU calls a "transitional period", or the UK calls an "implementation period". It is currently proposed that this period will last until 31 December 2020, when the EU's current budgetary period ends.

Although certain details remain to be resolved, there seems a broad consensus that, during this transitional period, the status quo will be maintained. The UK will make financial contributions to the EU, remain in the Single Market and the Customs Union, and continue to be subject to the jurisdiction of the ECJ. The key difference between the UK's current membership of the EU and its status during the transitional period would be that the UK would have no, or little, say over EU decision-making.

Long-term relationship

Assuming exit terms and the terms of a transitional period can be agreed, the UK and the EU will then need to work towards "heads of agreement" or a political declaration setting out the basis of the long-term relationship between the parties. Following that, it is envisaged that detailed terms will be agreed during the transitional period. As yet, there is very little clarity as to what sort of agreement the UK will be seeking and what the final agreement is likely to look like.

Free movement rights for European Economic Area ("EEA") nationals – the latest position

In this report references to EEA nationals refer both to non-EU EEA nationals (those from Norway, Iceland and Liechtenstein) and EU nationals unless otherwise stated. Swiss nationals also benefit from the same rights as EEA nationals even though Switzerland is not an EEA member so references in this report to EEA national also includes, where relevant, Swiss nationals.

The Government has attempted to provide some certainty to EEA nationals living in the UK about their rights post-Brexit. Policy documents⁴ were published in June 2017 and a technical note⁵ in November 2017. The EU and UK have agreed that the citizens' rights chapter of the Draft Withdrawal Agreement will be incorporated into UK law. There are likely to be three phases:

➤ *Phase 1: before 29 March 2019*

EEA nationals and their family members residing lawfully in the UK before 29 March 2019 are not required to do anything at the present time.

The position under EU law is that EEA nationals who have been lawfully resident in the UK on the basis of exercising Treaty rights - studying, job seeking, employment, self-employment, and self-sufficiency - for a qualifying period of at least five years may hold permanent residence in the UK if they wish.

Permanent residence gives EEA nationals the right to reside lawfully in the UK regardless of whether they are exercising Treaty rights, and they can apply for a document to confirm their status.

Those who hold permanent residence documents may be eligible to obtain British citizenship. Under the terms of the Draft Withdrawal Agreement, settled status under UK law is set to replace permanent residence for EEA nationals and their family members. Settled status is equivalent to the indefinite leave to remain permission that non-EEA nationals may obtain under existing UK legislation, set out in the framework of the current UK Immigration Rules.

Applicants must have been lawfully resident in the UK for at least five years of continuous residence as a worker, self-employed person, student, self-sufficient person (or family member of such person). Settled status allows holders to: live and work in the UK free from immigration restrictions; access public funds; and obtain British citizenship provided they meet the eligibility criteria.

Those who do not meet the criteria for settled status will be entitled to remain in the UK until they have accrued five years' continuous lawful residence in total, after which they may be entitled to settled status.

As set out in the Settled Status Statement of Intent⁶, published on 21 June 2018, the Home Office is setting up a new online application process for either settled status or a temporary residence permit, which is expected to be rolled out this summer and fully up and running by March 2019. Applicants have until 30 June 2021 to apply, and up to this point their rights in the UK will be fully protected. The Statement of Intent sets out the criteria and cost of applications for the scheme and confirms that those granted settled status will have the same access as they presently do to healthcare and pensions. Ahead of the publication, Mr Javid accused the EU of failing to discuss comparable arrangements for UK expats living elsewhere within the EU post-Brexit.

➤ ***Phase 2: 30 March 2019 to 31 December 2020 (transitional period)***

The Government has agreed that EEA nationals and their families arriving in the UK from 30 March 2019 to 31 December 2020, will be able to stay on the same terms as before Brexit, but they will need to register if they choose to stay for longer than three months.

EEA nationals and their families who have been continuously and lawfully living in the UK for five years by 31 December 2020 will still be able to apply for settled status.

EEA nationals and their families who arrive by 31 December 2020, but will not have been living here lawfully for five years by this date, will be able to apply to stay until they have reached the five-year threshold required for settled status.

➤ ***Phase 3: 1 January 2021 onwards***

EEA nationals and their families arriving after 1 January 2021 will be subject to a new immigration system, the details of which will depend on the long term agreement (if any) entered into between the UK and the EU.

3. Definitions: Single Market and Customs Union

In recent months, the British public has come to understand better the meaning of, and distinctions between, the Single Market and the Customs Unions - terms which were largely unfamiliar before the EU referendum.

The Single Market

The Single Market refers to the EU as one territory, without any internal borders or other regulatory obstacles to the free movement of goods and services throughout the EU. It includes four fundamental freedoms, which are set out in Article 26 of Treaty on the Functioning of the European Union ("TFEU"):

- free movement of persons;

- free movement of goods;
- free movement of services; and
- free movement of capital.

The EU has consistently maintained that these four freedoms are inseparable and it will not allow the UK to “cherry pick” only certain aspects of the Single Market in any future agreement.

Free movement of goods means that not only can there be no customs tariffs between EU members, but that regulations must be harmonised throughout the EU. Take chocolate, for example, which the EU dictates must contain 30% cocoa in order to be called “chocolate”. The removal of trade barriers requires that chocolate sold in any EU member state must comply with this rule. If any country was allowed to depart from this rule, then border checks would be necessary to ensure “chocolate” containing less than 30% cocoa was not imported into another member state from one with less rigorous standards.

Free movement

Originally the European Economic Community (“EEC”) provided free movement rights for workers – the employed and self-employed - which are now enshrined in Article 45 of the TFEU. This was extended (by the 1993 Maastricht Treaty) to the more extensive idea of free movement of persons, which is one of the four fundamental EU freedoms set out above. The free movement of persons is linked to the concept of “EU citizenship”, as expanded upon in EU Directive 2004/38.

These free movement rights can be broken down into four main categories:

- the right to enter;
- the extended right of residence;
- the right to permanent residence; and
- the right to equal treatment.

As mentioned above, these free movement rights apply not only to EU nationals but to nationals of non-EU EEA states and to Swiss nationals. These rights derive from the European Economic Area Agreement to which the EU itself, EU member states as well as the non-EU EEA states are parties and from the bilateral agreements between the EU and Switzerland.

EEA nationals may enter the UK for three months, after which they can stay if they are a “qualified person” – namely, they are working, studying, self-employed or self-sufficient.

The Customs Union

A customs union governs its members’ trading relationships with countries outside that union. It does not have to be comprehensive and can cover certain goods only. However, a customs union which is not comprehensive would require border controls to police the import of goods not covered by the agreement.

Membership of the EU Customs Union is a consequence of member states signing up to the TFEU. It is a comprehensive customs union as it covers all goods and, in effect, governs the trading relationship between the EU and countries outside the EU.

The Customs Union cedes to the European Commission responsibility for agreeing free trade agreements (“FTAs”) with non-EU states. These FTAs set out a common approach for EU member states to set tariffs and non-tariff barriers to trade at borders between the EU and non-EU states.

FTAs between the EU and third-party countries not only set out tariffs to be applied to the import of goods into the EU, but also Tariff Rate Quotas (“TRQs”) which set limits on the volume of certain imported goods that can benefit from no or reduced tariffs. FTAs also set out regulations governing imported goods.

4. Current UK immigration rules for non-EEA migrants

The domestic immigration system which applies to non-EEA nationals is restrictive, partially because the UK has relied for many years on EEA nationals who have had unfettered access to the labour market.

From April 2008, the majority of ways a non-EEA national may enter the UK to work have been incorporated into the Points Based System, which consists of five Tiers:

- Tier 1: high-value (investors, entrepreneurs and those with exceptional talent);
- Tier 2: skilled workers with a job offer that meets salary, resident labour market test, or shortage occupation requirements;
- Tier 3: lower skilled workers in specific schemes (never implemented);
- Tier 4: students; and
- Tier 5: temporary categories, for example, internships, youth mobility.

Each tier has an allocation of points for specific attributes. A migrant’s visa application is only successful if the migrant fulfils each of a number of strict criteria.

