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EU Migration and EU Citizens' Rights



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Culture, Tourism, Europe and External Relations Committee

Remit: To consider and report on the following (and any additional matter added under Rule 6.1.5A)—

- (a) proposals for European Union legislation;
- (b) the implementation of European Communities and European Union legislation;
- (c) any European Communities or European Union issue;
- (d) the development and implementation of the Scottish Administration's links with countries and territories outside Scotland, the European Union (and its institutions) and other international organisations; and
- (e) co-ordination of the international activities of the Scottish Administration.
- (f) culture and tourism matters falling within the responsibility of the Cabinet Secretary for Culture, Tourism and External Relations



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Convener's Foreword

The UK's intended withdrawal from the EU has made all of our futures uncertain. For no group is this uncertainty more keenly felt than the 181,000 EU citizens who live in Scotland and the Scots who have made their homes in Europe.

They currently do not know if they will be able to continue their lives in the countries that they made their homes. In Scotland, EU citizens have settled in our cities, towns and rural communities. They have helped reverse the population decline that so worried us at the beginning of this century. They have contributed to the growth of our economy by filling skilled and unskilled, temporary and permanent jobs. But most importantly they have settled in our communities, enriched our lives and broadened our cultural horizons. The report includes two testimonies that we received from EU citizens who have made their homes in Scotland. These provide powerful evidence on the impact that Brexit has had on their lives.

UK citizens living in this country, and in Europe, will also see a reduction in their rights on leaving the EU. We have become used to moving freely within the EU for business and pleasure so the prospect of visa requirements or travel restrictions presents both a physical and psychological barrier to travel and engagement with our European neighbours in the future. We recently heard from the Scottish Youth Parliament that young people in Scotland see freedom of movement as an opportunity rather than a threat and want that right to be protected. The risk is that the UK will become a third country on the fringe of the largest and deepest union of countries and peoples in the world.

When the Committee visited Brussels recently for a series of meetings, we were told that the resolution of the position of EU citizens was regarded as the most significant element of the withdrawal agreement. I believe there is an immediate need to resolve the current state of limbo in which EU citizens in Scotland, as well as Scots abroad, find themselves. There must be a consideration of how the rights of EU citizens in Scotland can be protected and how EU and EEA EFTA nationals already in Scotland can remain.

Finally, witnesses also told us that it was important for there to be an evidence-based debate on immigration in Scotland and I hope that this report contributes to the development of a constructive debate on migration in the future.

Joan McAlpine MSP
Committee Convener

Introduction

EU immigration was one of the most controversial issues in the debate on the UK's membership of the European Union. Immigrants come to the UK from many countries in the world, indeed more immigrants come from non-EU countries than from EU countries. However, during the referendum there was considerable discussion on how EU immigration to the UK could be reduced or further controlled.

When the Committee developed its inquiry into the EU referendum and its implications for Scotland, it agreed to commission research into EU migration patterns in Scotland and to consider the rights of EU nationals in the UK and UK nationals in the EU as a key theme of its inquiry.

This report brings together those two pieces of work, presenting quantitative and qualitative data on EU migration to Scotland and the contribution of EU migrants to Scotland's economy and Scottish society. It also considers the rights of the 181,000 EU citizens resident in Scotland, who represent 3.4% of the population, as well as the rights that UK citizens enjoy as EU citizens whether they live abroad or in Scotland. Finally, it reflects on Scotland's future migration needs and the potential for a differentiated immigration policy in Scotland to ensure that Scotland's population growth is not reversed by withdrawal from the European Union.

Executive Summary

Demographic and EU migration trends in Scotland

The Committee believes that the evidence that it has brought together on EU migration to Scotland for this report provides valuable quantitative and qualitative material on migration patterns and the contribution of EU migrants to the Scottish economy and society.

Significantly, EU migration has helped reverse the trend of a declining population that was an issue of key concern in the early years of the Scottish Parliament. The Committee recalls that in 2004, a key proposal of the then Scottish Executive led by First Minister Jack McConnell, was to establish a Relocation Advisory Service and develop a Fresh Talent initiative to prevent Scotland's population falling below 5 million by 2009. The concern about population decline has been alleviated by EU migration to Scotland which has supported population growth, particularly among those of working age in Scotland.

The EU migrants that have settled in Scotland, whether on a temporary or permanent basis, have become well established in Scotland's biggest cities, but have also supported the sustainability of some rural communities. The high labour market participation rates of migrants from the post-2004 EU Accession countries, in particular, are crucial to a number of economic sectors in Scotland.

Notably, over 30,000 people are employed in the distribution, hotels and restaurants sector, and 12,000 EU migrants are employed in health and social work. Scotland's agricultural sector also depends on migrant workers to do seasonal work.

The Committee was concerned by the quality of the data available on the employment of EU migrants, particularly the lack of statistics for the agriculture, forestry and fishing sector.

The Committee's report summarising the written evidence received from stakeholders – Brexit: What Scotland thinks: a summary of evidence and emerging issues – also provided strong evidence on the importance of EU migrants to a range of economic sectors and the success of those sectors in recent years. Notably, EU migrants have supported the growth and success of Scotland's higher education and research sector and been crucial to the construction sector.

The percentage of migrants coming to Scotland as a whole has been lower than the rest of the UK, with non-UK nationals making up 5.6% of the population in Scotland compared to 8.7% for the UK as a whole. Notably, since 2000, 50% of

the increase in the numbers of people born outside the UK living in Scotland has come from EU nationals, compared to 32% in the UK as a whole.

The projections provided by the National Records of Scotland of zero future EU migration, while they represent a worst case scenario, present stark evidence of the demographic importance of EU migrants in Scotland. As the majority are of working age, they have increased the size of the working population in Scotland and offset the effects of an ageing population. With higher fertility rates, they have also helped reverse population decline. The Committee therefore believes that there are acute risks to Scotland of a loss of the existing EU migrants or a decline in future migration.

While much of this report has focused on numbers and trends, the Committee is very aware that these all refer to people who have left their own countries and familiar environments in order to make new lives in Scotland, whether on a temporary or permanent basis.

The Committee agrees that the 181,000 EU nationals who live in Scotland are now experiencing “imposed uncertainty” as they wait to find out whether they will be able to continue to live in Scotland. The Committee welcomes the evidence that it heard suggesting that there had been less hostility to EU nationals in Scotland than in other parts of the UK, but is very conscious of the impact that the discussions of their future will have during the negotiations on withdrawal from the EU.

Furthermore, if these people leave as a result of the prospect or reality of withdrawal from the EU, it has the potential not only to undermine Scotland's economic performance, but also to reduce the sustainability and cultural diversity of our communities – whether in cities, towns or rural areas. The Committee believes that EU migrants have enriched our lives and widened our cultural horizons – losing them would leave Scotland a narrower place.

EU Citizens' Rights

The Committee is particularly concerned by the current position of EU and EEA EFTA nationals living in the UK, as well as UK nationals who are exercising their rights as EU citizens in other countries. This includes 181,000 EU nationals living in Scotland. As the UK Government has indicated that discussions on the position of these people will be considered as part of the withdrawal negotiations, UK nationals in EU and EEA EFTA Member States and EU and EEA EFTA citizens in the UK face a protracted period of uncertainty and no guarantee that they will be able to continue to live where they currently reside.

The Committee considers that by including EU and EEA EFTA nationals living in the UK, and UK nationals living in EU and EEA EFTA Member States, as part of the negotiations there is a risk that their position remains unclear and becomes

part of the wider negotiations. The Committee therefore calls on the UK Government to provide clarity on the position of EU and EEA EFTA citizens living in the UK without further delay.

The impact of the UK withdrawing from the EU on the rights of EU and EEA citizens

The rights of UK citizens

The Committee recognises that the UK's membership of the European Union has conferred a range of legal rights on UK citizens as EU citizens. Principal among these is the freedom to move and reside freely within the EU, which many UK citizens have enjoyed. This has allowed EU citizens to travel freely in order to study, to work and to reside in other EU Member States and benefit from the same rights that citizens of those states enjoy. It has also allowed UK citizens the right to establish businesses in the EU.

The Committee believes that ability to exercise these legal rights freely has become an intrinsic part of our lives and one that many of us have taken for granted. There are generations of UK citizens who have never known the restrictions that visa requirements place on travel, either from a business or personal perspective. If UK citizens are no longer able to exercise these legal rights, it will not only establish physical barriers, but it will inhibit our engagement with the countries and peoples of the EU.

The Committee calls on the UK Government to give priority to ensuring that UK citizens can continue to travel without burdensome visa requirements and that the capacity of UK citizens to travel for work or pleasure will not be restricted in any significant sense. It also believes that this will help promote the principle of reciprocity in future travel arrangements between the UK and the EU Member States.

The position of EU and EEA Citizens who reside or work in the UK and their family members

The Committee notes that over 110,000 of the EU citizens living in Scotland may currently be eligible for Permanent Residence Cards, but that there has not been any evidence of a significant increase in applications following the EU referendum. The Committee concurs with evidence suggesting that there may be a point at which high numbers of EU citizens seek to formalise their residency in the UK and that this is likely to put a severe logistical strain on the Home Office.

The Committee therefore calls on the Scottish Government to work with local authorities and migrants groups to provide further information and support to EU citizens living in Scotland who wish to apply for Permanent Residence Cards, and to explore the potential of local authorities to provide this service. It asks the

Scottish Government to assess the capacity of the six centres in Scotland that pre-check applications to ensure that they can cope with greater demand and provide support to EU citizens across the whole of Scotland.

The Committee is concerned by the burden that may be placed on employers when EU citizens seek to collect the evidence of their residence, as well as the fact that EU citizens will be dependent on the goodwill of employers in providing this information.

The Committee is also concerned that EU citizens who have lived in the UK for more than five years may assume that they will satisfy the requirements for permanent residency but not qualify on sickness insurance grounds. It therefore calls on the Scottish Government to raise this issue at intergovernmental level and press for the sickness insurance requirements to be interpreted as being met by the legal right to use the National Health Service. The Committee also believes that there should not be any substantial increase in the cost of applying for a Permanent Residence Card, particularly as the cost could be prohibitive for families on low incomes.

The Committee calls for the rights of third country nationals living in the UK due to a family relationship with an EU citizen to be addressed in any future agreement. The Committee believes that there is a risk that these third country nationals could experience a reduction of their rights as a result of the UK withdrawing from the EU.

Students and pensioners

The Committee has received evidence from the higher education sector about the positive impact that EU and EEA students have made to Scottish universities and the income they bring to the Scottish economy. The Committee would therefore like to see a continuation of the opportunity for EU and EEA EFTA students to study in Scotland and for Scottish students to study in EU and EEA EFTA countries, as well as the involvement of students from Scottish universities and colleges in the Erasmus programme.

The Committee recognises the particularly vulnerable position of pensioners, whether they be UK pensioners living in other Member States, or EU and EEA EFTA pensioners living in the UK, in connection to the index-linking of pensions or the provision of medical cover.

The Committee therefore calls on the Scottish Government to represent the specific interests of these two particular groups in its intergovernmental discussion with the UK Government on the position of EU citizens.

UK nationals living in the EU and the EEA EFTA countries

The Committee notes the arguments made in evidence that the constitutions and fundamental rights of other Member States may offer some protection to UK nationals living in them. However, it remains concerned by the lack of clarity on the future rights of UK nationals, and their family members, to continue to reside in other Member States where they have made temporary or permanent homes. It believes that there is a pressing need to resolve the position of these people so that they have clarity on the extent to which their rights and their ability to continue their lives will be affected.

The degree of protection offered by acquired rights and human rights

The Committee notes that the doctrine of acquired rights may provide some protections in relation to property or contract rights, but offers little to support the protection of EU citizens' rights.

The Committee believes that European Convention on Human Rights provides more protection than acquired rights, particularly in a situation where no withdrawal agreement is reached before the end of the two year negotiating period under Article 50. In this scenario, the right to family and private life under Article 8 could provide protection to EU citizens in the UK where cases were litigated. However, the Committee does not consider that the European Convention on Human Rights and the Human Rights Act protect, or substitute, the rights that EU citizens currently enjoy in the UK.

Associate citizenship

The Committee notes with interest the proposal developed by Charles Goerens MEP for some form of associate citizenship and the support that Guy Verhofstadt MEP, the European Parliament's lead negotiator on Brexit, has for the idea. The Committee also recognises the challenges to making such a proposal a reality, notably the need for Treaty change and the support of the Member States. Nevertheless, the Committee considers that the challenges posed by Brexit may require pragmatic and creative approaches to be developed in order to deal with problems such as those that will be faced in relation to the rights of EU and EEA EFTA citizens.

The potential for bilateral agreement between the UK and individual Member States

The Committee recognises that there would be many challenges to the UK seeking bilateral agreements with individual Member States in the absence of an EU-level agreement covering EU citizens. In particular, bilateral agreements would undermine the concept of EU citizenship enshrined in the EU Treaties. It

therefore considers that this makes reaching agreement as part of the withdrawal negotiations as more imperative.

Future EU migration to Scotland

The Committee notes the strong case made by witnesses for holding an informed and evidence-based debate on immigration in Scotland and hopes that this report can contribute to the development of such a debate.

The Committee recognises the value of the research, both quantitative and qualitative, carried out by those who contributed to the Committee's inquiry work. It commends the Scottish Government and the National Records of Scotland for their work in trying to improve the data on migrants, and individual academics and GRAMNet for their work in researching the lives and experience of migrants. Nevertheless, the Committee considers that it will be crucial to better understand Scotland's demographic, geographic and skills requirement in order to articulate the case for Scotland's migration needs in the future. The Committee therefore calls on the Scottish Government to collect more data on EU and other migrants, including the sectors that they work in and their contribution to the economy and society in Scotland. As part of this work, the Committee calls on the Scottish Government to consider how the 2021 Census can be used to improve the data that is available on those born outside of the UK who live in Scotland.

The Committee considers that there is a strong argument for Scotland to be able to continue to attract migrants from European countries as distinct from other countries in the world. This is because there are existing communities from these countries already established in Scotland and their proximity facilitates the flexibility that seasonal or temporary employment requires. It also supports the development of close cultural ties with our continental neighbours and geopolitical allies.

The Committee notes the evidence presented that the current non-EEA immigration system in the UK does not respond to Scotland's needs, particularly in relation to skills gaps, and the needs of local areas, and that the Scottish shortage occupation list has been little used. The Committee heard of the precedents in countries such as Canada, Australia and Switzerland for different immigration policies within a state and believes that this must be considered for Scotland, and other parts of the UK, following the UK's withdrawal from the European Union.

The potential for a differentiated Scottish immigration policy

The Committee acknowledges that there was a spectrum of views in evidence on the potential for Scotland to have a differentiated arrangement in relation EU migration. These ranged from the development of the existing immigration system to be more responsive to Scotland's needs through to the development of a system to allow EU citizens to work or be self-employed in Scotland, but not in the rest of the UK. Some considered the legal and practical difficulties to be insurmountable, while others saw the potential for National Insurance numbers to be used to facilitate a differentiated immigration system for Scotland.

The Committee is concerned both by the position of EU and EEA EFTA citizens living in Scotland and the UK citizens living in EU Member States and the impact of Brexit upon them, and the continuing need for Scotland to grow its population and fill vacancies in the labour market. While individual Committee members hold differing views on Scotland's future relationship with the EU, the Committee collectively believes that a full range of options need to be explored which may protect the rights of EU and EEA EFTA citizens and allow for EU and EEA EFTA nationals already in Scotland to remain. It should also allow EU and EEA EFTA nationals to migrate to Scotland in the future to take up employment and contribute to Scottish society.

Conclusions

We believe that this report provides strong evidence of the importance of EU migration to Scotland and the contribution that EU citizens have made to the Scottish economy and Scottish society. EU migration since 2004 has contributed to reversing the decline in the Scottish population and in increasing the number of people of working age in Scotland. It has also been of significant net economic benefit and increased Scotland's fertility rate. Scotland may no longer face the challenge of population decline to the same degree as in the early years of the Scottish Parliament.

EU withdrawal poses a major challenge for EU citizens. We are concerned about the position of the 181,000 EU migrants living in Scotland, as well as the position of Scots living in Europe. They are effectively living in a state of limbo until there is clarity on whether they will be able to continue their lives here, and if so, under what terms.

We believe that Scotland's economy could suffer if we no longer have access to European workers who have been crucial to so many sectors of our economy, ranging from agricultural workers, through those employed in food and tourism to skilled engineers and scientists in our high-growth sectors. EU citizens have become a crucial part of our labour market, and there are risks to the Scottish economy of any decline in current number of EU migrants.

We believe that EU citizens who have made their homes throughout Scotland should be allowed to remain. Most live in Scotland's major cities, but others have also made homes in rural communities where they have contributed to the sustainability of those communities. They have brought and shared their cultures, enriching our lives and our society. Scotland is part of Europe and would be a poorer place without these citizens from other European countries.