Tier 2 is the most relevant for employers and is split into four categories: General; intra-company transfer; Sportsperson; and Minister of religion. Employers must obtain a sponsor licence from the Home Office before they can issue certificates of sponsorship to individual Tier 2 workers.

Tier 2 has become a progressively more expensive and restrictive route. For example:

- The Government introduced an upfront Immigration Skills Charge of £364 or £1,000 per year (depending on company size) for the duration of the visa as well as the usual visa application fees. There is an additional Immigration Health Surcharge fee of £200 per year. These costs are in addition to the visa application fees, currently £610 for a three year visa or £1,220 for a 5 year visa. This is in contrast to Canadian fees of CAD155 for a work permit.
- Employers must apply for Restricted Certificates of Sponsorship from the annual cap of 20,700 certificates to hire in workers from overseas who earn less than £159,600. Preference is given to shortage occupations, PhD occupation codes and milk-round recruitment.
- Intra-company transfer Certificates of Sponsorship are not capped. However, Tier 2 workers in all categories (including intra-company transfer workers) may not apply to enter the UK again as a Tier 2 worker until 12 months after the end of their visa or after their departure date from the UK (should their assignment end prematurely). Limited exemptions apply to roles at the high earner threshold, presently £120,000 for Intra-company transfer and £159,600 for Tier 2 (General), or for those on very short assignments.
- The UK has, however, waived the prior employment requirement for roles with salaries of £73,900 or more for workers under the Tier 2 intra-company transfer route and employers may avoid the Resident Labour Market test for shortage occupations, high earners under the Tier 2 (General) category or Tier 4 students converting into Tier 2 status from inside the UK.

- Self-employment is only permitted under Tiers 1 and 2 in very limited circumstances. A self-employed individual, for example, a dentist or a consultant would have to be sponsored by a Tier 2 company unless they invested funds into a new or existing business under the Entrepreneur route and worked for the company where they were registered as a director.

Tier 3, which was designed for lower skilled routes, was never implemented given the number of EEA nationals available to take up these roles.

Tier 5 provides for non-EEA nationals to carry out internships and for certain nationalities to work in lower skilled jobs on Tier 5 Youth Mobility Scheme visas for a two year period. However, the current system does not cater to skills shortages in lower skilled jobs and sector based schemes have ceased to operate.

5. The Irish border

Of all the issues to be resolved in the negotiations between the UK and the EU, the question of the border between Northern Ireland and the Republic has become the most problematic. Both sides want as frictionless a border as possible and are mindful of a hard-won peace in Northern Ireland which could be jeopardised by border controls. However, this could prove to be an intractable problem, bearing in mind the UK's and the EU's respective "red lines".

The EU speaks of a "frictionless" border⁷, while the UK speaks of "minimising friction": there is a profound difference between minimal friction and no friction.

The EU has made it a condition of any future trade agreement that there can be no hard border. Indeed, for the EU, resolving the Irish border issue is a pre-condition to agreeing the exit terms on which the proposed transitional period and engagement in discussions about a future trade agreement depend – a position that was repeated at the European Council meeting on 28 and 29 June 2018.

As mentioned above, the Draft Withdrawal Agreement reflects the political agreement reached in December 2017 in which the UK committed to no hard border and regulatory alignment between Ireland and Northern Ireland if no other solution could be found. The Irish Protocol is highlighted in yellow/not highlighted at all to signify its details are yet to be agreed and includes reference to "a common regulatory area" and the UK's commitment to avoid a hard border "including any physical infrastructure or related checks and controls".

This position was reinforced in the Withdrawal Act when the Government accepted the (slightly amended) House of Lords amendment preventing any new border arrangements, including any "physical infrastructure including border posts, or checks and controls".

The Government has since been working to achieve the seemingly impossible and come up with a workable solution.

Customs partnership and maximum facilitation

The prime minister, Theresa May, has been exploring two alternatives with her Cabinet colleagues, the so-called "customs partnership" and the so-called maximum facilitation ("max fac").

With a customs partnership, goods entering the UK from outside the EU would be subject to two alternative regimes. For those goods destined for onward export into the EU, EU customs tariffs and regulations would apply. For those destined to remain in the UK, UK rules would apply. Importers would pay EU tariffs at the border and then reclaim the difference if they could show the goods

remained in the UK and were eligible for lower UK tariffs. It is not clear what the position would be if the UK tariffs were higher than the EU ones.

Max fac anticipates that the use of technology and other measures to streamline procedures would “minimise frictions to trade”.

There are major obstacles to both proposals, including:

- The Cabinet cannot agree on the right approach. The group of ministers entrusted by Mrs May to develop the UK’s position on Brexit is split and, as time ticks by, seem no closer to an agreed position.
- Even if the Government can reach agreement on its preferred position, it may not be possible to get this through Parliament.
- Recent reports suggest that Theresa May is beginning to realise that neither option could be in force by the end of 2020, when it is currently envisaged the proposed transitional period would end. There is now talk of a second transitional phase to continue after the first one ends.
- HM Revenue & Customs forecasts suggest that “max fac” would cost businesses up to £20 billion a year in additional costs.
- A frictionless border without checks requires not only consistent tariffs between the UK and third-party countries and between the EU and such countries, but also requires the same welfare and consumer protection regulations to apply. The proposed solutions only address tariffs.
- It is one thing for either proposal to become the UK’s preferred option, but it also needs the EU’s agreement. So far, the EU has rejected both ideas out of hand.

In practice, to avoid a hard border in Ireland, there will have to be a customs union to which the Republic of Ireland and Northern Ireland - at least - are parties, and common rules to enable the free movement of goods. Assume that no such customs union existed and the UK reached a trade agreement with the US including reduced tariffs on car imports, how else would the EU be able to ensure that cars declared as destined for the UK with lower tariffs were not re-exported into Ireland (and hence the whole of the EU)?

The problem is not limited to tariffs. Without a customs union setting out regulations to which imports must comply, the UK could agree a trade agreement with the US which permitted the import into the UK, of, for example, chlorinated chicken or “chocolate” with a lower cocoa content than required under EU law (see above). The absence of any border controls would permit, in practice, the unrestricted import of such goods into the EU, thereby undermining any customs checks the EU operates at its borders with non-EU countries.

Even if there were a customs union, this would not be sufficient. If there is no set of common rules applying across the EU and the UK the same issues would arise.

As mentioned above, the prime minister has already accepted the need for “regulatory alignment” between Northern Ireland and the Republic. By this, Theresa May presumably means the same regulatory outcomes, but with the right to get there in different ways. In her Mansion House speech in March 2018, she concluded her comments on the Irish border by stating that a frictionless border “*can be achieved via a commitment to ensure that the relevant UK regulatory standards remain at least as high as the EU’s... We recognise this would constrain our ability to lower regulatory standards for industrial goods.*”⁸

This comment raises various questions, including:

- What about agricultural goods? How does the prime minister believe the export of those would be policed if different regulatory standards prevail?
- What if the EU introduces higher regulatory standards in the future? Regulatory alignment would force the UK to follow and introduce rules over which it has no say.

In truth, there is no middle way or compromise. The EU has suggested a solution would be for Northern Ireland to be part of the Single Market and a customs union with a hard border between Northern Ireland and the rest of the UK. Due to the special circumstances of Northern Ireland, the EU seems prepared to apply free movement of goods rules to the province without requiring all four fundamental freedoms to apply. It seems that avoiding a hard border is sufficiently important for the EU to be prepared to make an exception to its principle that the four fundamental freedoms embodied in the Single Market are indivisible.

As a result, the only possible outcomes would seem to be:

- The UK backs down and accepts a hard border between Northern Ireland and mainland United Kingdom (it would, however, seem politically all but impossible for the UK effectively to move the hard border to the Irish Sea and Theresa May has said that no prime minister could agree to this).
- The EU and the UK recognise that Brexit must result in a hard border between Northern Ireland and the Republic (albeit one where border controls are minimised so far as possible).
- The UK recognises that the only way forward is for it to be in a customs union with the EU and in the Single Market (including all four freedoms).
- The EU backs down from its position that the UK cannot “cherry pick” parts of the Single Market.
- Negotiations break down and there is an acrimonious “no deal” parting of the ways.

At the time of writing Theresa May is promising to present a new solution to her cabinet colleagues for consideration.

Free movement - the Irish border

Ireland is part of the so-called Common Travel Area⁹. Immigration control does not apply to people arriving in the UK from the Republic of Ireland subject to the Immigration (Control of Entry through Republic of Ireland) Order 1972, which excludes several categories of person, for example, nationals of countries who require visas to enter the UK, or visa nationals. Visa nationals who wish to apply for Indefinite Leave to Remain (permanent residence) can find themselves locating immigration officers to stamp them into the UK so that there is a record of their date of entry. Post-Brexit this will present an issue as if there is no border or freedom of movement rights EU nationals who can enter Ireland freely would also be able to enter the UK freely even if they would be doing so unlawfully. A pragmatic response would be to exempt EEA nationals from visa requirements or alternatively to allow EEA nationals and family members issued with residence documents in Ireland into the UK without a visa.

6. Options for the UK's future relationship with the EU

There are six potential long-term outcomes from the negotiations with the EU, namely:

- (a) The UK remains in the EU.
- (b) The UK leaves the EU and remains in the Single Market, but not in a customs union with the EU.
- (c) The UK leaves the EU and remains in a customs union with it, but not in the Single Market.
- (d) The UK leaves the EU and remains in both the Single Market and a customs union with the EU.
- (e) The UK negotiates a trade agreement with the EU.
- (f) No agreement is reached and the UK resorts to trading with the EU under World Trade Organisation ("WTO") rules.

We discuss these in turn below, together with the consequential implications for free movement and immigration.

A. UK remains in the EU

There are significant obstacles to the UK staying in the EU. Of the UK political parties, only the Liberal Democrats currently advocate this. Most Remainers recognise the challenges of a repeat referendum and struggle against accusations of "denying the will of the people". Many staunchly pro-EU MPs from across the political spectrum promote the closest possible relationship with the EU, rather than pressing for a repeat referendum or seeking to avoid Brexit.

If there is no agreed extension to the UK's notice period to defer departure, remaining in the EU would require either:

- the UK's notice to leave being withdrawn; or
- the UK leaving the EU on 29 March 2019 next year but subsequently re-joining it.

There is debate as to whether or not the UK would be entitled to withdraw its notice to leave unilaterally even if it wanted to. Delaying departure, while unlikely, seems more plausible than withdrawing the notice.

One possibility is that the UK leaves the EU and enters a transitional period which ends up being longer than currently envisaged, during which the UK's relationship with the EU is very little changed.

It is certainly foreseeable that the UK could leave the EU and subsequently seek to re-join, in light of the challenges of the alternatives: the passage of time; the possibility of shifting public opinion; and the likelihood of a very different domestic political landscape.

If agreement from the EU is needed in order for the UK to remain in the EU (or re-join it), the terms might well exclude the UK's rebate (the UK negotiated a reduced contribution to the EU budget but has been under pressure from other member states to give up this for several years). The terms might also exclude certain opt outs from EU laws from which the UK currently benefits. It is, however, difficult to envisage such a scenario ending with the UK remaining in the EU but on significantly worse terms than before the referendum.

EU reform

Re-joining the EU would become a more realistic prospect politically if the EU were to change in the meantime, perhaps by restricting free movement rights. Another scenario might see the EU developing into a two-tier union with a core group of countries, perhaps the Eurozone ones, pressing for greater integration and an outer group of members including the UK.

With French president Emmanuel Macron pressing for closer integration¹⁰ among the Eurozone countries, tensions arising between countries such as Hungary and Poland and the rest of the EU, Eurosceptic parties coming to power in Italy, and the EU pressing Switzerland for a formalised agreement to replace the current hotchpotch of agreements (see below), perhaps the time is near for a fresh look at the idea of a two-tier EU. The financier George Soros has recently advocated this, suggesting that the UK might feel comfortable in an outer-tier.

It is an intriguing possibility that future reform of the EU might open the way for the UK to reconsider membership.

UK remains in the EU - free movement

If the UK were to remain in the EU, it would continue to accept free movement of persons from the EEA as it currently does. Similarly, British citizens would continue to benefit from free movement rights throughout the EEA. Nationals of EEA countries and, by extension, their non-EEA family members could continue to live, work, study and reside in the UK on the basis of self-sufficiency, with UK citizens and their families benefiting from equivalent rights throughout the EEA.

➤ *Controlling EU migration*

There is some scope within existing EU laws for controlling migration. EU countries cannot impose a requirement for EEA nationals to apply for residence documents within the first three months of their stay. However, some EU countries ask EEA nationals to report their presence for short stay of less than three months to the relevant authority within a reasonable time of arrival and may impose a penalty if they fail to do so. Other EU countries request that EEA nationals register with a relevant authority if residing in the country for more than three months. The UK government could add similar administrative hurdles, which would provide assurances that the Government is aware of the number of EU migrants and family members who are living in the UK.

The Government could also require EEA nationals to prove that they have an offer of employment or would not be a burden on the public resources. Depending on the form this might take, additional controls may well be acceptable to the EU.

As set out in the report *Balanced Migration: A Progressive Approach*¹¹ by the Institute for Global Change, a think-tank headed by Tony Blair, 25 out of the 31 states in the EEA currently use national identity cards and 15 of those countries have mandatory schemes. Technological advances mean that many states (Belgium, Germany, Estonia and Spain) are introducing compulsory electronic identity cards (eIDs) which facilitate the opening of bank accounts, travel within the EU and accessing benefits and services.

Controlling EEA migration through registration or an eID scheme could do much to alleviate public concerns about controlling access to benefits and services, but it would deny services to EEA nationals who are not lawfully in the UK.

In the wake of the Windrush scandal, where individuals have been denied access to services because they do not have paperwork to prove their status and there are insufficient or no

official records, it would be important for the Government to be careful in implementing any such scheme so that EEA migrants are not wrongfully denied access to benefits and services. For example, if an EEA national is lawfully resident in the UK but then their employment is terminated, they may no longer be a qualified person and could be left in limbo.

➤ *Remaining in a reformed EU*

Tony Blair has stated his view that Brexit could yet be stopped if the EU were to accept reform, including “a comprehensive plan on immigration control, which...includes sensitivity to the challenges of the freedom of movement principle”¹². The report¹³, mentioned above, by the Institute for Global Change, suggests that populations have lost trust and confidence in governments’ management of immigration. Pressure to review free movement rights is also coming from some within the central and eastern European countries experiencing a brain drain of skilled talent to richer EU neighbours.

It is argued that in the UK this loss of trust was exacerbated by the decision of the Labour government, following the accession of eight countries from central and eastern European countries to the EU in 2004, to work in the UK without restriction. This resulted in a much higher number of EEA nationals moving to the UK than was anticipated, contributing to the popular feeling that EEA migration to the UK was out of control. Successive governments since 2010 have focused on reducing net migration to the tens of thousands (EU and non-EU migrants included).

The report recommends establishing a “targeted emergency brake” during periods of high inflows to avoid a similar scenario. We cite below a recent example from Switzerland demonstrating how this might work in practice. (See also our January 2017 report¹⁴, in which we discussed the extent to which non-EU EEA members such as Norway could utilise a safeguard brake set out in the EEA Agreement also referred to below).

	Free movement of persons	Frictionless borders for trade	Right to agree own trade agreements	Financial contributions to the EU	Supremacy of EU law	Jurisdiction of the ECJ
UK remains in the EU	✓	✓	✗	✓	✓	✓

B. UK leaves the EU and remains in the Single Market but not a customs union

If the UK were to remain within the Single Market, it could do this as a result of a bespoke agreement with the EU or by joining the EEA.

The second of these two possibilities – the so-called “Norway option” - is advocated by the Scottish Nationalist Party.

As mentioned above, Norway (with Iceland and Liechtenstein) is part of the Single Market by virtue of its membership of the EEA. This is governed by the EEA Agreement, which came into force on 1 January 1994 and brings together those three countries with the EU member states, each of which

is a signatory. Under the terms of the EEA Agreement, Norway accepts the four fundamental freedoms of the Single Market, with certain exceptions not available to the EU member states.