The evidence that we have collected shows that the demographic risks for Scotland of a reduction in the number of EU migrants are more acute than for the UK as a whole. This leads us to conclude that there has to be a bespoke – or differentiated – solution for immigration policy in Scotland in the future. The Committee also recognises that there may need to be a bespoke solution that can respond to skills or demographic needs in other parts of the UK. This need for a bespoke or differentiated solution in Scotland should be fully explored by the Scottish Government and raised by it in its discussions with the UK and other devolved administrations.

EU migration

1. Following the vote in the EU referendum for the UK to leave the EU, the Culture, Tourism, Europe and External Relations Committee (the Committee) initiated a number of pieces of work. One of these was to commission the Scottish Parliament's research service – SPICe – to produce research on demographic trends and EU migration to Scotland. SPICe used data from the Office for National Statistics Annual Population Survey (APS) and prepared a briefing on [EU nationals living in Scotland](#) which was published in November 2016. This research also informed a roundtable evidence session held by the Committee on 8 December with a number of experts in the field of migration.
2. The first part of this report draws on the SPICe briefing and the evidence heard by the Committee to set out demographic and migration trends in Scotland. It presents evidence on historic population trends; recent migration trends and the growth in Scotland's population; the nationality of EU migrants and the impact of EU enlargement on patterns of migration; the age profile, economic activity and skills level of EU migrants; levels of social mobility; and the contribution of EU migrants to Scottish society. It then considers the position of EU migrants following the EU referendum in June 2016.

Demographic and EU migration trends in Scotland

Historic population trends

3. In the last decades of the twentieth century, Scotland's low fertility rates resulted in population decline. Professor Robert Wright of the University of Strathclyde told the Committee that low fertility rates have determined Scotland's population growth—

” What drives population growth in Scotland is not immigration or net migration but fertility. Fertility is below replacement level and has been for four and a half decades. The Scottish population will in the future not grow much, and it will not grow rapidly.¹

4. Furthermore, Scotland has historically experienced net out-migration as people living in Scotland have moved elsewhere in the UK or the world, primarily to secure employment. The natural change in Scotland's population – that is the number of births minus the number of deaths – has been insufficient to replace this outward migration flow.

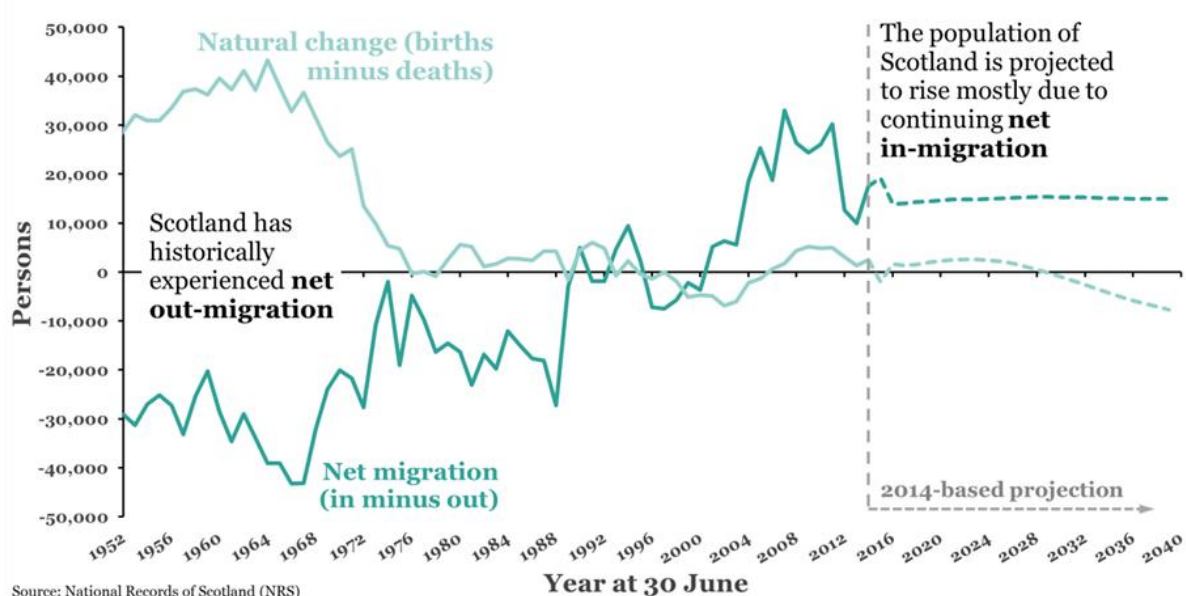
Recent migration and the growth of Scotland's population

5. In the last two decades, the increasing number of migrants coming to Scotland has reversed the trend of negative population growth in Scotland. Between 2000 and 2015 Scotland's population increased by

283,000, which represents a 5.7% increase. Over this period, the number of people born outside the UK living in Scotland has increased by 152% from 156,000 to 393,000, with EU migration accounting for 50% of that increase. This is in contrast to the rest of the UK where those born in the EU accounted for 32% of the increase in the number of people born outside the UK living in the UK. However, immigration levels to Scotland have been lower than in the rest of the UK: 5.6% of the population in Scotland are non-UK nationals, compared to 8.7% in the rest of the UK.

6. Figure 1 below - provided by the National Records of Scotland (NRS) - shows the natural change and migration in Scotland's population from 1952 to the present day, and includes a projection made in 2014, prior to the EU referendum, for a rise in the population as a consequence of continuing net-migration to Scotland.

Figure 1: Natural change and migration, actual and projected, 1952-2039



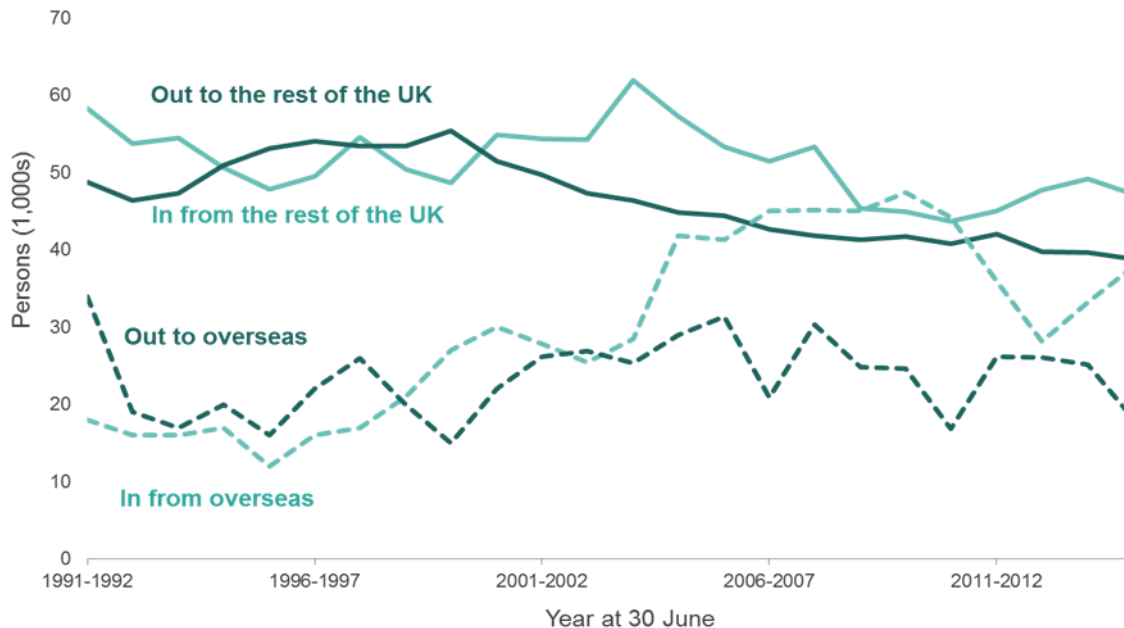
Source

National Records of Scotland, 2014-based national population projections

<https://www.nrscotland.gov.uk/statistics-and-data/statistics/statistics-by-theme/population/population-projections/population-projections-scotland/2014-based>

7. The patterns of inward and outward migration between Scotland and the rest of the UK, and between Scotland and the rest of the world, are captured by the NRS in Figure 2. This demonstrates the increase in immigration from overseas from the late 1990s.

Figure 2: Components of migration flows to and from Scotland, 1991-2015



Source

National Records of Scotland, mid-year population estimates

<https://www.nrscotland.gov.uk/statistics-and-data/statistics/statistics-by-theme/population/population-estimates/mid-year-population-estimates>

8. Witnesses stressed the importance of immigration due to the age profile of immigrants and the contribution that they have made to the labour force and fertility rates in Scotland. Professor Robert Wright argued—

” Immigration is particularly important because immigrants tend to be younger: the majority of them are in the childbearing age group, which is why we see high fertility among immigrants. That is what grows the labour force. That is the key and has been since Jack McConnell said that we need to grow the population in order to grow the labour force. Without a growing labour force that has the appropriate skills, we will not get the economic growth that pushes up our standard of living—and has done so for almost all of this century.²

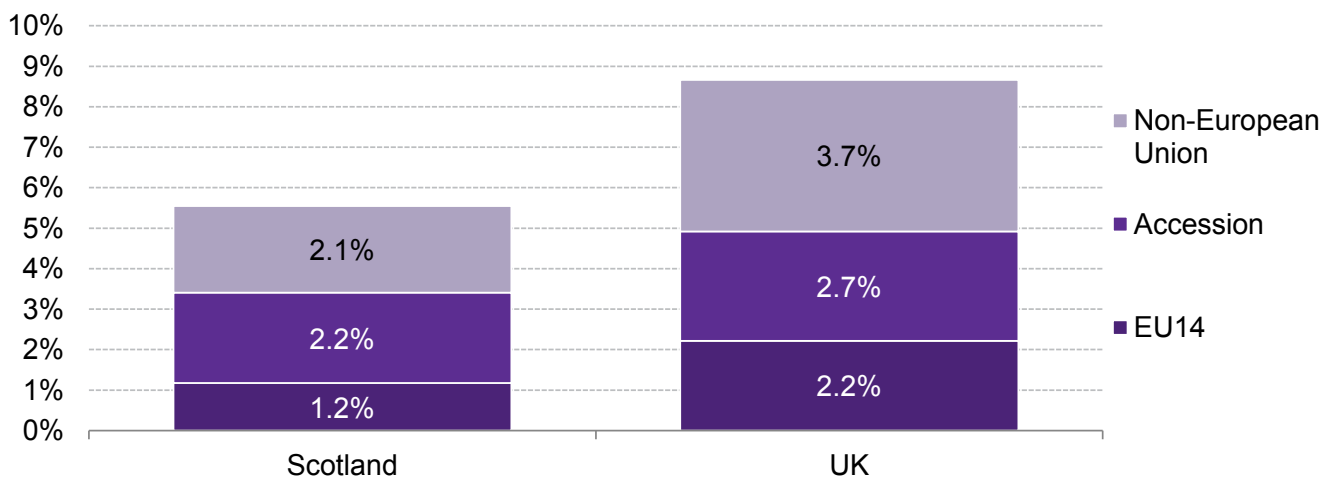
9. Population growth patterns vary within Scotland. Lorraine Cooke of COSLA identified the importance of population growth for almost half of the 32 local authorities in Scotland, which had set an outcome of achieving population growth in their single outcome agreements. She explained—

” Population growth has been ... very different in different local authority areas. Population growth and the need to attract people to their areas are huge issues for some local authorities, but not so much for others. We looked at the most recent single outcome agreements for every local authority, from which we saw that just under half had population growth as one of their key outcomes. Population growth is hugely important for local authorities, and migration is recognised as a key factor in it.³

The nationality of EU migrants to Scotland and the impact of EU enlargement on migration patterns

10. Proportionally, immigration levels to Scotland have been lower than the rest of the UK. In Scotland, 5.6% of the population are non-UK nationals compared to 8.7% in the rest of the UK. Nationals from the other EU Member States (EU27) make up 3.4% of the Scottish population compared to 4.9% in the UK as a whole. Figure 3 shows the proportions of those living in Scotland and the UK who are from the EU14 (the Member States of the European Union before the fifth enlargement which included Eastern European countries), those from the accession countries that joined the EU in 2004 and subsequently, and those from non-EU countries in 2015.

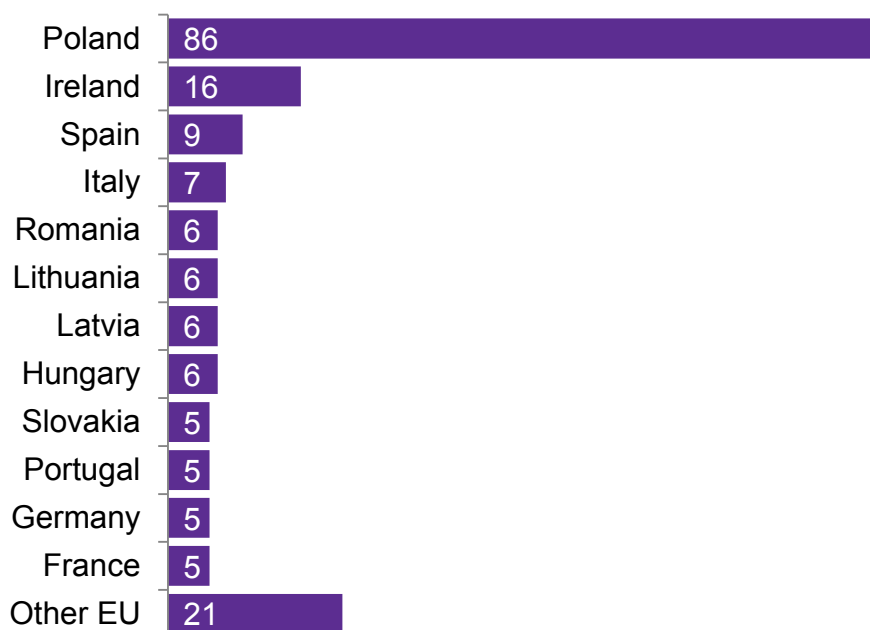
Figure 3: Scottish and UK populations by nationality, 2015



Source: SPICe analysis of [ONS \(2016\)](#)

11. Polish nationals are the single largest population group of EU migrants in Scotland. There are an estimated 86,000 Polish nationals, representing 47% of all EU nationals resident in Scotland. Irish nationals are the next biggest group, making up 16,000 – or 9% - of EU nationals in Scotland. Figure 4 shows the numbers of EU nationals for each Member State of the European Union where there are more than 5,000 EU nationals living in Scotland.

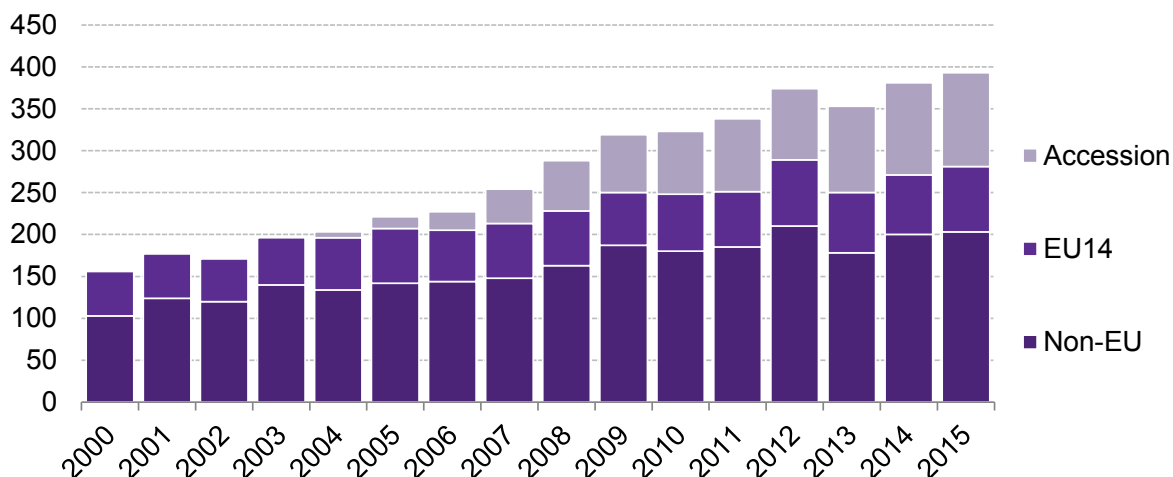
Figure 4: EU nationals in Scotland by country, 2015 (000s)



Source: SPICe analysis of APS Jan-Dec 2015, ONS

12. In 2004, ten countries acceded to the European Union. These countries, referred to as the accession countries (or A10), were Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia, and Slovenia. Bulgaria and Romania joined the EU in 2007, although the right of Bulgarian and Romanian nationals to work and claim benefits in other EU Member States was restricted for seven years. In the UK, prospective employers had to apply for work permits and Bulgarian and Romanian migrants for an "accession worker card". Croatia joined the EU in 2013.
13. The trend of migration to Scotland of people born outside the UK changed in the period 2000-2015. As Figure 5 shows, in 2003, ahead of the 2004 EU enlargement, 29% of those born outside the UK came from the EU, a figure that increased to 48% by 2015. Much of this net increase is a result of the enlargement of the EU with 112,000 people born in accession countries living in Scotland in 2015.