Norway makes significant financial contributions to the EU budget, but it is difficult to make a direct comparison with the contributions it would make if it were an EU member. Norway pays more than the UK per capita, but less than the UK as a proportion of GDP, while Iceland is a net recipient of money from the EU.

Norway is subject to what is called the *acquis communautaire*, which means it is subject to EU laws over which it has little say. There are merely decision-shaping mechanisms designed to permit the non-EU EEA states to contribute to new laws at an early stage, but without any formal say in their adoption.

The UK could not unilaterally decide to join the EEA as this would require the agreement of the parties to the EEA Agreement, namely Norway, Iceland, Liechtenstein as well as all other EU members.

European Free Trade Agreement

Norway is also a party to the European Free Trade Agreement (“EFTA”) and, if the UK were to join the EEA, it could also join EFTA. Technically, it would be re-joining as the UK was a founder member of EFTA between 1960 and 1973 and left when it joined the EEC (which subsequently became the EU).

There is a fundamental difference of principle between an EU member’s subservience to the ECJ and the position of Norway in relation to that court. In practice, enforcement of EU law in Norway is by reason of Norwegian domestic law and not subservience to EU law.

Norway is not subject to the jurisdiction of the ECJ, but is subject to the EFTA Court which adjudicates on questions relating to the EEA Agreement (in effect, EU law) as it applies to the three non-EU EEA members. Unlike the ECJ, the EFTA Court does not have primacy over local courts in that its decisions are not legally binding on domestic courts and domestic courts have no obligation to make referrals to the EFTA Court. In practice, however, Norway must follow ECJ case law - the sanction for non-compliance would presumably be for the EU to remove Norway’s participation in the Single Market if it flouted EU law.

If the UK were to join EFTA, one would assume that the EFTA Court would be the arbiter of relevant disputes involving EU law as it is for the current EFTA members. The EFTA Court and ECJ look to each other’s case law in making decisions and there is a high degree of consistency.

If the UK were somehow to remain in the Single Market but outside EFTA, an independent body would presumably be needed to arbitrate. It is not clear whether those whose animosity is directed towards the ECJ have a particular issue with that court, or with the principle of the UK courts being subservient to an international body of any kind.

Perhaps for arch-Brexiteers, the EFTA Court’s jurisdiction applying as it does in Norway by reason of domestic law would be acceptable. Indeed, WTO disputes are resolved by a dispute settlement mechanism to which members subscribe. Otherwise, it is as if the UK should be its own judge in any disputes affecting it in its international relations. That is akin to wanting to play in the World Cup but also be the referee.

No customs union

As it is not in a customs union with the EU, Norway is free to negotiate its own FTAs. However, it has ceded responsibility for negotiating trade agreements to EFTA.

EFTA, like the EU for its members, negotiates FTAs with third-party countries and currently benefits from 27 FTAs with 38 countries and territories outside the EU. Unlike the EU, however, EFTA coordinates trade policy and is not a customs union. EFTA members therefore also have the right to enter into bilateral trade agreements with other countries.

Not being in a customs union with the EU means that there is not frictionless trade between Norway and other EU states. Consequently, there is a hard border between Norway and Sweden.

If the UK were to remain in the Single Market but outside the EU, and without a customs union with the EU, the consequences would include:

- The need for a hard border between Northern Ireland and the Republic.
- Non-tariff barriers to trade with the EU, in particular regarding “rules of origin”. For any UK goods exported to the EU, it would need to be shown that they did not include products imported from outside the EU to which different tariffs or other rules applied.
- The continued application of EU laws over which the UK would have little say, even if the constitutional supremacy of the ECJ would not be the same.

Switzerland

Switzerland has preferential access to parts of the Single Market which it has built up through bilateral agreements over 20 years. This preferential access does not cover financial services. Switzerland accepts free movement of persons and pays a financial contribution to the EU (albeit a small fraction of the UK’s contribution, whether calculated per capita or as a proportion of GDP).

Switzerland is not in a customs union with the EU and the ECJ has no enforcement powers. Indeed, there is no legal mechanism for enforcing Switzerland’s obligations under the bilateral treaties and control is, in practice, political. The EU would presumably end Switzerland’s preferential rights if it concluded that Switzerland was breaching its obligations.

The Swiss/EU relationship is controversial from both the EU’s and Switzerland’s perspectives. The Swiss public voted narrowly in a 2014 referendum to introduce a quota on EU migration - a step which, if taken, the EU made clear would end Switzerland’s preferential access to the Single Market. Attempts by Switzerland to seek some form of compromise were not successful.

The EU (and some within Switzerland) are keen to regularise the relationship and negotiate a new Treaty. Others in Switzerland are pressing for the country to cut its ties with the EU. In January 2018, the Swiss People’s Party (SVP), the largest party in the Swiss Parliament with around 30% of votes and a third of seats, secured approval to canvass for the 100,000 signatures needed to call for a referendum on severing these ties and introducing controls on free movement.

Leaving EU but remaining in Single Market – free movement

If the UK remains in the Single Market, it would have to accept free movement of persons broadly in the same way as it would as an EU member.

So far as the non-EU EEA member states (Norway, Iceland and Liechtenstein) are concerned, their free movement obligations set out in the EEA Agreement are not quite the same as those of EU member states. Article 112 of the EEA agreement states that if there are ongoing serious economic,

societal or environmental difficulties, a party to the agreement can unilaterally adopt safeguard measures. Liechtenstein has suspended freedom of movement, implementing a quota system for what is, in effect, an indefinite period. Freedom of movement appears therefore negotiable for EFTA states.

Switzerland, meanwhile, has preferential access to parts of the Single Market and accepts freedom of movement. In December 2016 Switzerland stated that they would control immigration by obliging employers in regions or sectors of high unemployment to target local applicants (of whatever nationality). This was acceptable to the EU.

In addition, a safeguard clause in the bilateral Swiss-EU agreement, which took effect from 1 June 2017, allows Switzerland to impose quotas on Bulgarian and Romanian nationals if immigration exceeds a level that is 10% above the median of the previous three years. As a result, Switzerland reintroduced work permit quotas for Bulgarian and Romanian nationals and implemented a new annual quota¹⁵ of 996 long-term permits (released quarterly). This followed a significant increase in granted residence permits in 2016, when migration from Bulgaria and Romania doubled to 3,300 compared with the previous year¹⁶.

This ability to calculate and control in-flows may appeal to that part of the UK electorate concerned about migration, and could be deployed to demonstrate the UK Government's resistance to uncontrolled migration of EEA workers into the UK.

	Free movement of persons	Frictionless borders for trade	Right to agree own trade agreements	Financial contributions to the EU	Supremacy of EU law	Jurisdiction of the ECJ
Norway model	✓ (with limited safeguards)	✗	✓	✓	Political not legal	Not necessarily
Swiss model	✓	✗	✓	✓	In some areas and then political	✓

C. UK leaves the EU and remains in a customs union but not the Single Market

In recent months, the distinction between *the* Customs Union and a customs union has become more topical.

The Customs Union

The UK cannot remain part of the Customs Union when it leaves the EU because, as mentioned above, membership of the Customs Union arises from membership of the EU. The UK would, however, be free to negotiate a customs union with the EU to come into force once it leaves the EU, which could largely replicate the Customs Union.

The EU currently has FTAs covering 62 countries with a further 15 finalised but not yet signed. Many others are covered by trade negotiations which have been ongoing for some time, though several are stalled. As a member of the Customs Union the UK benefits from these FTAs. Upon leaving the Customs Union, the UK would not be able unilaterally to adopt the EU FTAs. Preserving those deals, never mind negotiating better ones, would pose political and technical challenges.

Leaving the Customs Union and seeking to replicate it with a new customs union on equivalent terms would create uncertainty until it became clear whether or not the UK would be able to continue to benefit from the existing FTAs.

Turkey

The only example of a third country being in a customs union with the EU is Turkey, but the Turkish model would represent a very unsatisfactory outcome for the UK. Turkey is in a customs union with the EU but this does not cover services or agricultural goods. This results in a hard border between Turkey and the EU to control those goods not covered by the agreement.

Under the terms of this customs union, Turkey has no say in new trade agreements which the EU might negotiate and which would apply to Turkey and it only accepts EU customs rules on the import of goods into Turkey. It does not benefit from the preferential trading arrangements which the EU has negotiated for exports into the countries covered by these agreements.

A customs union

In February 2018, Jeremy Corbyn announced¹⁷ a shift in Labour Party policy to advocate continued membership of a customs union. Many Brexiteers oppose this option as it would reduce the UK's freedom to negotiate its own trade agreements. Acquiring such freedom was nonetheless compared by Sir Martin Donnelly, former permanent secretary at the Department of International Trade, to giving up a three course meal for the prospect of a bag of crisps¹⁸ (which seems a fair analogy).

Even if Mr Corbyn were in a position to take control of the UK's negotiations, agreeing a customs union presents very considerable challenges. Firstly, the UK would almost certainly have little role in any future trade negotiations the EU might have. As a member of a customs union with the EU, the UK would necessarily be bound by future FTAs reached by the EU, but is unlikely to be a party to the negotiations and would not have to approve - so effectively lose its veto over - any final agreement before it came into force. The UK would, in practice, be a taker not maker of rules which would seem very unattractive politically.

Mr Corbyn has made clear that Labour's preference for a "comprehensive" customs union is predicated by the "need to ensure that the UK has a say in future trade deals" and "Britain being able to negotiate new trade deals in our national interest".¹⁹

Does "having a say" mean a right of veto, or merely a right to be consulted? If the former, it seems highly unlikely that the EU would fetter its own right to agree deals by a requirement for the UK, a non-EU member, to agree. If the latter, it must be doubtful whether it would be politically acceptable to go from the current position, where the UK must agree to any new EU trade agreements which apply to it, to a situation where trade deals covering the UK can be reached even if it opposes them. Does Mr Corbyn expect to be at the table alongside the EU negotiating new deals with third countries? It seems unlikely this would be acceptable to the EU.

Trade agreements represent a complex balancing of the negotiating parties' interests. Without a place at the table it must be questionable whether, for example, UK whisky distillers' interests would be given the same weight as Greece's olive producers.

In addition, what does Mr Corbyn mean by “comprehensive”? As mentioned above, the EU-Turkey customs union does not cover agricultural goods (hence the lengthy delays at the frontier between Turkey and the EU) or services. Does Mr Corbyn mean that in “negotiating trade deals in our national interest”, there would be sectors which his comprehensive trade agreement would not cover (with a consequential requirement for border checks)?

A second major drawback to Mr Corbyn’s approach is that it would not, of itself, dispense with the requirement of a hard border between Northern Ireland and the Republic (or, indeed, at Dover).

As mentioned above, even if the UK and the EU could agree a customs union which applied the same tariffs to all goods imported into the combined EU/UK territory and even if the issue of TRQs could be overcome, regulatory alignment would be necessary to ensure goods imported into the combined territory complied with the same regulations. Unless the EU backtracks and agrees to unpick the Single Market, a hard border would be needed between Northern Ireland and the Republic of Ireland.

Leaving the EU but remaining in a customs union - free movement

If the UK were to leave the Single Market but remain in a customs union with the EU, the free movement rights and obligations arising from participation in the Single Market would fall away. The UK would be free to impose whatever rules on migration it wished, subject to any terms of the customs union agreement which might or might not include preferential migration rights. Within a customs union, the UK could endeavour to negotiate agreements setting out preferential immigration arrangements for UK nationals entering those countries and vice versa.

As mentioned above, Turkey is the only example of a third country being in a customs union with the EU. Member states of the EU are bound by the Association Agreement signed with Turkey as far back as 1963. Turkish nationals do not benefit from freedom of movement to the EU and fall under domestic immigration laws of each member state. There is only limited preferential treatment for certain categories of Turkish nationals in the UK. For example, self-employed Turkish business persons are permitted to work in the UK. However, the UK’s Upper Tribunal (Immigration and Asylum Chamber) recently found that settlement for Turkish nationals and their dependants did not fall within the scope of the “standstill clause” of the agreement, so those individuals are no longer entitled to settle in the UK.

	Free movement of persons	Frictionless borders for trade	Right to agree own trade agreements	Financial contributions to the EU	Supremacy of EU law	Jurisdiction of the ECJ
Customs union but not Single Market	x	x	x	x	Only very limited	Not necessarily

D. UK leaves the EU and remains in both the Single Market and a customs union

No country participates in the Single Market as well as either: a) *the* Customs Union; or b) a customs union with the EU but, at the same time, is not a member of the EU. This option is advocated by many politicians from both major parties. However, it seems an unlikely long-term outcome.

This option does not deliver any of the advantages which Leavers want to achieve from Brexit, which include: a) no financial contributions to the EU; b) supremacy of the UK courts; c) freedom to negotiate the UK's own trade agreements; d) control over borders by ending free movement; and e) control of domestic laws. In practice, this option would mean that the UK loses any say over the rules which apply to it.

There would be very limited differences between being in the Single Market and a customs union, on the one hand, and continued membership of the EU, on the other hand. These limited differences might include:

- The possible jurisdiction of a court other than the ECJ (see above).
- The supremacy of EU law as a practical necessity rather than a constitutional obligation.
- Lower financial contributions to the EU budget.
- Limited safeguards permitting restrictions on free movement in exceptional circumstances.
- Some aspects of common fisheries and common agricultural policies not applying.

To all intents and purposes this option will essentially mirror EU membership but forfeit any say in EU decision-making, begging the question "what's the point?".

Leaving the EU but remaining in the Single Market and in a customs union with the EU – free movement

The position would be the same as if the UK remained in the Single Market but not in any customs union with the EU (see above).

	Free movement of persons	Frictionless borders for trade	Right to agree own trade agreements	Financial contributions to the EU	Supremacy of EU law	Jurisdiction of the ECJ
Single Market and a customs union	✓	✓	✗	✓	Political	Not necessarily

E. UK negotiates a trade agreement with the EU

If the UK were to leave the Single Market and remain outside a customs union, it could negotiate a trade agreement with the EU based on an existing agreement or it could negotiate a bespoke agreement.

Existing model - Comprehensive Economic and Trade Agreement with Canada (CETA)

The much publicised CETA²⁰, which was provisionally entered into in September 2017, took seven years to negotiate between Canada and the EU.

CETA is often cited as the most likely model for an EU/UK trade agreement because of Theresa May's current red lines rejecting a customs union and continued participation in the Single Market.

CETA:

- Abolishes tariffs on around 98% of produces traded between Canada and the EU.
- Maintains quotas on tariff free export for certain products (e.g. cheese into Canada and beef into the EU).
- Excludes entirely certain produces from preferential market access (e.g. eggs).
- Allows EU business to access public procurement tenders.
- Improves intellectual property rights.
- Reduces technical barriers to trade.
- Gives preferential free movement rights for inter-company transfers and their families and for professionals.
- Subject to exceptions, provides that service providers shall have similar access to domestic markets as domestic suppliers.

If a UK/EU trade agreement reflected the approach taken in CETA it would: a) give the UK back control of its borders; b) remove any obligation to make financial contributions to the EU; c) remove the primacy of the ECJ; and d) remove the need to follow EU laws.

It would, however, result in barriers to trade between the EU and the UK including some non-financial barriers, as well as tariffs and quotas. In particular, there would still be "rules of origin" barriers where exporters would have to certify the origin of goods. There would consequently be a hard border between Northern Ireland and the Republic.

Existing model – Canada and free movement

CETA has reduced restrictions for EEA nationals entering Canada to work or establish themselves in business. For example:

➤ *Inter-company transfers under CETA*

CETA establishes preferential free movement rights for inter-company transfer of workers and their families. CETA's inter-company transfer provisions allow EU citizens who have been employed by an enterprise in the EU for at least a year to transfer to a subsidiary, branch or parent company in Canada. The seconded employee must be a Senior Personnel, a Specialist or a Graduate Trainee (as defined). Spouses of high skilled workers may be eligible for open work permits.