Figure 5: Scottish population born outside the UK, 2000-2015



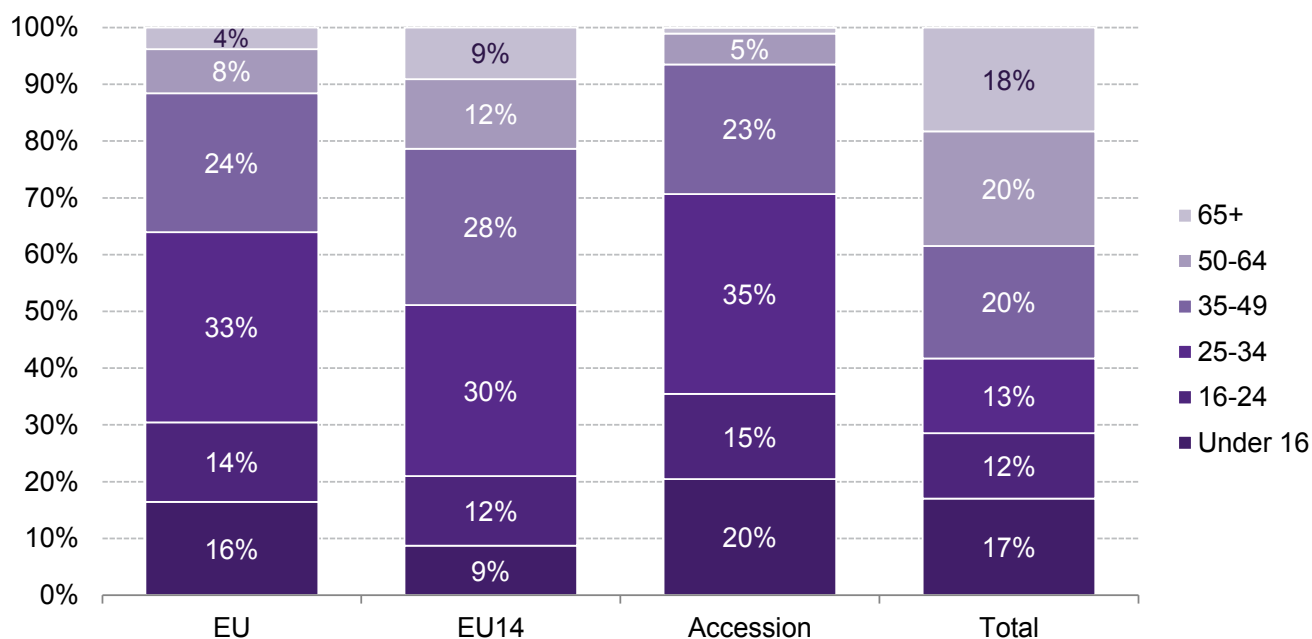
Source: SPICe analysis of [ONS \(2016\)](#)

14. Professor Christina Boswell commented on recent trends in EU migration, confirming that there had been a “substantial rise in immigration from the A8 accession countries since 2004”⁴ (the A8 accession countries are the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia, and Slovenia). She considered that while there was a continuing rise in immigration flows from Romania and Bulgaria (the A2 countries), this would not, in her opinion, continue indefinitely.⁵
15. Professor Boswell also identified a more recent rise in immigration from southern European countries due to the economic situation, estimating that these migrants comprised about half of all EU immigration flows to the UK. She considered that “...that may rise in the next few years but, over the longer term, we can assume an ebbing of that migration as those economies pick up in the next five to 10 years. Within the next 10 years or so, I suspect that we will see levels of intra-EU migration return to normality.”⁶

The age profile of EU migrants

16. As discussed earlier, migrants tend to be of working age and the age profile of EU nationals in Scotland is therefore different from that of the Scottish population as a whole. Figure 6 shows that just over half (57%) of EU nationals in Scotland are aged 25-49, compared with only a third (33%) across the Scottish population as a whole. Only 4% of EU nationals in Scotland are aged 65+, compared with 18% of the Scottish population as a whole.

Figure 6: Age profile of Scottish population by nationality, 2015

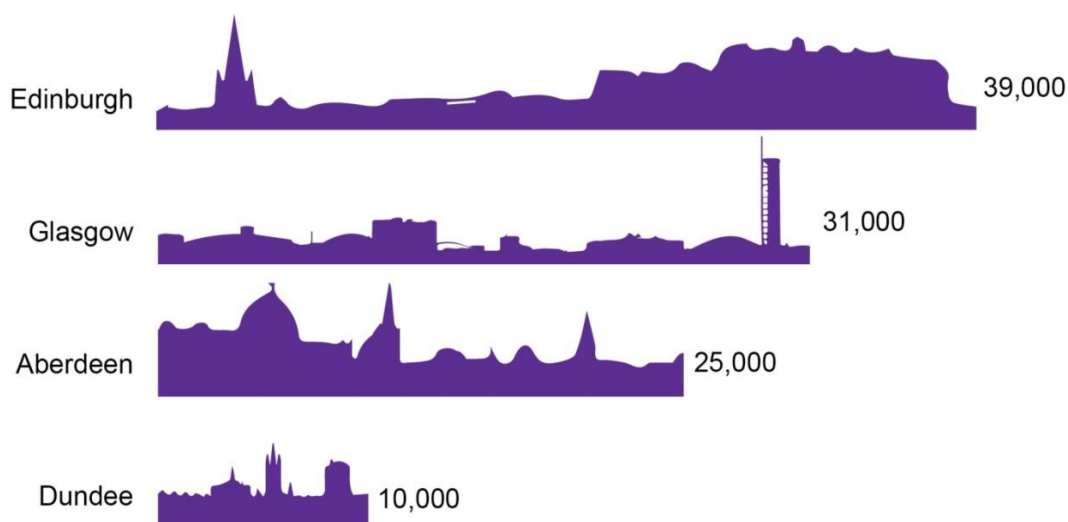


Source: SPICe analysis of APS Jan-Dec 2015, ONS

Reasons for migration to Scotland

17. EU nationals migrating to Scotland have predominantly moved to urban areas. As demonstrated in Figure 7, more than half of the EU migrants live in Scotland's biggest cities.

Figure 7 – Numbers of EU nationals living in Scotland's four biggest cities 2015



18. The factors that motivated people to come to Scotland were discussed in evidence. Colm Wilson of Fife Migrants Forum commented on the factors that might influence migrants to come to Scotland, as well as the contribution that they have made to the economy. He stated—

” There is no stereotypical migrant coming into Scotland. People come for various and numerous reasons; sometimes it is as simple as somebody coming over to spend a few weeks with a friend and deciding that they would like to stay. They may start in a low-paid job. Many of the migrants we have are capable of doing a lot more than the jobs that they are in at present. They are ambitious so that when they get knowledge of their environment, they want to move on into higher-skilled jobs. That is a great thing—it is great for the economy. For example, I work from Kirkcaldy where, in the last year or so, we had a high street that was dying. Now it has seven or eight businesses that have been set up by migrants who arrived in Fife. They are not employing a lot of people, but they are providing employment.⁷

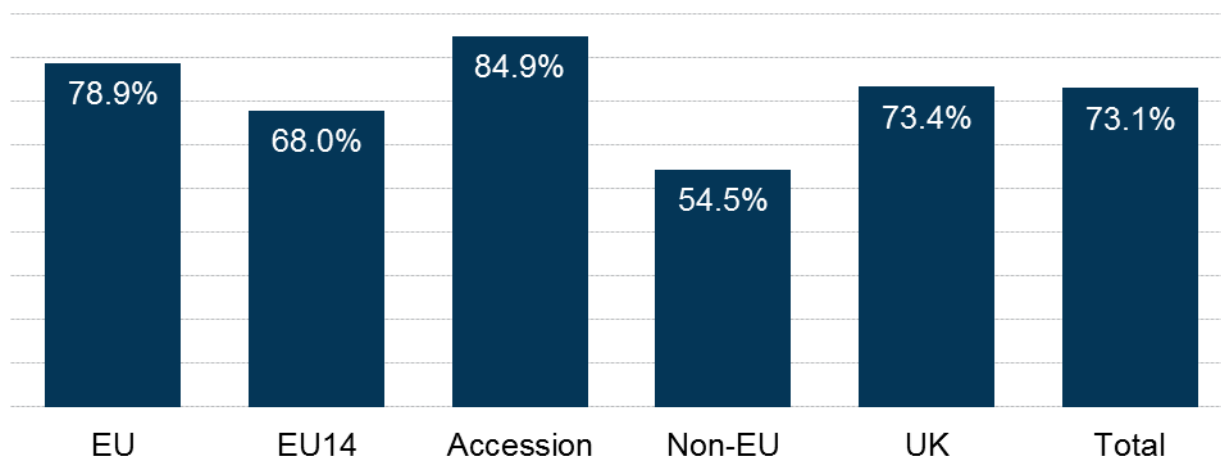
19. Professor Rebecca Kay observed that she was “not sure that people come here to take up low-skilled jobs” but that instead they “come here to make a life, and their starting point for that is to accept lower-skilled work.”⁸ She further explained—

” Economic factors are also important to migrants themselves, but it is important to recognise that for the people who come to live here and to make lives here, many other experiences influence their decision to come here in the first place and their decision whether to stay for the long term. ... You have to look at migrants' lives in the round and recognise the factors—beyond the legislation that says whether people can come here—that might have a big influence on whether people see Scotland as a place they want to come to and, once they are here, as a place where they and their children have a future.⁹

Economic activity of EU nationals in Scotland

20. Figure 8 shows the employment rates for migrants in Scotland. The employment rate for the population of Scotland aged 16-64 is 73.1%, compared to 78.9% for EU nationals. However, the picture is very different within this group: EU14 nationals have a much lower employment rate at 68.0%, compared to 84.9% for those from the accession countries. Non-EU nationals have the lowest employment rate of all the groups shown.

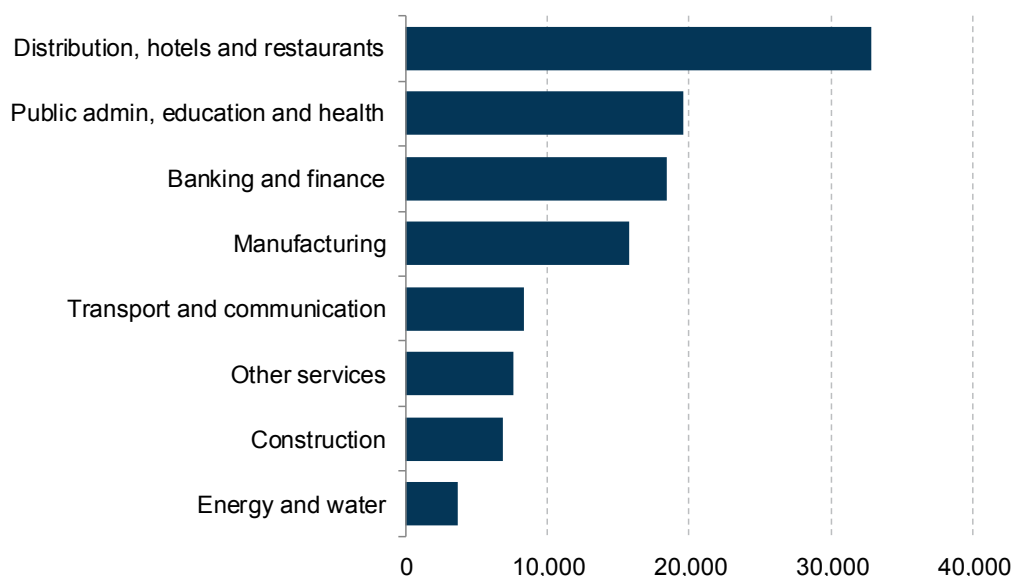
Figure 8: Employment rate by nationality (population aged 16-64), Scotland 2015



Source: SPICe analysis of APS Jan-Dec 2015, ONS

21. An estimated 115,000 EU nationals are in employment in Scotland, representing 4% of the Scottish workforce. Almost a third of them - 33,000 - are working in the distribution, hotels and restaurants sector. Figure 9 shows a breakdown by industrial sector of EU nationals in employment.

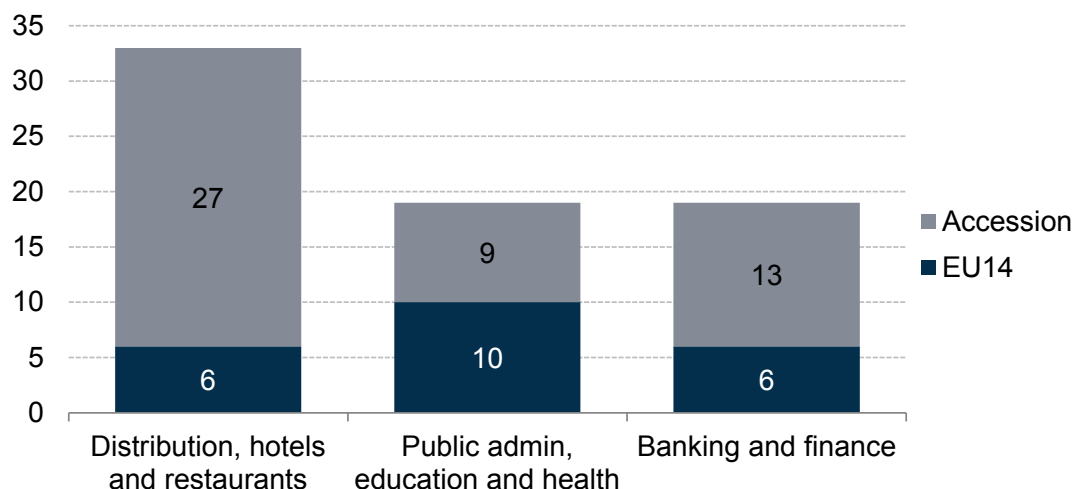
Figure 9: Employment of EU nationals by industry, Scotland 2015



Source: SPICe analysis of APS Jan-Dec 2015, ONS

22. For the larger economic sectors, it is possible to provide a further split between EU14 and accession countries and this is shown in Figure 10. However, this is not possible for all sectors due to the sample sizes involved and the reliability of smaller estimates.