➤ *Independent professionals under CETA*

Independent professionals are defined as self-employed individuals in the EU in certain industry sectors who have secured a contract in Canada. To be eligible to work in Canada, CETA independent professionals must have relevant industry experience and professional or graduate qualifications and be engaged in the supply of a service on a temporary basis as a self-employed person in Canada. Spouses may be eligible for open work permits as above.

➤ *Investors under CETA*

European investors who are staying for an extended period in Canada can also obtain Labour Market Impact Assessment “LMIA” exempt work permits to start their business.

Adopting similar provisions to CETA in a bespoke agreement with the EU would potentially be a more suitable option than the existing Points Based System routes (see above).

	Free movement of persons	Frictionless borders for trade	Right to agree own trade agreements	Financial contributions to the EU	Supremacy of EU law	Jurisdiction of the ECJ
Canada model	x	x	✓	x	x	x

Existing model - Ukraine

The Ukraine’s Deep and Comprehensive Free Trade Agreement (DCFTA) is another example of an EU trade agreement, although this is of less relevance to the UK because the aim is to prepare the Ukraine to meet EU regulatory standards as a stepping stone to possible membership.

Bespoke model - Theresa May’s vision

A consistent complaint from the EU is the UK’s lack of clarity on the relationship it wants with the EU. This is a consequence of the schisms within the Government between “soft Brexiteers” who prioritise a close relationship with the EU post-Brexit and the “hard Brexiteers” who prioritise control and sovereignty. The next eagerly awaited development promises to be the publication of a white paper by the Government setting out the UK’s preferred relationship in the coming weeks. It remains to be seen what this will be.

Theresa May’s stated preference has been for “the deepest possible trade agreement”²¹ and one which is not based on an existing model. She has unwaveringly equated leaving the EU with leaving the Single Market and any customs union.

There are significant political and technical difficulties with this approach.

Michel Barnier, the EU’s chief negotiator, has repeated countless times that a bespoke model is not on the cards. He is unwilling to allow the UK to “have its cake and eat it” and “cherry pick”²² the benefits of the Single Market. This has been reiterated by Donald Tusk, President of the European Council who has stated²³ that a “pick ‘n’ mix” approach to the Single Market is a red line as far as the EU is concerned (notwithstanding that, in one sense, as Theresa May has highlighted, every free trade agreement is different and, as such, amounts to cherry picking). It is also the case that the EU seems prepared to accept an outcome in which the Single Market is “unpicked” as far as Northern Ireland is concerned.

Notwithstanding the EU's position, Theresa May set out the "Canada plus plus plus" free trade agreement sought by the Government in her Mansion House speech on 2 March 2018.

In negotiating "the broadest and deepest partnership possible", she envisages three considerations in promoting free trade in goods: a) tariffs; b) quotas; and c) regulatory standards.

Agreeing with the EU a trade agreement which abolishes tariffs and quotas for UK sourced goods will be relatively straightforward and uncontentious. Applying common regulatory standards is more challenging.

Theresa May's vision for the free trade in goods envisages an independent mechanism to oversee these arrangements, presumably an arbitration panel similar to that found in the Ukrainian DCFTA. This would avoid any role for the ECJ.

Notwithstanding the EU's stated position, there are two other obstacles to this set of arrangements.

Firstly, in practice, the UK would find itself a "taker not maker" of rules. Each time the EU introduced new regulations, the UK would find itself either being forced to follow without them having had any say in making those rules or lose access to the EU market for the affected products. The Government may well argue that it has "taken back control" because it had the power to reject the new regulation, albeit with profound consequences. In reality, the UK would be substituting a real say over new regulations as a member of the EU for a specious taking back of control.

Secondly, if the bespoke arrangement is not coupled with membership of a customs union and continued participation in the Single Market, this "broadest and deepest partnership" will require customs controls between the EU and the UK. These would inevitably interrupt the supply chains of, for example, motor manufacturers based in the UK who rely on a frictionless pan-European supply chain. It would also require a "hard border" between Northern Ireland and the Republic.

➤ **Services**

The UK has a significant trade surplus in services with the EU (and the World as a whole) whereas it has a significant trade deficit with the EU in goods. In light of this, a trade agreement which covers services is of particular importance to the UK.

Free trade in services is very different to free trade in goods. Tariffs, quotas and border checks are less relevant than non-discrimination and common regulatory environments. Inside the Single Market British financial services businesses currently benefit from "passporting" rights which confer freedom to operate throughout the EU. Theresa May has recognised that these "passporting" rights, derived from membership of the Single Market, will fall away if the UK leaves the Single Market and the Chancellor, Philip Hammond, has argued²⁴ that any trade agreement must include financial services with regulatory equivalence.

The EU has, so far, rejected this stance, pointing out that no other FTA includes financial services (although it is interesting to note that Michel Barnier pressed for financial services to be included in the stalled EU/US Transatlantic Trade and Investment Partnership ("TTIP") negotiations between the EU and the US).

The EU is unlikely to agree to fetter its right to introduce new regulations in the future in which case the UK would likely have to match any new regulations to maintain equivalence. This would also put the UK in the position of being a taker not maker of rules. This is unlikely to be acceptable to Theresa May who has stated that the UK will not agree a position where it must accept new EU regulation automatically.

➤ *UK and Free Trade Agreements*

If the UK agrees an FTA with the EU post-Brexit outside of any customs union, it would have the freedom to enter into trading agreements with non-EU members. This would bring a number of advantages and disadvantages.

Being able to negotiate FTAs with non-EU members would give the UK greater agility in reaching agreements which do not require the agreement of each EU member state. The UK would be able to concentrate on its own interests and not have to defer to those of other countries which often have different priorities. For example, giving greater access to the UK's market for some producers (for example, wine or olive oil producers) would reduce prices for UK consumers whilst having very little impact on UK producers. On the other hand, opening up access for other products (such as whisky) imported into Europe might be of little concern to most EU members other than the UK.

However, with a gross domestic product (GDP) of \$2,600 billion the UK will, arguably, be in a less strong negotiating position in trade negotiations than the EU which has a combined GDP of \$17,100 billion. The EU as a whole is much a more significant market to non-EU countries than the UK alone.

In addition, the progress which has already been made in negotiations between the EU and a number of other countries threatens to put the UK at the back of the queue for negotiating new trade agreements. China has stated²⁵ that it will not open negotiations with the UK on a trade agreement without a withdrawal agreement between the UK and the EU. Japan has made clear²⁶ that it will place any agreement with the UK behind one with the EU. The challenges, but also the potential benefits, of accessing such a large market as the US are set out below but it is instructive to recall that former President Obama placed a UK FTA behind an EU one before his tenure ended. Although US politics will no doubt change in time, there remain significant obstacles to overcome in light of the current President's approach to free trade.

➤ *Replicating existing EU FTAs*

Existing FTAs between non-EU member states and the EU which govern the UK's current trading relationship will end with the UK leaving the EU. The UK will need to replace these agreements which could take some time even if the UK aims to replicate as far as possible the existing EU agreement. The risk is that other countries may see this as an opportunity to renegotiate the agreement or take the view that an agreement with the UK alone is contrary to their interests.

A further issue in replicating existing agreements would be how to replicate TRQs incorporated into the EU FTAs. These TRQs apply preferential tariffs to limited volumes of imports or exports and would have to be renegotiated in any split between the UK and the EU. For example, under the CETA, the EU is permitted to export tariff free 32,000 tons of cheese to Canada. Unless, Canada, the UK and the EU can agree how this will be split, the UK will not be able to merely replicate this. In practice, negotiations with both the EU and Canada will be required.

➤ *Key markets*

The largest non-EU markets are:

1. USA - \$19,400 billion

2. China - \$11,900 billion
3. Japan - \$4,900 billion
4. India - \$2,400 billion
5. Brazil - \$2,100 billion

The EU does not have, and has no short-term prospect of, any trade agreements with the USA, China and India. However, although not yet in force, Japan and the EU have agreed the terms of an economic partnership agreement. Brazil, together with the other Mercosur countries (Argentina, Paraguay and Uruguay), is in ongoing negotiations with the EU over a trade agreement. The next two biggest non-EU economies, after those listed above, are Canada and South Korea. Both these countries have entered into trade agreements with the EU.