Figure 10: Employment of EU nationals in selected industries, Scotland 2015 (000s)



Source: SPICE analysis of APS Jan-Dec 2015, ONS

23. Within the distribution, hotels and restaurants sector, the main area of employment is accommodation and food services, which employs 20,000 EU nationals, representing 12% of all those in employment. 15,000 of the 20,000 working in accommodation and food services are from EU accession countries.
24. In the public administration, education and health sector, the largest area of employment is health and social work, which employs 12,000 EU nationals. However, because this sector is a large employer, EU nationals only account for 3% of total employment in this sector. Again, the majority - 8,000 - of EU nationals working in this sector are from EU accession countries.
25. The agriculture, forestry and fishing sector is not shown in the figures as the estimate is too small to be considered statistically robust and as the seasonal and often casual nature of work in this sector may not be well reflected in the APS. Angela Hallam of the Scottish Government told the Committee—

” There is great difficulty in getting a handle on the agricultural system, because migrants come and go, and they migrate from job to job as the season progresses. My rural affairs colleagues looked at the agricultural census, which records the number of days that people work but not the number of workers. Their estimate was somewhere between 5,000 and 15,000. We need better work to address that.¹⁰
26. Much agricultural employment is seasonal. Colm Wilson of Fife Migrants Forum explained how EU nationals provided a flexible workforce for farmers. He said—

” Migration has worked for the agriculture industry in Scotland because it is simple. A farmer can get the employees he requires for a week, a month or a year without having to work with governments or officialdom. Migrants flow in and out and jobs are filled. Some of the employers in Fife tell me over and over that their businesses would not exist if it were not for migrants. If it is complex or difficult to employ people from the Philippines or wherever, businesses will go to the wall. Migration works now because it is simple.¹¹

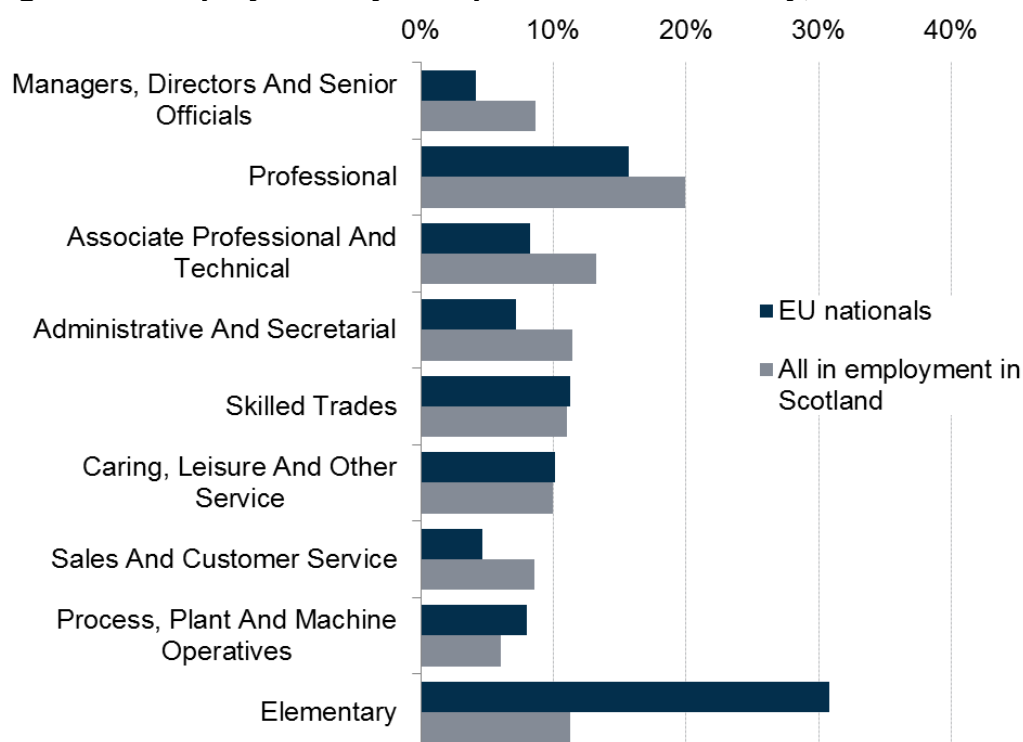
27. Professor Rebecca Kay of Glasgow Refugee, Asylum and Migration Network (GRAMNet) described some of the evidence that GRAMNet had gathered on seasonal workers in Angus—

” Angus is one of the places where we have been working, and the region clearly has a big need for seasonal workers. However, we found a lot of evidence—albeit in a qualitative piece of research—that EU migrants who come over for seasonal work repeatedly might then stay and begin to develop a practice of permanent residence in Angus, moving between different kinds of seasonal work and accessing their rights as EU citizens during periods when there is a gap in their employment. We found a lot of people who spend the spring picking daffodils, the summer working on the berries, the autumn lifting potatoes and the winter working in packaging around the Christmas season. Those people bring families with them and have children.¹²

Skills, educational attainment levels and social mobility among EU migrants

28. The occupational profile of EU nationals working in Scotland differs from the overall pattern in the population as a whole, as shown in Figure 11. EU nationals are less likely to be in managerial and professional occupations, and are more likely to be working in ‘elementary occupations’ which would include unskilled agricultural workers, unskilled construction workers, hospital and kitchen porters and cleaners. In total, around a third of EU nationals - 31% or 35,000 - in employment are working in jobs classified as elementary occupations, with 30,000 of those workers coming from EU accession countries.

Figure 11: Employment by occupation and nationality, Scotland 2015



Source: SPICE analysis of APS Jan-Dec 2015, ONS

29. Although EU nationals are more likely to be in low skilled jobs, they have higher level qualifications than the Scottish working age population as a whole. Of EU nationals resident in Scotland, 35% hold a degree level qualification or higher. By comparison, only around 26% of UK nationals in Scotland are qualified to this level.

30. Angela Hallam of the Scottish Government referred to the evidence from the last Census in 2011 showing the distinction between the types of employment undertaken by EU14 and the accession nationals. She said—

” From the census, we know that EU accession migrants are in very different types of jobs. The census breaks down by degree-level qualifications whether people are in managerial posts, semi-routine or routine occupations. There is a massive difference between the EEA accession migrants and all the other groups. They are very likely to be in low-skilled jobs.¹³ Robert Wright made the point that we have evidence that shows that.¹⁴

31. The APS data shows the scale of the skills mismatch for EU migrants in employment in Scotland with qualifications of degree level or higher. 40% are working as managers, directors, senior officials or in other professional occupations, compared to 59% across the Scottish working age population as a whole, and 25% are working in 'elementary

occupations', compared to only 3% for the Scottish working age population as a whole.

32. The potential for social mobility was also discussed in evidence. Professor Robert Wright referred to the limited opportunities for social mobility referring to Irish research “which shows that there is hardly any social mobility there at all.”¹⁵ Professor Rebecca Kay said that GRAMNet’s research indicated that social mobility appeared to vary across different regions in Scotland—

” We have done research in Glasgow, Aberdeen, Aberdeenshire and Angus. Aberdeen stood out as an area in which there is a relatively attractive labour market and in which migrants can upskill more easily or work in contexts in which they are able to increase their English language skills and therefore put into practice the qualifications and skills that they brought with them.

” In some areas where we have been working, particularly the more rural regions, we have found that people have been stuck for a very long time in very unskilled work that is not commensurate with their qualifications or skill set and can be in a vicious circle in which the forms of employment that they are engaged in make it very difficult for them to increase their English language skills.”¹⁶

33. Angela Hallam said that [The impacts of migrants and migration into Scotland](#) report published by the Scottish Government in October 2016, found that there was a U-shaped pattern in wages for EU migrants. She explained that, “There is a real cluster at the low-skill end, a cluster at the high-skill end, and not much in between.”¹⁷

34. Professor Boswell identified one of the potential risks of Brexit being “that it will further limit options for the social mobility of EU nationals and potentially enhance vulnerability to exploitation”¹⁸. She explained that—

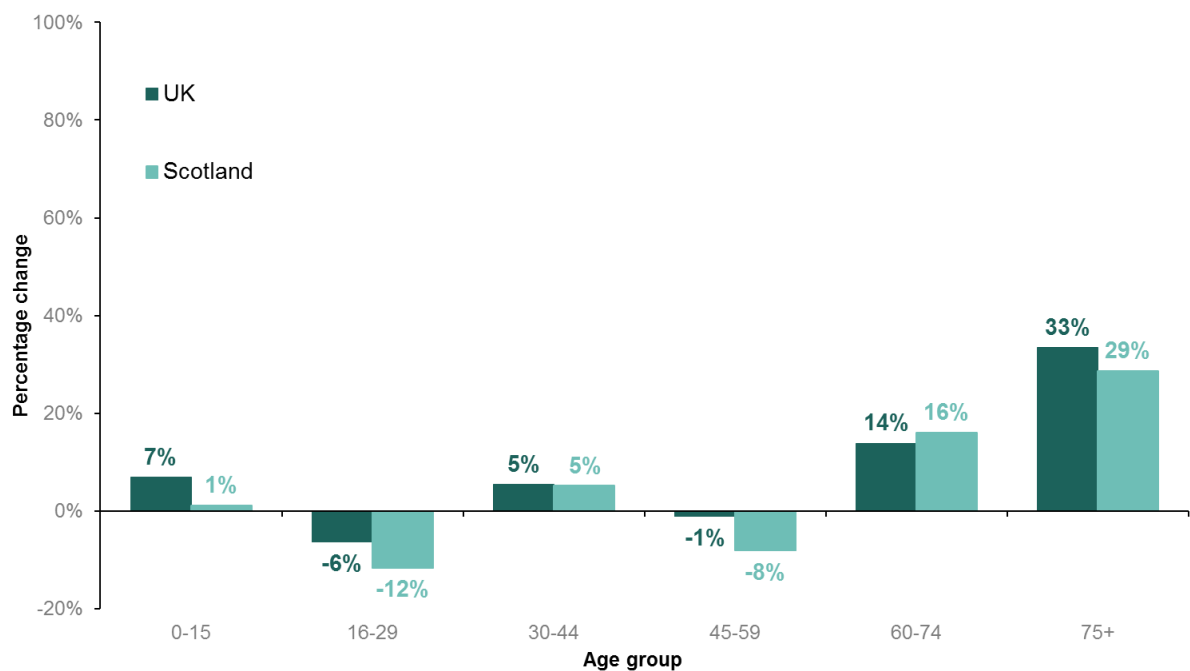
” ...if people do not have the full panoply of rights associated with free movement, they are obviously much more likely to enter through some of the more rigid schemes, such as under tier 2, which is linked to particular occupations and jobs, or perhaps under tier 3 or a seasonal labour scheme in which there are quite limited rights with a very fixed-term period of employment.”¹⁹

The impact of zero EU migration to Scotland

35. The evidence presented above demonstrates that EU nationals have become a significant part of the Scottish labour force, particularly in certain sectors. They have also changed the demographic profile of the Scottish labour force, increasing the size of the working age population.

36. NRS projected the impact of zero future EU migration in Scotland, which would be a worse-case scenario, to identify the impact that this would have on the population by age group over the next ten years. Figure 13 shows significant projected reductions for the 16-29 age group and the 45-59 age group of -12% and -8% respectively if there is zero future EU migration. Because Scotland's population growth has been more dependent on EU nationals immigrating to Scotland, these figures are higher than the equivalent figures for the UK as a whole and demonstrate a greater level of exposure in Scotland to any reduction to EU migration.

Figure 13: Projected change in population by age group, Scotland and UK zero future EU migration variant, 2014-2024

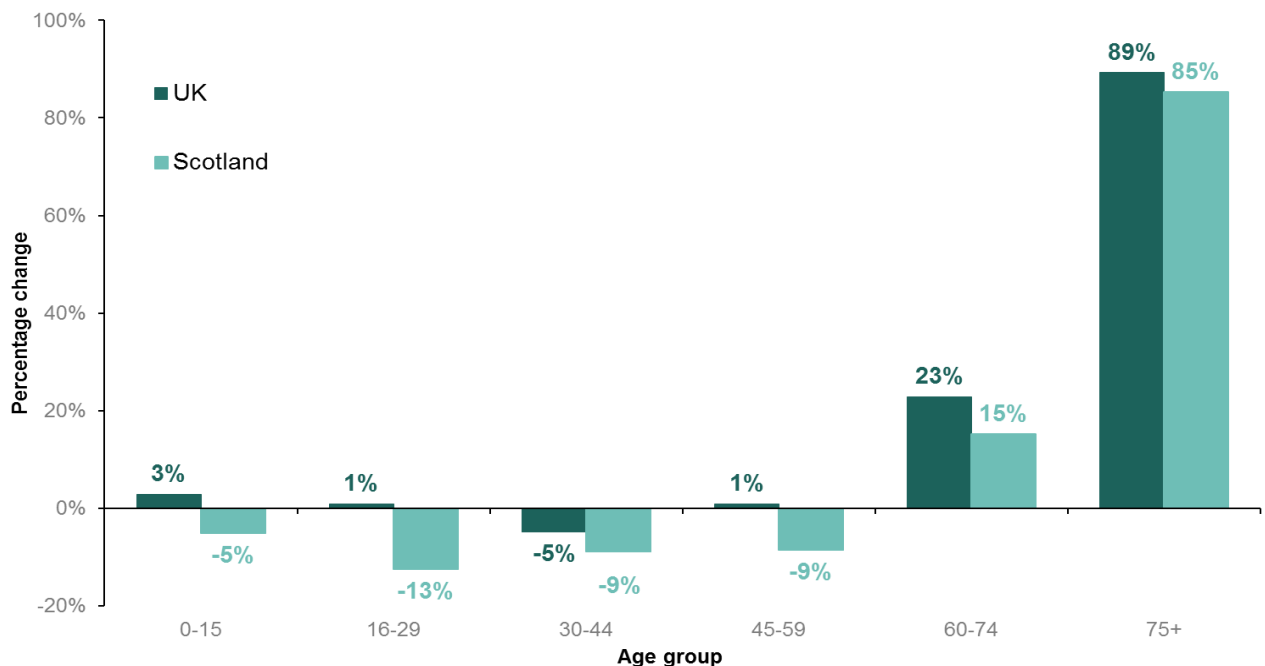


Source

NRS Projected Population of Scotland (2014-based): Additional Variants Using Alternative European Union Migration Assumptions
<https://www.nrscotland.gov.uk/statistics-and-data/statistics/statistics-by-theme/population/population-projections/population-projections-scotland/2014-based-additional-variants>

37. Figure 14 projects the impact on the population by age group of zero future EU migration for a twenty-five year period, showing decreases in the proportion of those under the age of 60 and increases in those over the age 60. Further projections carried out by NRS showed that over that period, with zero future EU migration to Scotland, the number of children would fall by 5% and the working age population would fall by 3%. Overall, the population of Scotland would increase by 3% rather than 7%. These figures were more acute for Scotland than the rest of the UK.

Figure 14: Projected change in population by age group, Scotland and UK, zero future EU migration variant, 2014-2039



Source

NRS Projected Population of Scotland (2014-based): Additional Variants Using Alternative European Union Migration Assumptions

<https://www.nrscotland.gov.uk/statistics-and-data/statistics/statistics-by-theme/population/population-projections/population-projections-scotland/2014-based-additional-variants>

38. Kirsty MacLachlan of NRS explained these figures, stating that they were—

“... illustrative projections of what would happen if there were to be no EU migration in the future. We made a rough approximation of the proportion of in-migrants from the EU and then projected the population. [Figure 13] shows what would happen over the next 10 years, and [Figure 14] shows what would happen over the next 25 years. ... the impact would be on the younger age group—migrants are of quite young working age or children—and there would be a much greater impact on Scotland than on the rest of the UK. The UK has a younger age profile than Scotland, which has a lot of baby boomers and fertility is lower. We all have ageing populations, but the working-age population seems to be the one that is going to be impacted most.”²⁰

39. Professor Robert Wright stated that he considered the zero net migration projections presented by NRS to be very informative, although he cautioned that there could be an additional impact of people leaving Scotland—

“You can think of them in two ways: either the door is shut—nobody leaves and nobody comes in—or the number of people coming in equals the number of people who leave. Those are two different scenarios. ...

People will leave—they are leaving now, as well as coming. We can stop people coming in if we leave the EU, because our immigration system will allow that, but it will not stop people leaving Scotland. The projections are, therefore, optimistic: they tell a good story relative to what the story is likely to be if there are big reductions in immigration.²¹

40. The zero net migration projections starkly demonstrate the positive net impact that EU migration has made to Scotland's population profile, both in terms of boosting the working age population and the birth rate.
41. Professor Christina Boswell was sceptical that there would be dramatic changes in immigration levels following UK withdrawal from the EU. She stated—

“...we must premise our discussion on a realistic sense of what the policy scenarios are. We are currently talking about the scenario in which there is no future EU immigration in the event of cessation of free-movement rights, but I find that scenario highly implausible. It is much more likely that the UK Government will have to find ways of preserving the volume and composition of current flows from the EU. We can discuss the policy scenarios in which the UK Government could do that, but I do not think that anybody—even the most rabid Brexiteer—is suggesting that there will be a cessation of the flow of EU nationals to the UK. The question is this: what will be the post-Brexit policy scenarios and how might a Scottish Government try to influence policy and shape those programmes in a way that is most beneficial to Scotland?”²²

The contribution of EU migrants to Scottish society and the economy

42. As shown previously, employment rates among EU nationals in Scotland are higher than for the population as a whole. While there has been no specific study conducted in Scotland on the fiscal contribution that EU nationals make to the Scottish economy, there was a consensus among the witnesses giving evidence to the Committee that EU nationals who had migrated to Scotland had made a positive contribution to Scottish society and the economy.

43. Angela Hallam of the Scottish Government concluded that—

“The benefits certainly outweigh the costs. A lot of evidence shows that the migrants who are coming to Scotland are young, healthy and want to be in employment. Their use of the health service is low, because they are young and healthy.

“There is some evidence that education services are having to adapt to changing needs for language provision in schools, but there is no clear link between migration and crime, for example. I think that all my

colleagues would agree that there is very good evidence that the benefits of migration certainly outweigh the costs.²³

44. Professor Robert Wright observed that there was a lot of misinformation in relation to migrants. He referred to a large study conducted by University College London that showed “the opposite of what has been suggested: that, in fact, immigrants pay much more into the system than they take out.”²⁴ He suggested that this made sense even at a simple level because the majority of immigrants are young and in employment. He concluded—

” ... there is no evidence that such immigrants are somehow stealing jobs from Scots or sponging on the welfare state. In fact, the position is the opposite by a significant margin, if we believe the research. At the end of the day, that is another reason why we can say that immigrants are very important economically. We get rhetoric from the anti-immigration lobby, but some very good research shows that the situation is the opposite of what that rhetoric claims.”²⁵

45. Lorraine Cooke reflected on the feedback that COSLA had received from local authorities on the impact of migration on local services. She noted that, “The only caveat was about provision for English as an additional language, but the view generally was that migrants were bringing benefits to local areas.”²⁶
46. In relation to school education, Angela Hallam told the Committee that there was “evidence that suggests that children benefit from having pupils alongside them in their schools for whom English is an additional language.”²⁷ This was reinforced by Professor Kay who referred to some research that she had conducted in collaboration with COSLA showing that “there was a strong feeling among education authorities that having pupils from elsewhere around the world in classes assisted with the aspirations of, and possibilities for, Scottish-born children, particularly in areas of multiple deprivation where Scottish-born children might have fairly limited experience of life beyond Glasgow, never mind of the wider world.”²⁸
47. The Committee was also told that immigrants were employed in jobs that employers found hard to fill. Professor Rebecca Kay referred to her research, stating—

” I found some employers in Angus who said that they had made a deliberate attempt to recruit local people and to offer them training packages, but there was no uptake. ... even if there is unemployment in an area and young people need employment, there are some jobs that local people will not take up.”²⁹

48. In the written evidence that the Committee received in response to its general call for evidence on the implications of the EU referendum for Scotland – [Brexit: What Scotland thinks: a summary of evidence and emerging issues](#) – a number of respondents highlighted the contribution that some of the most highly-skilled and educated EU migrants had made to key sectors in Scotland. The University and College Union reported that approximately 16% of staff in Scottish universities and higher education institutions are EU citizens and the figure is higher, at 24%, for research-only positions.³⁰ The sentiment expressed by respondents in the education and skills sector towards the contribution of EU staff and exchange programmes was overwhelmingly positive. The British Medical Association considered that the free movement of people has helped the UK to cement its position in “the vanguard of European medical research”.³¹ The British Academy explained that “UK universities score highly in international rankings not least because they have been able to draw on an international talent pool”.³² The University of Highlands and Islands commented that Erasmus+ is “...a key aspect of our development as an outward-looking, international organisation” and noted that “...it has a significant impact on participating students and staff”.³³
49. Some sectors expressed concern about the impact that withdrawal from the EU would have on their capacity to recruit. For example, the submissions from the National Federation of Roofing Contractors (NFRC), Construction Scotland and the Scottish Contractors Group stressed the value of EU nationals in the workforce and the NFRC stated that—
- “...restrictions on freedom of movement within the EU will have a profound impact on the construction industry. Should workers from EU countries be restricted from entering the UK, we could face a skills shortage in specialist construction sectors. Training workers in these skills takes time and planning. Over 95% of recently surveyed NFRC members stated this was their biggest concern over leaving the EU.”³⁴

The position of EU nationals following the EU referendum

50. The Committee explored the position of EU nationals following the vote in the referendum with the witnesses. Lorraine Cooke of COSLA described EU nationals as living in a state of “imposed uncertainty”.³⁵ She said, “We have heard different announcements from chief executives, leaders and, of course, the First Minister, but we need to ensure that people know that they and their contribution to their local areas and, indeed, to the country, are valued.”³⁶
51. Professor Spaventa of the University of Durham stressed that it was important not to “underestimate the cooling effect that the current situation is having on the migration of very skilled people.”³⁷ She suggested that—

- ” If the UK Government were to clarify as soon as possible the rights of those people who might come and those who are already here, universities and businesses, and other sectors that rely on people to fill very high-skilled jobs, would find that very helpful.³⁸
52. Colm Wilson of Fife Migrants Forum affirmed that migrants felt “that Scotland is a good place to be, because we are not anti-immigrant, we have an open debate about the issue and we always talk about the positive aspects of migration, rather than the negatives.”³⁹ He also reflected on the impact of immigration on perceptions in Scotland—
- ” The beauty of the European Union is that we have stopped talking about national borders and started looking at people and that we now have an ebb and flow of migrants and people from all different cultures mixing with one another and enjoying one another’s company. That has been one of the great things about Scotland: people from the rest of Europe feel that they are accepted here.
- ” I was recently in Manchester, and the mood there is totally different. There is fear among migrants in the rest of the UK. Migrants in Fife—and I suppose that this speaks for the rest of Scotland—do not have the same fear that they are all suddenly going to be put on boats and sent back to Poland or wherever.⁴⁰
53. Professor Wright was more circumspect, expressing the view that it was “an exaggeration to say that Scotland is more positive—it is just less negative than the rest of the UK.”⁴¹ He said that—
- ” To say that, in this country, the man or woman on the street is really positive towards immigration is a major exaggeration. The attitude is still negative, but it is less negative than other parts of the UK.⁴²
54. Professor Rebecca Kay referred to the intentions of EU migrants who are currently in Scotland, agreeing that “many people have been positively influenced by the political leadership in Scotland and by the different message that is being put out in Scotland.”⁴³ However, she also cautioned that—
- ” ...it is important to avoid complacency and think that Scotland is simply a better place for people to be. Many Scottish areas have more recent experience of multicultural and diverse communities in which there have been lower community-level interactions and lower access to community-level networks for people. Certainly no spike in hate crime has been reported but, anecdotally, people have reported discomfort, their children having problems at school and so on, albeit that has been at a much lower level than elsewhere.⁴⁴

55. Professor Kay described the degree to which some immigrants had settled in Scotland and the dilemma that they faced in taking a decision on whether to remain—

” We should also bear in mind that the assumption as to whether people will or will not go home is not a straightforward one. For many people, their past home is not an easy one. A person who has lived in Scotland for the past five, six or seven years might have a Scottish partner, or their child might have been born in Scotland either with a Scottish partner or with, say, a Polish partner. That person might have no property in a central or east European country, and the economy might not be an easy one for them to go back into. People might well remain here without their necessarily feeling particularly comfortable about it. The repercussions of the loss of their social rights are likely to play out at local authority rather than at national level.⁴⁵

56. The Committee recognises the difficult position the EU migrants are in following the EU referendum and the uncertainty that they currently face about whether they will be able to stay in Scotland and on what terms they will be able to stay.
57. In response to its call for written evidence, the Committee received some responses from EU citizens resident in Scotland. These are presented below as they provide valuable testimony from EU citizens on the impact of leaving the EU on their lives.

Extracts from a written submission from Hanna Pennig

I am a German living in Scotland since 2007. I came here with no proper job, I started to live and work for board and lodging in a hostel. Eventually I met my partner, we bought a smallholding in Aberdeenshire and lived there happily ever after, well, till the referendum.

A week before I started to panic as I read about lots of Germans applying for British Citizenship of fear of being chucked out. I didn't know up till then, that Germany had changed the law about dual nationality.

Now, I'm sitting here, I don't know what's going to happen. I panicked and started filling in the 85 page form for leave to remain, but I'm not sure, if I actually earned enough money to qualify as self-employed. If not, I as I found out now, I should have had complete health insurance, despite the NHS never asking for anything like it, but accepting me into the system.

I am paying my National Insurance Contribution (despite not earning enough) and I'm certainly not lazy. There's plenty of work at our little project. Not only are there 10 acres of land, but also a historic watermill in desperate need of restoration, the house needs doing up, too. So I spend a lot of time working without getting paid, mostly growing vegetables, chopping wood, planting trees, helping my (British)

partner carrying slates up and down ladders, etc. But no pay. It saves a lot of money, which we don't have to earn in the first place. But now, turns out, that was all wrong...

Is it that earning money is all that counts in this country?

I am also active in my community, mostly in the SWI, but we also support local events at our Hall and in the nearby town.

I started to panic, as I said, so I did actually take my Life in the UK test and this week, I will sit my English language test. But I'm not sure now, if I should fill in my Leave to Remain, because it might be bad, if they say, I don't qualify, but later, it might not matter how much I've earned, but only for how long I've lived here.

Most people I ask for advice simply say, nobody knows, and for now nothing is changing. But filling in forms always takes time, and it costs money to do all this, the 85 page form costs 65 quid, the UK test was 50 and the language test is 150! And that's only the start.

If Britain leaves the EU, I will have to apply first in Germany to keep my German citizenship, which is another form and will cost more money, and it will take time, especially, if 2,4 Million people (or however many there are) all do the same. I really don't want to throw away my entire life and start again from scratch in a country I don't want to live in. Not that Germany is bad, but I simply love Scotland (that's why I came).

Extracts from a written submission from Dr Anja Gunderloch

I write in response to the call for evidence in relation to Scotland's relationship with the EU, specifically the position of EU nationals in Scotland, of whom I am one. This is a matter that has caused me a considerable amount of concern since the Brexit referendum.

Until the end of June, I considered myself happily settled in Scotland and secure in my right to live and work here. The referendum result was a shock, and since then I have been waiting for official clarification of what exactly the status of EU citizens will be in the future. I was much heartened by the First Minister's early reassurance that we would continue to be welcome in Scotland but at the same time I was quite disturbed by the then Home Secretary's characterisation of EU citizens as potential 'bargaining chips'. For the first few weeks after the Brexit vote I caught myself thinking that I should perhaps not do or say anything that might draw attention to the fact that I was not born here, and I am not usually easily scared. I have not actually experienced anything that could be interpreted as racism – on the contrary, I have had nothing but support from anyone I spoke to on the subject of Brexit – but the reports especially from England about such incidents have caused me considerable disquiet. ...

Having now spent thirty years (more than half my life) in this country I consider that I qualify for permanent residence several times over, and since EU citizens

were expressly excluded from voting in the referendum that was to have such a dramatic effect on our status I feel very strongly that all those who qualify at the point when Brexit will come into force should be given permanent residence automatically and with a minimum of bureaucratic fuss. By one manner of reckoning it appears that at present staffing levels and with current procedures it would take the Home Office around 140 years to deal with applications if all current EU citizens decided to apply now so a degree of streamlining is clearly in order to speed up the process a bit.

I never saw any need to apply for a British passport because thanks to EU legislation I had a right to live and work in this country, anyway. Now I do not want to give up my European identity in favour of a British one, given the way that Britain will be viewed by the rest of Europe and the wider world from now on. The fact that all my friends and colleagues who are entitled to apply for an Irish passport are already doing so for themselves and their children shows that I am not alone in taking this view. Being able to vote in all elections except Westminster ones is another right that I appreciate greatly, and a right I have made use of whenever an election came round. I may be overly pessimistic here but the prospect of having such rights taken away is truly worrying, and I feel that we EU citizens are owed some reassurance. Developing a clear and fair pathway towards guaranteeing and maintaining our current rights should be a priority for those in power, both in Scotland and Westminster. In my view, any arbitrary decision to curtail the existing rights of EU citizens in the UK is a human rights matter, and should be automatically subjected to the scrutiny of a court of justice. We all came here in good faith, with the desire to find our place in Scotland's society and to contribute in various ways. I am sure I am not alone in settling in Scotland because I like the open and welcoming outlook of its people that I have experienced over the years. The endorsement of the European idea that is evident in the strong showing of the Remain votes in Scotland was one of the few positive aspects to come out of the referendum, and in an ideal world Scotland would be able to remain in the EU on the strength of this. ...

Returning to Germany is not an option I am prepared to contemplate. I have never worked or paid any taxes there, I have no German health insurance or paid into the pension system, and apart from a few friends and fewer relatives I have no ties that bind me to any place there. ... The fact that I am now past 50 years of age is also likely to put me at a serious disadvantage should I have to seek a job in Germany, and my husband would be at an even greater disadvantage because his German is reasonably fluent but not sufficient to function at a professional level. Put succinctly, I do not want to live in Germany. My home is in Scotland and I like it just fine here.

Demographic and EU migration trends in Scotland

The Committee believes that the evidence that it has brought together on EU migration to Scotland for this report provides valuable quantitative and qualitative material on migration patterns and the contribution of EU migrants to the Scottish economy and society.

Significantly, EU migration has helped reverse the trend of a declining population that was an issue of key concern in the early years of the Scottish Parliament. The Committee recalls that in 2004, a key proposal of the then Scottish Executive led by First Minister Jack McConnell, was to establish a Relocation Advisory Service and develop a Fresh Talent initiative to prevent Scotland's population falling below 5 million by 2009. The concern about population decline has been alleviated by EU migration to Scotland which has supported population growth, particularly among those of working age in Scotland.

The EU migrants that have settled in Scotland, whether on a temporary or permanent basis, have become well established in Scotland's biggest cities, but have also supported the sustainability of some rural communities. The high labour market participation rates of migrants from the post-2004 EU Accession countries, in particular, are crucial to a number of economic sectors in Scotland.

Notably, over 30,000 people are employed in the distribution, hotels and restaurants sector, and 12,000 EU migrants are employed in health and social work. Scotland's agricultural sector also depends on migrant workers to do seasonal work.

The Committee was concerned by the quality of the data available on the employment of EU migrants, particularly the lack of statistics for the agriculture, forestry and fishing sector.

The Committee's report summarising the written evidence received from stakeholders – [Brexit: What Scotland thinks: a summary of evidence and emerging issues](#) – also provided strong evidence on the importance of EU migrants to a range of economic sectors and the success of those sectors in recent years. Notably, EU migrants have supported the growth and success of Scotland's higher education and research sector and been crucial to the construction sector.

The percentage of migrants coming to Scotland as a whole has been lower than the rest of the UK, with non-UK nationals making up 5.6% of the population in Scotland compared to 8.7% for the UK as a whole. Notably, since 2000, 50% of the increase in the numbers of people born outside the UK living in Scotland has come from EU nationals, compared to 32% in the UK as a whole.

The projections provided by the National Records of Scotland of zero future EU migration, while they represent a worst case scenario, present stark evidence of the demographic importance of EU migrants in Scotland. As the majority are of working age, they have increased the size of the working population in Scotland and offset the effects of an ageing population. With higher fertility rates, they have also helped reverse population decline. The Committee therefore believes that

there are acute risks to Scotland of a loss of the existing EU migrants or a decline in future migration.

While much of this report has focused on numbers and trends, the Committee is very aware that these all refer to people who have left their own countries and familiar environments in order to make new lives in Scotland, whether on a temporary or permanent basis.

The Committee agrees that the 181,000 EU nationals who live in Scotland are now experiencing “imposed uncertainty” as they wait to find out whether they will be able to continue to live in Scotland. The Committee welcomes the evidence that it heard suggesting that there had been less hostility to EU nationals in Scotland than in other parts of the UK, but is very conscious of the impact that the discussions of their future will have during the negotiations on withdrawal from the EU.

Furthermore, if these people leave as a result of the prospect or reality of withdrawal from the EU, it has the potential not only to undermine Scotland’s economic performance, but also to reduce the sustainability and cultural diversity of our communities – whether in cities, towns or rural areas. The Committee believes that EU migrants have enriched our lives and widened our cultural horizons – losing them would leave Scotland a narrower place.

EU Citizens' Rights

The legal concept of EU Citizenship

58. In her briefing for the Committee, Professor Sionaidh Douglas-Scott defined citizenship as “being a member of a particular national community.”⁴⁶ She further explained that—

” It usually includes certain rights or privileges not accorded to non-members, such as the right of political participation in a community, including voting, participating in government, and receiving state protection. Citizenship usually also involves obligations, such as the duty to pay taxes, or to fight in time of war.”⁴⁷

59. The legal concept of EU citizenship was formally introduced by the Treaty of Maastricht and is embodied in Part II of the Treaty on the Functioning of the European Union (TFEU, Articles 20-25). Article 9 of the Treaty of European Union (TEU) provides that—

” Every national of a Member state shall be a citizen of the Union. Citizenship of the Union shall be additional to and not replace national citizenship.”⁴⁸

60. The rights of EU citizens set out in the Treaties include—

- the right to move and reside freely within the territory of the Member States, subject to the limitations and conditions laid down in the Treaties and by the measures adopted to give them effect;
- the right to vote and to stand as a candidate at municipal elections and European Parliament elections in other Member States when residing there;
- to be protected by the diplomatic or consular authorities of any EU Member State (when in a third country) on the same conditions as the nationals of that State; and
- the right to organise a citizens' initiative to call for new EU legislation with other EU citizens.

61. In addition, the Citizens' Rights Directive ([Directive 2004-38](#)) develops and codifies these rights. The rights under the Citizens Directive include—

- **a right to leave the territory of a Member State to travel to another one** (Article 4) allowing EU citizens and their non-EU family members to leave a Member State to travel to another Member State without the need for an exit visa;

- **a right to enter the territory of a Member State** (Article 5) allowing an EU citizen who holds a valid identity card or passport and his/her non-EU family members the right to enter the territory of any Member State;
- **the right of residence for up to three months** (Article 6) providing EU citizens with the right of residence on the territory of another Member State for a period of up to three months without any conditions or any formalities other than the requirement to hold a valid identity card or passport;
- **the right of residence for more than three months** (Article 7) for all EU citizens if they are workers or self-employed in that Member State; or if they have sufficient resources for themselves and their family members not to become a burden on the social assistance system of the host Member State during the period of residence and have comprehensive sickness insurance cover in the host Member State; or they are accredited student and have comprehensive sickness insurance and sufficient resources for themselves and their family not to become a burden on the social assistance system of the host Member State;
- **the right of permanent residence** (Article 16) for EU citizens who have resided legally for a continuous period of five years in the host Member State. This also applies to family members who are third country nationals;
- **the right of equal treatment** (Article 24) allowing EU citizens the right to enjoy equal treatment with the nationals of the host Member State (although it should be noted that there is no obligation to provide social assistance during the first three months of residence or grant maintenance aid for studies.
- **the right to restrict the freedom of movement of EU citizens and their family members** (Article 27) on the grounds of public policy, public security or public health.