India has made it clear²⁷ that in return for any trade agreement, it will require easier access to the UK for its people. That is unlikely to be acceptable to those Leavers principally concerned about immigration. There are mixed views amongst commentators on the likelihood of a free trade agreement with China and whether the UK would be in a better negotiating position as part of the EU. Trade agreements with China and India are likely to have a profound impact on the UK economy – on the one hand providing welcome opportunities through greater access to these markets but, on the other, opening up certain sectors such as manufacturing to lower cost competition with which they would be unlikely to be able to compete on price.

➤ **US/UK FTA**

The US is potentially a bigger market for the UK than the EU. However, the issues with reaching a trade agreement with the US have already attracted much comment. TTIP negotiations offer an insight into what a US/UK deal might look like.

TTIP negotiations stalled following Donald Trump's election and his protectionist "America First" approach to trade which seems incompatible with achieving a comprehensive trade agreement. While the negotiations are confidential, leaks suggest that the final agreement would, in all likelihood, be similar in many respects to CETA but would include additional measures restricting rights to regulate financial services to encourage free competition across the EU and US.

There are a number of areas of potential controversy with TTIP. One is in relation to "sanitary and phytosanitary (plant sanitary) issues". TTIP aims to eliminate unnecessary barriers and could bring into sharp relief the very different standards in this area on the two sides of the Atlantic. One often cited example is chlorinated chicken in the US (referred to above), where it is lawful to use chlorine to wash chicken for human consumption. This practice is not lawful in the EU. Michael Gove has made it clear²⁸ that any deal with the US could not involve any relaxation of the UK's food hygiene and welfare standards and would block any deal that allowed chlorinated chicken into the UK. Liam Fox, on the other hand, has suggested²⁹ he is more open to relaxing standards.

Wilbur Ross, US Commerce Secretary, has made it clear³⁰ that any deal with the US would necessitate the UK changing its food safety rules as well as opening up the UK health service to competition from US private healthcare companies. An erosion in welfare and consumer protection standards appears, therefore, to be an inevitable consequence of any US/UK FTA.

Even anticipating political change in the US, a US/UK FTA seems contingent on an "Americanisation" of UK business regulation. The prospect of a deregulated UK is, almost

certainly, at odds with the values of most of Britain, whether Leaver or Remainer. It is also at odds with Michael Gove and Theresa May's position in relation to the post-Brexit regulatory environment.

The other area with TTIP which has attracted much controversy is the investor state dispute mechanism which allows corporations to sue governments in private arbitration if they considered government policy had infringed their rights. This was watered down in CETA to a more transparent investment court system with certain safeguards which might prove a more sustainable model.

Concerns about a loss of sovereignty arising from EU membership would no doubt be repeated if the UK were to replace EU membership with a TTIP-style UK/US FTA enforced by private arbitration to which the UK courts would be bound.

Without a trade agreement with the US, there seems little point in jeopardising the benefits of EU trade agreements - the potential benefits arising from the freedom to negotiate the UK's own trade agreements with other markets seem limited. However, those opposed to a customs union may take the view that it is unacceptable to cede sovereignty to a multi-state body to undertake negotiations even if the outcome of taking control of the negotiations ourselves would inevitably be far worse.

The UK negotiates a bespoke agreement with the EU – free movement

Preferential rights of migration, either for EEA citizens to enter the UK or UK citizens to enter the EEA, could be negotiated as part of a FTA with the EU.

In her Mansion House speech of 2 March 2018, Theresa May stated³¹ that “businesses across the EU and the UK must be able to attract and employ the people they need. And we are open to discussing how to facilitate these valuable links.” This was the first time the UK has stated that migration could be open to negotiation. While migration from the EU would be managed, this alluded to reciprocal arrangements with EU and UK companies to ensure that workers from EU-based companies can move to the EU with relative ease and vice versa. It also implied that there may be a preferential or easier route for EEA highly-skilled migrants coming to the UK or vice versa.

Taking a leaf out of CETA, if the UK wished to use an inter-company transfer arrangement for EEA nationals they would arguably need to significantly reduce the visa fees and exempt them from an Immigration Skills Charge currently in operation. Also, they may not want to regard EEA nationals as “temporary workers” without a right of permanent residence.

The CETA independent professionals category could be a more refined version of the now disbanded Tier 1 (General) category, which replaced the Highly Skilled Migrant Program and was a less restrictive route for those wishing to take up employment or self-employment in the UK. Individuals could come to the UK on a self-sponsored basis and were awarded points for attributes including age, earning potential and qualifications. They also had to meet an English language requirement. Individuals could take up employment or set themselves up in business without a formal job offer.

Under existing UK domestic immigration laws, there are preferential arrangements for certain nationalities wanting to work in the UK. For example, the UK Ancestry provisions allow Commonwealth citizens with a grandparent born in the UK, including the Channel Islands and the Isle of Man, or in Ireland but before 31 March 1922, with a job offer in the UK to obtain a five year visa leading to settlement. Further, the Tier 5 Youth Mobility visa allows nationals of certain countries (Australia, Canada, Japan, Hong Kong, Monaco, New Zealand, Republic of Korea and Taiwan) aged

18 – 30 to obtain a two year working holiday style visa. The quota varies depending on the country of nationality.

The UK could grant EEA nationals similar preferential arrangements.

	Free movement of persons	Frictionless borders for trade	Right to agree own trade agreements	Financial contributions to the EU	Supremacy of EU law	Jurisdiction of the ECJ
Bespoke trade agreement	x	✓	✓	Very limited	x	x

F. No agreement is reached with the EU

If no agreement is reached on the terms of a transitional period (or no extension to the notice period is agreed) then the UK will leave the EU - the so-called “cliff-edge” scenario. The UK would crash out of the EU without a deal on 29 March 2019.

Even if the terms of a transitional period are agreed, the possibility of crashing out of the EU without a deal will resurface in negotiations over a permanent deal. On the face of it, there appears to be absolutely nothing to gain for Leavers or Remainers in a no deal over a Canada-style agreement. However, no deal remains a distinct possibility.

WTO

In the absence of any deal, the UK would fall back on WTO rules governing trade. This would not, however, be straightforward.

The EU’s membership of the WTO, as with its FTAs (see above), includes complicated TRQs for different products and different countries. For example, the EU quota for New Zealand lamb and mutton is just over 228,000 tonnes. The EU and the UK, in a welcome consensus, have agreed to how to split these quotas based on past usage. However, a number of countries including New Zealand and the US have protested to the WTO that they will be disadvantaged and will not agree. Taking the lamb and mutton example, the US and New Zealand argue that they currently have the right to vary the proportion of the 228,000 tonnes between the UK and the rest of the EU, depending on demand. If the proportions going into the UK and the remainder of the EU were fixed, they risk losing out.

The challenges of falling back on WTO rules extend not only to maintaining agreements with those countries with which the EU does not have trade agreements but also to the terms of a trading relationship between the UK and the EU based on WTO rules. This relationship would have to be negotiated and approved by the WTO.

Joiners to the WTO have, in the past, taken many years to agree terms. Crashing out of the EU on 29 March 2019 would not mean the UK could rely on WTO trading terms the next day - detailed terms would need to be negotiated and agreed.

The latest obstacle to falling back on WTO terms is Donald Trump’s imposition of tariffs on steel and aluminium imports to the US, almost certainly in breach of WTO rules. The President is not a fan of

the WTO and has said that he might withdraw the US from the WTO, casting doubt on its future role as guardian of free trade.

Aside from several micro-states and Pacific Island nations, the only countries which are neither members of the WTO nor observers as a prelude to membership are: Eritrea, North Korea and Turkmenistan. If the UK crashed out of the EU, it would join these illustrious companions.

No agreement is reached with the EU – free movement

Current immigration laws would continue to apply (see above).

If the UK left the EU without any sort of agreement, it would need to address the needs of many employers for skilled and unskilled migrant workers.