62. As part of the single market the EEA EFTA countries (Norway, Iceland and Liechtenstein) also benefit from the freedom of movement rights which are a core part of that agreement. Sarah Craig, Maria Fletcher and Nina Miller-Westoby of the University of Glasgow summarised the rights that derive from EU law and which EEA citizens (EU and the EEA EFTA countries) benefit from—



EEA nationals ... in the UK derive a range of rights from EU law for themselves and their family members. The sources of these rights can be found in primary EU law (TEU and TFEU and Charter of Fundamental Rights), secondary EU law (the 'Citizen's Rights Directive' (2004/38/EC), a number of Regulations on coordinating social security rules,) and the case law of the Court of Justice of the EU. Together they make up the *acquis* of EU law in this area. In Scotland (and the rest of the UK) these EU law-derived rights are given effect by domestic legislation (eg The Immigration (European Economic Area) Regulations 2006).

” The range of rights conferred by EU law upon EEA nationals extend beyond pure immigration-related rights (eg entry and residence) and include, for instance, rights to access education, rights to set up and run a business and rights of access to public services. The principle that underpins the application of these rights is ‘non-discrimination on the grounds of nationality.’ Recipients of these EU-law derived rights are in effect exempt from the application of UK immigration controls.⁴⁹

63. Thus, EU citizens enjoy a range of rights, primary among them being the right to move and reside freely within the territory of the Member States. The UK’s withdrawal from the EU raises questions about the potential for UK citizens to lose these rights, depending on the agreement that the UK Government reaches with the EU on its future relationship, as well as about the rights of EU citizens from other Member States currently residing in the UK to continue to stay in the UK.

The withdrawal agreement and the resolution of the position of EU citizens

64. At the time of publication of this report, the UK Government has indicated that it foresees the position of EU citizens as being resolved as part of the withdrawal agreement. In an email to the House of Lords European Union Committee, the Home Office set out its position—

” ...the government has been clear that it wants to protect the rights of EU nationals already living in the UK, and the only circumstances in which that would not be possible are if UK citizens’ rights in other EU Member States were not protected in return. The government has provided repeated assurances on this point but this issue must be addressed as part of the wider negotiations on the UK’s exit from the EU. The government has committed to invoking Article 50 by the end of March 2017 once it has clear objectives for negotiations. Therefor the government will not be able to provide any further detail at this time”.⁵⁰

65. The importance of resolving the position of EU and EEA EFTA citizens as part of the withdrawal agreement was stressed in the evidence. As mentioned earlier in this report, there are 181,000 EU nationals living in Scotland, and almost three million EU nationals living in the UK as a whole, as well as 1.2 million UK nationals living in the EU. Sunder Katwala of British Future believed that it was important “to press for the matter to be settled right at the start—by declaration and on day 1”⁵¹ in order to reduce anxiety and people living without clarity on their future status. He argued—

” We will have some very complex negotiations. Those have not begun yet, so we do not know the starting positions or the outcomes. However, they will affect everyone in Scotland and in Britain in lots of ways. The most pressing and urgent issue is the 3 million Europeans who now live in the

UK—150,000 of them in Scotland—and over a million Brits around the EU.⁵²

66. If the question of EU and EEA EFTA nationals in the UK and UK nationals in the EU is settled as part of the Article 50 negotiations, it can be agreed by a majority in the European Council (i.e. it will not require unanimity). Professor Spaventa believed that settling this issue was “one of the main article 50 matters, because it is about what to do with people who are exercising their rights at the moment of exit.”⁵³
67. If an agreement is not reached as part of the Article 50 negotiations, then, as Sarah Craig, Maria Fletcher and Nina Miller-Westoby pointed out, EU and EEA EFTA citizens in Scotland (and the rest of the UK) would have “no immediate legal basis to reside in Scotland and to continue their lives in their work or study and with their families in the way that they have established.”⁵⁴ UK citizens living in other EU and EFTA EEA countries would be similarly affected as their EU citizenship status would be lost.

EEA membership

68. The scale of the loss of rights by UK citizens would depend on whether the UK sought membership of the European Economic Area or not. Brendan Donnelly, of the Federal Trust, observed that, “Citizenship ... cannot be distinguished from the general question of leaving the European Union or, more precisely, what Britain’s relationship with the EU will be once it has left the EU” and that there “are many barriers, both intellectual and political, to getting a clear picture of that.”⁵⁵
69. If the UK had decided to remain in the EEA, free movement of persons would have continued under Part III of the EEA agreement. However, EU citizenship is not protected under the EEA, which could, for example, affect the residence rights for family members of EU citizens. Professor Barnard commented on the impact of joining the EEA—



On Brexit, those rights ... will be removed, unless we join the European Economic Area as an independent state and not qua a member of the European Union. Of course the advantage of joining the European Economic Area is that it is as close as possible to the position that we have at present, but it is worth noting that the European Economic Area does not recognise the concept of EU citizenship. If we were to rejoin the EEA, in which case our position would be much the same as that of Norway or Iceland, there would be rights of free movement for those who are economically active, such as workers, the self-employed and service providers. The so-called Citizens rights directive would also apply, so that students and persons of independent means would have rights. However, any rights under the more general principles of

citizenship that those who are economically inactive might previously have had would not apply. The EFTA court does not give an expansive reading of citizenship rights for economically active people.⁵⁶

70. Professor Kochenov explained that the EEA framework would, in part, provide protection in relation to the freedom of movement—

” The EEA court is obliged to interpret the directive on the free movement of citizens, including the rights that it grants to family members who are not economically active, as if citizenship was not created by the Maastricht treaty; that covers all the family members of people who are economically active.⁵⁷

71. Professor Barnard questioned whether continuing membership of the EEA would be politically acceptable as it would involve “migration on much the same terms for those who are economically active, plus students and people who have independent means, or should there be a much more dramatic curtailment of immigration?” She noted that there was an emergency-brake provision in the EEA agreement which “exists in case of significant need by a member state that wants to interfere with the operation of free movement, for example.”⁵⁸

The Committee is particularly concerned by the current position of EU and EEA EFTA nationals living in the UK, as well as UK nationals who are exercising their rights as EU citizens in other countries. This includes 181,000 EU nationals living in Scotland. As the UK Government has indicated that discussions on the position of these people will be considered as part of the withdrawal negotiations, UK nationals in EU and EEA EFTA Member States and EU and EEA EFTA citizens in the UK face a protracted period of uncertainty and no guarantee that they will be able to continue to live where they currently reside.

The Committee considers that by including EU and EEA EFTA nationals living in the UK, and UK nationals living in EU and EEA EFTA Member States, as part of the negotiations there is a risk that their position remains unclear and becomes part of the wider negotiations. The Committee therefore calls on the UK Government to provide clarity on the position of EU and EE EFTA citizens living in the UK without further delay.

The impact of the UK withdrawing from the EU on the rights of EU and EEA citizens

72. There are three groups who will be affected by the UK's withdrawal from the EU in relation to their rights as EU citizens—
- UK citizens who currently enjoy rights as EU citizens;

- EU and EEA EFTA citizens living in the UK; and
- UK citizens living in EU and EEA EFTA countries.

The rights of UK citizens

UK nationals who have not exercised free movement rights

73. As indicated previously, all UK nationals are EU citizens by virtue of being a citizen of a Member State of the EU, a status that will be lost when the UK leaves the EU. Unless rights are negotiated for UK citizens as part of the withdrawal agreement, UK nationals could have fewer rights than some third countries currently have in relation to the EU. For example, there are non-discrimination clauses in EU agreements with Russia and Morocco which provide the citizens of those countries with some rights in relation to the EU.

74. Following withdrawal, as citizens of a third country, UK nationals might need to apply for visas to enter the EU unless an agreement was reached as part of the withdrawal agreement.

75. Professor Douglas-Scott described the impact of withdrawal from the EU on the rights of UK citizens as “an underexamined area of Brexit”⁵⁹ which raised a number of questions about the ramifications of loss of EU citizenship. She asked—

” Is deprivation of EU citizenship to be likened to loss of national citizenship or to government expropriation of a valuable property? Might the government be financially liable for this loss? Does it involve the violation of human rights?⁶⁰

Professor Douglas-Scott stated that UK citizens could lose the following rights when the UK leaves the EU—

- “Rights of free movement, residence and the right to work and study in other EU states.
- “Rights to vote/stand for the European Parliament, as well as the right to vote/stand in European Parliament and local elections while resident in other EU states.
- “Rights to do business with other EU states without barriers, even if not personally leaving the UK (e.g. selling insurance/financial services over the phone to another EU state from the UK).
- “The many other rights which accrue from EU membership, although this would depend on whether these were preserved by the UK Government. These include workers’ rights such as equal pay for work of equal value for men and women, and working time measures.”

76. Professor Catherine Barnard of the University of Cambridge described the “deprivation of citizenship is a serious matter” noting that although UK nationals would retain their UK citizenship, “they will be deprived of ... rights ... such as the rights of free movement.”⁶¹
77. Professor Dimitry Kochenov of the University of Groningen considered that “the fact that UK citizens will not be able to benefit from free movement in the EU drastically reduces the quality of the rights that they enjoy.”⁶² He explained that—

” Although UK citizens, by virtue of UK law, can reside in the UK, enjoy non-discrimination in the UK and work in the UK, by virtue of EU law before Brexit they can enjoy exactly the same rights in 27 more states. The issue of scale is fundamental here. The loss of scale and the loss of the territory in which rights can legitimately be claimed based on EU citizenship, which corresponds to 27 other EU member states.⁶³

The Committee recognises that the UK’s membership of the European Union has conferred a range of legal rights on UK citizens as EU citizens. Principal among these is the freedom to move and reside freely within the EU, which many UK citizens have enjoyed. This has allowed EU citizens to travel freely in order to study, to work and to reside in other EU Member States and benefit from the same rights that citizens of those states enjoy. It has also allowed UK citizens the right to establish businesses in the EU.

The Committee believes that ability to exercise these legal rights freely has become an intrinsic part of our lives and one that many of us have taken for granted. There are generations of UK citizens who have never known the restrictions that visa requirements place on travel, either from a business or personal perspective. If UK citizens are no longer able to exercise these legal rights, it will not only establish physical barriers, but it will inhibit our engagement with the countries and peoples of the EU.

The Committee calls on the UK Government to give priority to ensuring that UK citizens can continue to travel without burdensome visa requirements and that the capacity of UK citizens to travel for work or pleasure will not be restricted in any significant sense. It also believes that this will help promote the principle of reciprocity in future travel arrangements between the UK and the EU Member States.

The position of EU and EEA Citizens who reside or work in the UK

78. The three million EU and EEA EFTA nationals living in the UK can be divided into two key groups. There are EU and EEA EFTA nationals who qualify for permanent residence as they have lived in the UK for over five years; and there are EU and EEA EFTA nationals who will not qualify for permanent

residence by 2019 (including those that who arrived in the UK after the EU referendum) because they have not lived in the UK for a sufficient period of time, because they have never worked in the UK, or because they are self-employed and do not have comprehensive sickness insurance and so do not qualify for a right of permanent residence under UK law. The future situation of third country nationals who derive a right of residence under the Citizens' Rights Directive through a family member who is British or other EU citizen is also not clear.

79. Professor Eleanor Spaventa stressed that the right to permanent residence “is conferred directly by EU law, and that the permanent residence card is only evidence of that right.”⁶⁴ She further explained that this meant that—

” as long as the citizen can prove that she has resided in the UK for at least five years whilst in employment; or pursuing economic activity; or having satisfied the conditions of sufficient resources and comprehensive health insurance, permanent residence can only be denied on serious grounds of public policy/security. Once a Union citizen has obtained the right to permanent residence, her right to stay in the country becomes unconditional, i.e. it is recognized regardless of economic activity or resources/health insurance.

80. Professor Douglas-Scott, in her briefing for the Committee, noted that applicants had to be able to “document activities in UK, providing evidence such as payslips or letters from an employer.”⁶⁵ She also pointed out that as “EU nationals do not need to register for any documentation in order to enjoy their free movement rights under EU law” it may be “very difficult to determine who is living legally in the UK on the cut-off date.”⁶⁶
81. SPICe calculated the percentage of EU nationals who had lived in Scotland for period of up to five years, and for five years or more. Table 1 demonstrates that 62% of EU nationals living in Scotland, equating to 112,220 people, have over five years of continuous residence and may, therefore, qualify for residence.

Table 1 - Duration of continuous UK residence of EU nationals in Scotland

Duration of continuous residence	% of EU nationals in Scotland
<1 year	3%
1-2 years	9%
2-3 years	13%
3-4 years	7%
4-5 years	5%
>5 years	62%

Source: SPICe analysis of 2015 ONS Annual Population Survey

82. In 2015, British Future notes that 18,064 Permanent Residence cards were granted in the UK. It notes that if 2.8 million people were to apply for residence, that it would take 150 years to process these applications. Currently the cost for the process is £65, compared to the cost of £1,875 for non-EU citizens seeking indefinite leave to remain. Sunder Katwala told the Committee that if the decision is made to grant formal right to remain for EU citizens who qualify for it would be “the biggest administrative task that the Home Office has carried out in its history.”⁶⁷
83. Sunder Katwala also indicated that currently between “a third and 40 per cent of the applications, which are supposed to be just a formality, are refused”⁶⁸ on the basis of applicants not having comprehensive health insurance. For example, time spent as a student or on a career break might only count towards residency if proof of comprehensive sickness insurance could be furnished. As this provision was brought in by the Citizens Rights Directive in 2014, many EU14 citizens were unaware of this requirement. Sunder Katwala noted that the “Immigration Law Practitioners Association has also suggested treating the legal right to use the national health service as meeting the requirement, but taking away the comprehensive health insurance requirement would work as well.”⁶⁹
84. In Scotland there is no evidence of large numbers of EU nationals seeking to apply for Permanent Residence Cards. Fife Migrants Forum told the Committee that, as yet—
- ” There has not been a great rush to apply for permanent residence. A few people have done so and a few people have come and asked questions about how it is done and all the rest of it, but my experience is that there has not been a stampede or anything like that.”⁷⁰
85. However, Professor Wright warned the Committee that there would need to be “a cut-off date somewhere along the way.”⁷¹ He stated—
- ” There will be a spurt when that is announced, so the announcement is very important. In economics, we fixate on how you announce and when you announce. The big rush will come following the announcement of the cut-off date, when there will be a difference one day before and one day after.”⁷²
86. Sunder Katwala told the Committee that there are approximately 120 local nationality-checking services in the UK, six of which are in Scotland. These allow documentation to be checked and added to as necessary. Sunder Katwala suggested that local authorities could provide the service for a charge. He explained—

” They could be allowed to charge, say, the £70 to do it, and the simple cases would go. They also have access to data and documentation that the state holds from Her Majesty's Revenue and Customs, the Department for Work and Pensions and others. It would be possible for them to green-light simple cases but not to refuse cases. If they could not green-light a case, it could go into the Home Office pile. That would get the Home Office pile down to hundreds of thousands from 3 million, as we have 2 million cases of people with five years of residence and another several hundred thousand who will have five years by Brexit day. We could let people do it nearer their homes. The local authorities should be able to keep the cost of providing the service.⁷³

87. Sunder Katwala said that another burden would be the challenge for people of finding documentation to prove that they had lived in the UK for over five years—

” Not only will people be trying to find their gas bills from five years ago, but employers, who are already looking at this for their current employees, might have everybody they have employed since 2004 suddenly coming back looking for the evidence of that employment, even if an employer has gone out of business. Where we can use the state's systems to prove that people have a footprint, we should do so. Everybody who has been exercising their free movement rights has a footprint in systems that the Government holds. We should try to access those systems to give people their status, in the simple cases.⁷⁴

88. If there was an increase in the fee for EU citizens to apply for the Permanent Residence Cards, particularly if it was increased to the amount paid by other immigrants to the UK, this could prove to be very expensive for those individuals, particularly where they have a family. Professor Spaventa said—

” The other problem is that, although there is a fee that could be paid, the fee applies for every single family member. For a family of five, multiply £1,875 times five. That is a lot of money to ask of low-skilled workers, and we know that there are a lot of low-skilled workers. They came in good faith when it was a right to come here, so we must be very careful that the rules do not turn out to be incredibly punitive.⁷⁵

The Committee notes that over 110,000 of the EU citizens living in Scotland may currently be eligible for Permanent Residence Cards, but that there has not been any evidence of a significant increase in applications following the EU referendum. The Committee concurs with evidence suggesting that there may be a point at which high numbers of EU citizens seek to formalise their residency in the UK and that this is likely to put a severe logistical strain on the Home Office.