If EEA nationals are to fall under the current immigration system, it would have to be considerably reformed to allow UK employers to recruit sufficient staff. Self-employment and employment in lower skilled roles, particularly those with sectoral or regional shortages would have to be addressed.

As outlined in our previous report, returning to a work permit scheme would place administrative burdens on the state which the Government would most likely want to pass to employers.

Lobbying from the National Farmers' Union and the agricultural and horticultural industries may well result in the re-introduction of a SAWS scheme open to non-EEA nationals. The Seasonal Agricultural Workers' Scheme, was closed to non-EEA nationals from 2007, and ended in December 2013 to coincide with the removal of restrictions on workers from Bulgaria and Romania in January 2014. At the time the scheme closed the annual quota was 21,250 SAWS participants. A Sector Based Scheme in the food processing sector also closed at the end of 2013.

Talk of a revamped Tier 5 Youth Mobility visa (as mentioned above, currently open to a small number of nationalities, and restricted to those aged 18 – 30 and for a two year period) may result in an equivalent visa of longer duration and broader age limits for lower skilled EEA or non-EEA nationals.

However, if the sharp reduction in net migration from the EU continues, shorter visas for so-called lower skilled positions or a temporary working holiday style visas may not draw in workers who would like the current option of obtaining permanent residence.

	Free movement of persons	Frictionless borders for trade	Right to agree own trade agreements	Financial contributions to the EU	Supremacy of EU law	Jurisdiction of the ECJ
WTO	x	x	✓	x	x	x

7. The UK political landscape

The numbers

Since the June 2017 snap election misfired and Theresa May lost her majority, domestic politics have never been so uncertain. In this context, it is impossible to predict how Brexit might unfold.

The Conservatives hold a parliamentary majority of 12, but only with the support of the ten Northern Irish Democratic Unionist MPs. The Conservatives are also deeply divided. The prime minister relies on a faction of about 60 no compromise Hard Brexiteers, but they are opposed by a number of Remainer MPs fighting for as close a relationship as possible with the EU. Recognising the challenge

of advocating for a reversal of the referendum result and “denying the will of the people” these “Soft Brexiteers” are pushing for a customs union and, logically, the Single Market.

Labour is now backing a softer Brexit, including the negotiation of a customs union, and will have the support of the SNP, Liberal Democrats and Plaid Cymru. However, Jeremy Corbyn is unlikely to be able to rely on up to seven Labour Hard Brexiteers.

It does seem only a matter of time before the schism in the Conservative party between Hard and Soft Brexiteers can no longer be managed.

A new government would throw everything up in the air again.

Public opinion

Public opinion has shifted little since the referendum, or so the polls say. They suggest that a small majority would now vote remain but equally that a small majority believes that the decision has been made and should not be revisited.

It is likely that an event such as the first car plant closure linked to Brexit will trigger a more significant shift, although this is yet to happen. Businesses are understandably cautious about public and consumer reaction and so are reluctant to link business decisions to Brexit. Increasingly, however, many are articulating strong concerns about the absence of a frictionless border after Brexit.

The political landscape - what it might mean for free movement?

Since 2010, immigration policy has been defined by the Conservative party manifesto to reduce net migration to the “tens of thousands”. This target has never been met. Net migration over the last ten years has ranged from a low of +154,000 in 2012 to a high of +336,000 in 2015.³²

In the year ending September 2017, net migration statistics³³ show that 244,000 more people came to the UK than left. However, migration from the EU fell sharply by 75,000 in the last year, with the decrease mainly due to a significant drop in the number of EU citizens coming to the UK to work or seek work (a drop of 58,000). Non-EU migration (+205,000) increased by 40,000 in the last year and is now larger than EU net migration (+90,000). At the same time, the number of EU citizens leaving the UK has experienced the highest outflow in a decade.

In a leaked paper³⁴ in September 2017, the Home Office stated that “wherever possible UK employers should look to meet their labour needs from resident labour” and that employers must complete an economic needs test to check whether they can source suitable recruits locally. The report also stated that the Home Office would be likely to grant those in highly skilled occupations with an employment contract lasting more than 12 months a permit of three to five years but would grant a permit of only up to two years for those in lower skilled occupations. The report went on to say that the Home Office would reduce the opportunity for workers to settle long term in the UK, particularly at lower skill levels.

However, there are signs that the concerns shaping the immigration landscape are shifting.

- The Migration Advisory Committee (MAC), a public body which offers independent advice to the Government on migration issues, recently gave a clear indication³⁵ that the Government is prepared to listen to concerns from business about the impact of restricting EEA migration. The MAC took the unusual step of publishing an interim update ahead of its full report, scheduled for release in September 2018, which showcased the opinions and concerns of UK business and employers across industry sectors. It even went so far as to state that it is

plausible that EEA migrants are sometimes a high quality, motivated workforce compared to British workers in similar occupations.

- The recent Windrush debacle over the Commonwealth citizens arriving in the UK between 1948 and 1971 who were given Indefinite Leave to Remain by the 1971 Immigration Act but have in some cases been deported, lost their jobs or been denied access to services has also highlighted the flaws of the “hostile” or compliance-driven immigration environment.
- The Home Secretary, Sajid Javid, told Parliament³⁶ in his first Commons speech that the term “hostile environment” is “unhelpful and does not represent our values as a country.” He also confirmed³⁷ on the Andrew Marr Show that he understands why overseas students should be taken out of net migration figures.
- According to reports in the Times on 11 June 2018, Sajid Javid favours a universal system of access rather than preferential treatment for EU nationals.
- The Home Office revealed plans³⁸ on 12 June 2018 to introduce a new start-up visa to improve the application process for entrepreneurs establishing a business in the UK. The expanded route is expected to start in Spring 2019.
- Under increasing pressure from ministers and business, the Home office has announced that the immigration rules will be relaxed to allow more non-EU doctors and nurses into the UK to fill NHS vacancies.
- The Cabinet is split on post-Brexit immigration system and plans to discuss this have stalled.
- Labour was initially in favour of the end of freedom of movement for EU nationals following the UK’s departure from the EU, but appears to be softening their position. Sir Keir Starmer said³⁹ on the Andrew Marr show that the UK will likely need an immigration policy that allows people “to cross borders across the UK, across the EU, to work”.

8. Conclusion

Making a prediction as to where all this will end has become increasingly difficult. The Irish border, an issue rarely mentioned before the referendum, has become a seemingly intractable issue. Something must give on one or both sides’ current red lines or the UK will be crashing out of the EU next June.

The EU is steadfast in demanding that it gets cast iron assurances about the Irish border before even the exit terms can be finalised. As set out above, this will require the UK to agree, effectively, to continued membership of the Single Market and a customs union unless and until an alternative can be agreed. At the current time, there seems to be no realistic alternative. With the Withdrawal Act repeating the requirement to avoid a hard border, a further Parliamentary vote will be needed before an alternative course of action can be lawfully taken.

On that basis, it does seem likely that the UK will commit to a backstop - effectively Single Market membership and a customs union unless and until an alternative can be found.

During the transitional period, when a longer-term agreement can be negotiated, there will be a slow realisation that reaching any agreement on a longer-term trading relationship or putting in place any necessary border controls will take a lot longer than two years. With the next election due to take place in May 2022 (assuming the current Government survives that long), the UK’s approach may well change course at that point.

In the writers’ opinions, ultimately the most likely outcomes are:

- a) a Canada plus (not plus plus) agreement similar to CETA but with the possibility of some limited agreement covering services and, in particular, financial services. This result would see a hard border erected between Northern Ireland and Ireland with the possibility of customs checks, though one which appears relatively frictionless (this would require some fudging by both sides as to what they had originally meant by a hard border); or
- b) that the UK will return to the European Union (with face-saving changes to the EU, probably in the area of limited restrictions on free movement having occurred in the intervening years) and we all look back on this episode as a huge waste of time and money.

If we are right, free movement rights will remain very largely unchanged for many years, although long-term uncertainty will no doubt have a corrosive impact of the migration of EEA nationals. This will result in the UK losing out on skilled migrants who will likely choose other destinations. In light of this the UK may well relax the rules generally for short-term unskilled migrants and possibly reintroduce a SAWS-like scheme.

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