The Committee therefore calls on the Scottish Government to work with local authorities and migrants groups to provide further information and support to EU citizens living in Scotland who wish to apply for Permanent Residence Cards, and to explore the potential of local authorities to provide this service. It asks the Scottish Government to assess the capacity of the six centres in Scotland that pre-check applications to ensure that they can cope with greater demand and provide support to EU citizens across the whole of Scotland.

The Committee is concerned by the burden that may be placed on employers when EU citizens seek to collect the evidence of their residence, as well as the fact that EU citizens will be dependent on the goodwill of employers in providing this information.

The Committee is also concerned that EU citizens who have lived in the UK for more than five years may assume that they will satisfy the requirements for permanent residency but not qualify on sickness insurance grounds. It therefore calls on the Scottish Government to raise this issue at intergovernmental level and press for the sickness insurance requirements to be interpreted as being met by the legal right to use the National Health Service. The Committee also believes that there should not be any substantial increase in the cost of applying for a Permanent Residence Card, particularly as the cost could be prohibitive for families on low incomes.

Rights of family members of EU citizens living in the UK

89. A specific issue also emerged in relation to the derived rights of family members of EU citizens living in the UK. Professor Spaventa told that Committee that “We have to remember not to talk only about EU citizens but to include third-country-national family members” as they have also “come here exercising their rights.”⁷⁶
90. As indicated earlier, under EU law the family members of EU nationals have the same rights as their spouse, partner or parent, regardless of their nationality. Thus non-EU citizens derive their rights from their family relations. Thus, parents of EU citizens maintain a right to reside when their child is in education or is self-sufficient. Divorced spouses who are not EU citizens can reside in an EU country if they are economically active or self-sufficient, or have been married for at least three years (including one year in the country concerned).
91. Professor Spaventa explained that those who can prove a family tie, or have “matured a right under the citizenship directive have the same rights as an EU citizen.”⁷⁷ She emphasised that this was very important in relation to children so that a non-EU parent of a child would have the right to reside in the same EU country as that child. Professor Spaventa

provided an example demonstrating the importance of derived rights for family members—

” If, for example, there has been a divorce or a death in the family so that the main right holder—say, the Italian spouse who is here—has departed, you might have a US citizen or a Somali citizen, perhaps with her children, who has a right to stay here until Brexit but who loses everything after Brexit because they are no longer going to be protected. The particular risk is that negotiations or mutual agreements will focus on EU citizens and forget that those citizens might have family members who came here legitimately and with an expectation of being treated in a certain way. It is possibly not fair to push them towards a normal immigration status, because it is so expensive to be an immigrant in the UK. Also, if they were to become normal immigrants, they would have to fulfil the income requirement and it is not obvious that they would manage to do that.⁷⁸

The Committee calls for the rights of third country nationals living in the UK due to a family relationship with an EU citizen to be addressed in any future agreement. The Committee believes that there is a risk that these third country nationals could experience a reduction of their rights as a result of the UK withdrawing from the EU.

Students and Pensioners

92. Students currently have the right to study in other EU Member States on an equal basis (for this reason EU students do not pay fees in Scotland). In addition, a number of students participate in the Erasmus programme, either coming to a Scottish University as part of this programme, or spending time studying at a university in the EU. There are questions as to whether EU students would be charged international student fees following Brexit and whether they would be guaranteed visas to study at UK universities or whether they would have to comply with the Tier 4 arrangements for international students studying in the UK.
93. Professor Spaventa pointed out that the most vulnerable group was pensioners, both EU and EEA EFTA pensioners living in the UK and UK pensioners living in the EU/EEA. A third of the 1.2 million UK nationals living in the EU/EEA are pensioners. She identified two areas in which this group would be most affected: firstly, in terms of provisions allowing for pensions to be index-linked and paid abroad; and secondly, for medical expenses. Professor Spaventa explained—

” Crucially, such legislation allows people to have the national health service pay their expenses abroad. Private medical insurance is perhaps not so

expensive for someone who is young and fit, but it is incredibly expensive for a pensioner. Once the medical arrangements are no longer in place, even if equality of rights is maintained, those pensioners simply might not be able to continue to live abroad. Special attention should be given to replacing those co-ordinated arrangements, but the problem is that they will have to be negotiated with all the member states once the UK is out of the EU. That will take a long time, which is why pensioners are particularly vulnerable.⁷⁹

The Committee has received evidence from the higher education sector about the positive impact that EU and EEA students have made to Scottish universities and the income they bring to the Scottish economy. The Committee would therefore like to see a continuation of the opportunity for EU and EEA EFTA students to study in Scotland and for Scottish students to study in EU and EEA EFTA countries, as well as the involvement of students from Scottish universities and colleges in the Erasmus programme.

The Committee recognises the particularly vulnerable position of pensioners, whether they be UK pensioners living in other Member States, or EU and EEA EFTA pensioners living in the UK, in connection to the index-linking of pensions or the provision of medical cover.

The Committee therefore calls on the Scottish Government to represent the specific interests of these two particular groups in its intergovernmental discussion with the UK Government on the position of EU citizens.

UK nationals living in the EU and the EEA EFTA countries

94. As mentioned previously, there are currently around 1.2 million UK citizens residing in other EU member states. If their status is not agreed as part of a withdrawal agreement, they will lose their EU citizenship (unless they have the nationality of another EU Member State) and will be treated as third country nationals under the EU's Common Immigration policy (from which the UK, Denmark and Ireland have opt-outs). This covers the rights of third country nationals to live, work and study in the EU, and their rights as long-term residents.
95. Approximately two thirds of UK citizens living in the EU are economically active as either employees or self-employed, while the other third are economically inactive (primarily pensioners, but also students).
96. The terms of the withdrawal agreement and the time at which it is negotiated may be crucial for this group. Professor Douglas-Scott stated that there was a risk that UK nationals living abroad may "well suffer loss of pension and other benefits which they currently enjoy in EU law. If this is agreed as part of

the Article 50 negotiations, it can be agreed on a majority basis in the European Council – otherwise it will be subject to unanimity.”⁸⁰

97. Professor Douglas-Scott suggested that the way in which the UK decides to deal with the position of EU nationals in the UK might influence the other EU member states—

” Their treatment by these member states would appear to depend on the terms of Brexit. Were the UK to take a harsh approach to EU nationals here, it is likely that UK nationals in other EU states may be treated similarly, although EU institutions and EU member states are bound by EU law in shaping the Withdrawal Agreement.”⁸¹

98. Professor Douglas-Scott also pointed out that if the UK were to require EU citizens to obtain visas to visit the UK, then a similar requirement might be imposed in the EU. Furthermore, the EU’s Returns Directive (Directive 2008/115/EC) would provide the legal basis for the expulsion of UK nationals who had no right to stay in the EU.

99. Professor Spaventa was less concerned by the rights of UK nationals in the EU than by the position of EU nationals in the UK. She argued that—

” We should remember that most member states have written constitutions with fundamental rights enshrined. In Italy, whose legal system I know quite well, migrants would probably be protected anyway under doctrines of fundamental rights and legitimate expectations. Therefore, it is politically very unlikely that the EU will use the issue as one of its cards; legally, it would not be possible to do so because those citizens are still protected under EU law, and they would be protected by the constitutions and judicial systems of the member states. I am not very anxious about the issue, apart from in relation to the pensioners, who are a different problem, because some co-operation is needed.”⁸²

100. This was reinforced by Professor Barnard who said “most other member states have not just the ECHR but national constitutions, which have fairly robust fundamental rights protection that is sometimes better than that provided by the European convention.”⁸³

101. Professor Spaventa argued that, in her view, UK citizens who had exercised their EU rights would not be subject to more stringent requirements than third-country national family members because there were a series of “constitutional constraints and principles that the European Court of Justice and the European institutions have elaborated on in the past 20 years.”⁸⁴ She stated—

” For me, it is unthinkable that somebody who has EU citizenship at the time of exit will be treated as a third-country national, because there is quite a complex body of case law. When the person exercised the right, they had

that right, and a person who has lost that right should be treated differently under European law from how a Canadian or whatever would be treated.⁸⁵

102. Professor Kochenov was less optimistic based on the manner in which the Netherlands had dealt with the position of the citizens of its former colonies. He explained—

” At the beginning of the 1980s—I think that it was on 1 January 1981—Suriname nationals suddenly discovered that they were treated as third-country nationals who came from nowhere, and the history of their Dutch citizenship throughout their lifetime was ignored. Not a single Netherlands court has done anything to alleviate that pressure. We had to wait for the European Court of Human Rights to comment, and a body of case law has come from Strasbourg that reminds Dutch courts to take into account the history of those people’s status. If it were not for that court, the national system would not protect them.⁸⁶

The Committee notes the arguments made in evidence that the constitutions and fundamental rights of other Member States may offer some protection to UK nationals living in them. However, it remains concerned by the lack of clarity on the future rights of UK nationals, and their family members, to continue to reside in other Member States where they have made temporary or permanent homes. It believes that there is a pressing need to resolve the position of these people so that they have clarity on the extent to which their rights and their ability to continue their lives will be affected.

The degree of protection offered by acquired rights and human rights

103. The evidence on whether there were any protections for either the rights of EU nationals in the UK or UK nationals in EU Member States focused on the doctrine of acquired rights and human rights, particularly the European Convention of Human Rights (ECHR).
104. There has been some discussion of the protection that Article 70 of the Vienna Convention on the Law of Treaties (the Vienna Convention) and the international law doctrine of acquired rights might provide in relation to EU rights following UK withdrawal from the EU.
105. Professor Douglas-Scott, in her briefing for the Committee, commented that “the acquired rights doctrine in fact does not give very much protection, and where it does offer protection, it is usually only where property or contract rights are at issue – for example where an EU national has bought property in Scotland, that right might be assured.”⁸⁷
106. Although EU law and the EU Treaties give individuals rights, they make no specific mention of acquired rights. As the Law Society of Scotland stated,

“The EU Treaties make no specific mention of acquired rights nor are there any provisions which seek to protect acquired rights, notwithstanding the fact that EU law and the Treaties give individuals rights.”⁸⁸

107. Sarah Craig, Maria Fletcher and Nina Miller-Westoby commented on the argument that the Vienna Convention on the law of the Treaty is supportive of the idea that acquired rights do attach to EU citizens in the UK following the UK leaving the EU. They said—

” We support the view that the ‘*acquired rights*’ principle in international treaty law (Art. 70 Vienna Convention) does NOT offer additional protection to ensure the continuity of rights acquired by EEA nationals in the UK, or of UK nationals in the EU [post withdrawal from the EU](#). There appears to have been some confusion around this issue in some campaign literature in the run up to the referendum. To avoid that confusion it may be preferable to use the term ‘accrued’ or ‘attained’ rights. Any continuity of rights pertaining to EU citizenship post EU–withdrawal would need clear protection in any withdrawal agreement between the UK and the EU or failing an agreement at that ‘external level’, in domestic legislation.”⁸⁹

108. Professor Douglas-Scott suggested that human rights, principally the ECHR might provide some protection of the rights of individuals. She noted—

” The right to family and private life (Article 8 ECHR) may be violated if EU citizens are threatened with deportation post Brexit. EU citizens whose businesses are affected by Brexit may also have human rights claims, for example interference with their property (under Article 1 Protocol 1 ECHR) or violations of their rights to private life (Article 8 ECHR) which also includes the office and work.

” Article 14 ECHR prohibits discrimination within the ambit of other ECHR rights. It requires justification for different treatment of two apparently similar groups. Given that no official announcement has been made concerning freedom of movement, using 23 June as a cut-off point for residence rights might be considered unlawful discrimination between groups of EU citizens who should be treated in the same way up and until UK actually exits EU in 2019.”⁹⁰

109. Professor Barnard set out the way in which the Human Rights Act 1998 gives effect to Article 8, pointing out that the “protection is not always as robust as people might think. It is stronger in respect of deportation than it is in respect of family reunification.” She said—

” However, it certainly gives some rights, even in the worst-case scenario, which I think we would all agree is that two years expire, there is no deal at all and the article 50 period has not been extended, as that would require unanimous voting. That would be not just a hard Brexit but a disorderly and

chaotic Brexit, but the Human Rights Act 1998 would apply, and there are also public law doctrines that are based on legitimate expectation. Were there suddenly to be a desire to deport all the EU nationals who live in the UK, the courts would be swamped with challenges based on the ECHR and traditional British public law doctrines.⁹¹

110. Professor Kochenov agreed, noting that, “The ECHR will play a decisive role in protecting those who would otherwise be left without any protection, should a disorderly Brexit happen. I agree entirely that article 8 will play a fundamental role there.”⁹²
111. Sunder Katwala pointed out that a situation in which two years had expired without a resolution on the situation of EU citizens “would be shocking” as well as “a slow, costly and uncertain way of finding out that some people have article 8 protections and others do not.”⁹³ He argued that from this perspective there needed to be a focus on resolving the question as it was “in nobody’s interests to end up with a large, irregular group of people who could have had their rights protected.”⁹⁴
112. Professor Spaventa indicated that she was “slightly less optimistic about the beauties of article 8”. She explained that—

” ...the European Court of Human Rights has given a huge margin of appreciation to member states in immigration matters. That is very strict and there is nowhere near as much protection as might be expected. As we said, the idea that every EU citizen in the UK would have to go to court to seek recognition of basic rights would be very disappointing and very costly.⁹⁵

The Committee notes that the doctrine of acquired rights may provide some protections in relation to property or contract rights, but offers little to support the protection of EU citizens’ rights.

The Committee believes that European Convention on Human Rights provides more protection than acquired rights, particularly in a situation where no withdrawal agreement is reached before the end of the two year negotiating period under Article 50. In this scenario, the right to family and private life under Article 8 could provide protection to EU citizens in the UK where cases were litigated. However, the Committee does not consider that the European Convention on Human Rights and the Human Rights Act protect, or substitute, the rights that EU citizens currently enjoy in the UK.

Associate citizenship

113. A Luxembourg MEP, Charles Goerens, has suggested that the EU should make an 'associate citizenship' available to those UK nationals who wished to maintain rights as EU citizens. The Committee was able to review this proposal further with him in a meeting during a visit to Brussels.

114. Professor Douglas-Scott explained that, "The Goerens' proposal was for opt-in with payment of a membership fee - in return, individuals would have some rights currently guaranteed by Treaty A[r]ticles 21-22 TFEU."⁹⁶

115. Mr Goerens submitted evidence to the Committee explaining his proposal. The proposal was developed by Mr Goerens for an amendment he tabled to an own-initiative draft report by Guy Verhofstadt MEP entitled "Possible evolutions of and adjustments to the current institutional set-up of the European Union"⁹⁷. In written evidence to the Committee, Charles Goerens explained that—

” In fact, in his report, Mr. Verhofstadt raises the idea of a type of “associate status”, which could be proposed “to those states in the periphery that only want to participate on the sideline, i.e. in some specific Union policies”, underlining that “this status should be accompanied by obligations corresponding to the associated rights”. This new type of “associate status” could thus be one of the possible outcomes of the negotiations about the future relationship between the EU and the UK. My proposed amendment could hence go hand in hand with Mr. Verhofstadt’s proposal and could be seen as a solution satisfying all UK citizens who wish to maintain a close relationship with the EU, whether they live in or outside the UK territory.⁹⁸

116. Charles Goerens explained why he had proposed an associate citizenship status—

” I am deeply convinced that we should not ignore the concern felt by many of those who continue to identify themselves with the European values and wish to be part of the European project even after their country has ceased to be a member of the European Union.⁹⁹

117. The First Minister has recently stated that she ‘would not rule out associate citizenship of the EU for Scotland’.¹⁰⁰

118. The proposition for some form of associate citizenship was raised in evidence. Professor Kochenov considered that it would not be possible without changing the Treaty on the Functioning of the European Union as “Part 2 of the Treaty on the Functioning of the European Union, which deals with citizenship, does not allow for such status.”¹⁰¹ Professor Spaventa agreed that it was necessary to change the Treaty and raised the question of the political willingness of the other Member States to do this—

- ” Let us remember that the eastern bloc is not impressed by the political rhetoric of not wanting EU workers, for the obvious reason of the migration that has taken place post-2004. Therefore, there might be a political unwillingness.¹⁰²
119. Professor Kochenov also saw the political challenges around such a proposal as “there is a fundamental problem in that it is likely that post-Brexit relations between the UK and the EU will be reciprocity-based.” He pointed out that—
- ” Associate citizenship would be a one-way provision of rights, as opposed to a reciprocal arrangement. All EU citizens who did not lose their status as a result of Brexit but who find themselves in the UK for one reason or another would not benefit at all from such a grant of rights to those who had exercised their full political sovereignty to leave the EU.
- ” There are several problems with the idea of associate citizenship. First, it involves the EU being asked to grant rights to people who have decided to leave the EU. Secondly, the EU would not thereby grant any rights whatever to its own citizens, so it might even be contrary to the idea of non-discrimination as it is understood in EU law. For that reason, I do not think that associate membership could possibly go through.¹⁰³
120. Sunder Katwala believed that the “idea of the EU27 Governments offering the chance for 1 million, 2 million or 5 million Britons who might like to live and work abroad to opt in unilaterally to one-way free movement would be a very curious thing for them to do at the start of a negotiation.”¹⁰⁴ He thought that—
- ” The EU27 Governments are very unlikely to offer associate membership, setting aside the fact that a treaty would be needed to do so. The UK Government could be entirely indifferent about the symbolic gesture and say, “Please offer it if you would like to.” It could take offence at it for symbolic reasons, too, but it could just say that it was happy for its citizens to be offered things on an optional basis. The catch-22 is that it would make sense to offer it to individual citizens only if free movement was in place, at which point the content of the offer would be diminished.¹⁰⁵
121. Professor Barnard commented that there was a lot that is “left unsaid” about the proposal—
- ” In particular, what annual payment would be needed to enjoy that associate citizenship—would it be £100 or £1,000? If it were to be accompanied by the right to access to the benefits system or the healthcare system—for emergency treatment, assuming that the European health insurance card disappears—in another member state, it would start to become quite costly for those other member states. There might be quite a strong political

imperative on the part of the EU27 to say, “No way”, because the arrangement is not reciprocated.¹⁰⁶

122. Professor Spaventa also thought that the concept needed to be further defined, particularly in relation to whether it involved free movement. She said—

” If you interpreted it as a symbolic gesture, whereby you simply removed the need for a visa in order to travel to the EU, of course it is possible. However, if you interpret it as implying a proper and substantial status that involves free movement of workers in a way that gives people the right to work and engage in the economic life of another member state, you again have the problem of reciprocity... I do not see how, even if we wanted to, we could legally or politically carve out a deal that would have any significance beyond a symbolic element in relation to travelling in and out.¹⁰⁷

123. Brendan Donnelly, however, considered that the proposal “might fly” as—

” For some of our partners, associate citizenship is a proposal that would have some attractions, because it is not the people who voted for Brexit who would apply for associate European citizenship, but those who, in the view of certain of our continental colleagues, are the downtrodden minority. I think that the proposal might well fly, and it will be an interesting element of the negotiations.¹⁰⁸

The Committee notes with interest the proposal developed by Charles Goerens MEP for some form of associate citizenship and the support that Guy Verhofstadt MEP, the European Parliament’s lead negotiator on Brexit, has for the idea. The Committee also recognises the challenges to making such a proposal a reality, notably the need for Treaty change and the support of the Member States. Nevertheless, the Committee considers that the challenges posed by Brexit may require pragmatic and creative approaches to be developed in order to deal with problems such as those that will be faced in relation to the rights of EU and EEA EFTA citizens.

The potential for bilateral agreement between the UK and individual Member States

124. The potential for a series of bilateral agreements between the UK and individual Member States were thought to be unlikely. Professor Kochenov considered that bilateral approaches would be improbable before withdrawal as “bilateralism would imply throwing away the idea of EU citizenship for the member states of the EU” as “different EU citizens will get different rights that depend on their association with the EU member state”.¹⁰⁹ Brendan

Donnelly concurred that there would be little chance of bilateral arrangements before Brexit. He recognised that, “There is always a temptation for negotiators who are negotiating with a large group of other people to try to split some of them off, and I would be amazed if the hope of doing that does not reside somewhere in the Foreign Office...However, I think that that is a vain hope.”¹¹⁰

125. Professor Barnard pointed out that there was an increasing body of EU law on the position of third-country nationals including “rules on long-term residents, on family reunification, on highly skilled so-called blue card workers, on seasonal workers and on intracorporate transfers.” She pointed out that, “Paradoxically, those rules will apply to the UK once we leave the EU, albeit that we have opted out of them while in the European Union.” Professor Barnard also highlighted the capacity issues related to any bilateral agreements, noting that there might be resource-intensive trade negotiations taking place and that “the civil service—certainly at Westminster—is probably at its lowest level since the end of the second world war.”¹¹¹

The Committee recognises that there would be many challenges to the UK seeking bilateral agreements with individual Member States in the absence of an EU-level agreement covering EU citizens. In particular, bilateral agreements would undermine the concept of EU citizenship enshrined in the EU Treaties. It therefore considers that this makes reaching agreement as part of the withdrawal negotiations as more imperative.

Future EU migration to Scotland

126. In addition to taking evidence on EU migration and EU citizens' rights, the Committee considered Scotland's future migration needs. In order to ensure that EU withdrawal did not reverse population growth in Scotland, there was some discussion in evidence on the potential for a differentiated immigration policy for Scotland in the future.
127. Subsequent to the Committee's evidence sessions on EU migration and EU citizens' rights, the Scottish Government published a paper on [Scotland's Place in Europe](#). In that paper, the Scottish Government argued that "regardless of the outcome of the Scottish Government's efforts to keep Scotland in the European Single Market ... there is a strong and increasingly urgent case for greater flexibilities on immigration for different parts of the UK." It further argued that "a one-size-fits-all approach is not in the best interests of Scotland" and that therefore "Scotland needs to explore a distinctive approach, whatever its future relationship with the single market turns out to be." The Scottish Government referred to the "Fresh Talent" initiative as a precedent for differentiation—
- ” We have already pioneered approaches suited to our particular circumstances such as the introduction of “Fresh Talent” in 2005 which allowed international students to work in Scotland, contributing to our economy and communities for two years after graduation. There is also strong support for future differentiation – with our partners in the university and business sectors, the Scottish Government has consistently made the case for the re-introduction of a post study work route which would allow talented graduates to stay in Scotland after completing their studies and continue to make a valuable contribution to the country.¹¹²
128. This section of the report considers the immigration debate that has taken place surrounding the EU referendum; whether it is important that migration should come from EU and EEA EFTA Member States; and the current immigration system for non-EEA citizens before considering the potential for a differentiated immigration policy in Scotland.

The immigration debate

129. During the roundtable on EU migration, the witnesses reflected on the debate on immigration that had taken place both prior to and following the referendum on EU membership. Professor Boswell noted that the “climate and debate on immigration in the context of Brexit have been highly charged and very heated in the rest of the UK in particular.”¹¹³ For this reason, she said—
- ” There are risks and opportunities for the Scottish debate when we observe what is happening in the rest of the UK. We should not be complacent that Scottish public opinion is significantly different from that in the rest of the

UK. In the event of the Scottish Government making a case for a slightly distinct approach—one that is perhaps more liberal than that of the rest of the UK—there is a risk that immigration could become more politically salient in Scotland than it is at the moment.¹¹⁴

130. Professor Boswell also argued that “we must think seriously about how we can engender and foster a more responsible and well-informed debate on immigration here.” She suggested that—

” One part of that has to be about securing buy-in across the Scottish political spectrum for a vision on immigration that is shared, progressive and informed by evidence. I know that there is an anti-expert, post-truth dynamic in the immigration debate at the moment, which we must think about carefully, but there is a window of opportunity right now for Scotland to do things differently and to have a more progressive, informed and open debate on the issue.¹¹⁵

131. Professor Kay also emphasised that “it is extremely important that we have an informed, evidence-based, progressive and popular debate with the settled population so that the political leadership and the migrants can look at that and see their views.” She raised the example of differing attitudes to immigrants in London and surrounding areas—

” We can look at London and the way in which it has acted as an exception. London has the highest possible levels of migration and diversity, yet it is often in the neighbouring regions where there are lower levels of migration that people are most prone to believing anti-migration rhetoric. That is also a danger for Scotland, as we have regions that have relatively low numbers of migrants and relatively low lived experience of what that means, but which are vulnerable to the negative discourse that says, “They are going to come and this is what the outcomes of that will be.”¹¹⁶

132. Angela Hallam stressed the need to avoid complacency, pointing out that, “There is some evidence that greater exposure to migrants actually increases tolerance and understanding but, if people feel overwhelmed, there is a very fine line.”¹¹⁷

The UK's future immigration policy

133. Professor Boswell commented on the impact of withdrawal from the EU on immigration policy in the UK. She stated that, “It is inevitable that UK immigration policy will be in flux in the context of Brexit: something is going to have to change, whether that is an expansion of the current points-based system or new bespoke programmes.”¹¹⁸

134. While the UK Government has not indicated how it will adapt immigration policies following withdrawal from the EU, the UK Prime Minister has made it clear that leaving the EU will allow closer control over immigration. At the Conservative Party Conference in early October 2016, the Prime Minister stated—

” We have voted to leave the European Union and become a fully independent, sovereign country. We will do what independent, sovereign countries do. We will decide for ourselves how we control immigration. And we will be free to pass our own laws.”¹¹⁹

135. Professor Boswell told the Committee that restricting immigration was challenging and that while the UK Government been “committed to reducing net migration since 2010” there had nevertheless been “a rise in net migration” from countries outside the EU.¹²⁰

136. Professor Wright perceived the future challenge to be about how Scotland could secure the immigration that it needs when it “has no say in immigration policy” and there is “a points-based system in place.”¹²¹ He considered that while this was a challenge, it could also be an opportunity. He commented—

” We have got a little bit lazy about the current system because we do not have to do anything. People know that the jobs are there and they show up with high skill levels—largely in English language skills—so we just continue. We have taken that for granted, but we now have to think about what we are going to do if those people are not available.”¹²²

Is it important that migration should come from EU and EEA EFTA Member States?

137. There was a difference of opinion among those giving evidence as to whether immigration from the EU and EEA EFTA countries should be maintained or whether the geographical origin of immigrants was of no importance. Professor Robert Wright posed the question: “Why is everybody so concerned that, in the future, it may not be somebody from Poland doing the low-skilled jobs but somebody from Indonesia or somewhere else?” He argued that, “It should be the best person with the appropriate skills who does those jobs” and that “Brexit may give you an opportunity to establish a more rational immigration system that does a better job of matching people to jobs and reducing job turnover.”¹²³

138. Professor Kay raised the question of the needs and support that immigrants coming from other parts of the world might require to help support them. She said that qualitative research had demonstrated that the social rights that are available to EU citizens had made a big difference to their integration in Scotland. This raised a question about—

” ...what people coming from Indonesia or other parts of the world need in terms of social support, integration policies and accompanying packages for family migrations, settlement, access to education and healthcare. All of those things might or might not be the same as the support that has been available to EU migrants, and such questions need to be looked at in the round as the policies are discussed, not addressed as an afterthought once

people are already here and we find that they do not fit neatly with what support might or might not be in place.¹²⁴

139. Professor Boswell referred to bilateral agreements that have existed in other European countries to fill seasonal and temporary labour migration needs, such as the UK's Seasonal Agricultural Work Scheme which, until the end of 2013, allowed for Bulgarian and Romanian agricultural workers to take seasonal employment in the UK for up to six months. She explained that it had been historically "convenient to have such agreements with neighbouring countries where there are established patterns of pendular or circular migration and established migrant networks."¹²⁵

The current immigration system for non-EEA citizens

140. The current immigration system in the UK for non-EEA nationals has a five-tier visa system. These tiers cover high skill/high value migrants; sponsored skilled workers; low-skilled workers; students; and temporary workers. Each tier contains several different visa categories (and some sub-categories), with varying associated conditions and mandatory eligibility requirements.¹²⁶
141. Under the Tier 2 visa, within the general skilled workers sub-section, the UK Government also operates a shortage occupation list. There is one list covering the whole of the UK and an additional list for Scotland. To qualify under the Scotland list, the job must be based in Scotland. The Scotland list is additional to those occupations already on the UK list and currently includes two additional occupations: certain categories of physical scientists and specific medical practitioner occupations. Visas for jobs under the shortage occupation scheme specify a minimum salary to be paid and stipulate that the job must be for a minimum of 30 hours per week.
142. When the current system was discussed, Lorraine Cooke of COSLA referred to the Scottish shortage occupation list as lacking the "flexibility to reflect Scotland's needs and the needs of local areas."¹²⁷ She explained that—

” Our issue is that the system is creating more barriers. Over the years, the bar has risen for the shortage occupation list. Social care used to be on it but, with qualifications and suchlike, salary scales have risen and it has come out of tier 2.”¹²⁸

143. Professor Boswell described the Tier 2 visa as the “most relevant to a post-Brexit scenario” as it covered “a range of different programmes, including intra-company transfers and the shortage occupation list, which defines the occupations that face acute shortages.” She noted that the special list for Scotland was “very minimally used”. Professor Boswell thought that expanding the Tier 2 visa would be “one obvious route for trying to expand possibilities for recruiting EU nationals post-Brexit in the tier system” and that there was “an opportunity there for Scotland to try to identify particular occupations or sectors that will face acute shortages and which need to preserve a flow of EU nationals into them.”¹²⁹

144. Tier 3 is for low skilled workers but it has never been used because any need for low skilled workers has been met from within the resident workforce or EU nationals.
145. Professor Boswell suggested that, in the future, there could be an expansion of the tier system or bespoke programmes or systems could also be put in place specifically for EU nationals, which give them preferential treatment. She considered a points-based system to be less likely.
146. Professor Kay expressed reservations about a tiered system that was focused on the needs of the labour market as it would ignore “the wider issue of what the migrant population may be bringing to particular areas.” She argued that in Scotland—

” We need to look beyond narrowly defined labour market needs to demographic profiles and communities. There are communities in which 50 per cent or more of the intake year in primary schools are the children of central and eastern European migrants. What will happen to those schools and communities if those families are not there?¹³⁰

147. Countries such as Canada and Australia use points-based systems and shared responsibility for immigration at different levels of government. Professor Wright reflected on the possibilities for future immigration policy in the UK—

” One way of dealing with this issue would be to devolve immigration completely; the other way would be to share it with, for example, provincial nominee programmes. That would simply be a matter of agreement; it would not be a matter of any difficulty or technology. All the provinces in Canada and the three territories have those arrangements with the federal Government. It is a workable approach, but it is also a political issue.¹³¹

148. Professor Boswell indicated that while there were practical issues associated with such schemes, she considered that they could be overcome. She provided evidence of the Swiss cantonal system whereby “cantons have quotas but can bid for more; there is a kind of free pool that can be allocated across them.”¹³² However, Professor Boswell also pointed out that the current data collected in Scotland and other parts of the UK was inadequate to support the development of immigration policy. She argued that—

” A priority would be to improve the data and develop robust data on net migration to Scotland and to other areas of the UK. Once we had that in place, if we then saw a reduction in net migration in England or parts of the UK but the numbers remaining steady or slightly increasing in Scotland, it would be more politically viable to say that what was happening in Scotland need not be as politically compromising to the Conservative Government.¹³³

149. She argued that there was “an opportunity for the Scottish Government to get better data on where those shortages are, so that it can take a pragmatic approach to negotiations and have some leverage to try to secure a more generous model or programme that better suits Scottish needs” as opposed to “a highly restrictive approach that substantially reduces EU immigration flows.”¹³⁴
150. Angela Hallam recognised that the Scottish Government’s report on [The Impacts of migrants and migration in Scotland](#) had identified the need for better information and that the NRS had “done a lot of work on improving data sources”. She said that the annual population survey and the Census data provided valuable information. She argued that what was important was to “make better use of the data that we have and extend it to collect the information that we need.” She also told the Committee that the Scottish Government was doing work to examine in greater depth which sectors EU migrants are working in and to improve data on that which would be available in 2018.¹³⁵
151. Kirsty MacLachlan of NRS commented that they were “dependent on GP registration as the source of our information for moves to the rest of the UK”¹³⁶ to track cross-border moves and lacked a population system index. She explained that different administrative sources were being used to improve the data sources, but that there were difficulties in accessing data from other departments, and that privacy also had to be respected.

The Committee notes the strong case made by witnesses for holding an informed and evidence-based debate on immigration in Scotland and hopes that this report can contribute to the development of such a debate.

The Committee recognises the value of the research, both quantitative and qualitative, carried out by those who contributed to the Committee’s inquiry work. It commends the Scottish Government and the National Records of Scotland for their work in trying to improve the data on migrants, and individual academics and GRAMNet for their work in researching the lives and experience of migrants. Nevertheless, the Committee considers that it will be crucial to better understand Scotland’s demographic, geographic and skills requirement in order to articulate the case for Scotland’s migration needs in the future. The Committee therefore calls on the Scottish Government to collect more data on EU and other migrants, including the sectors that they work in and their contribution to the economy and society in Scotland. As part of this work, the Committee calls on the Scottish Government to consider how the 2021 Census can be used to improve the data that is available on those born outside of the UK who live in Scotland.

The Committee considers that there is a strong argument for Scotland to be able to continue to attract migrants from European countries as distinct from other countries in the world. This is because there are existing communities from these countries already established in Scotland and their proximity facilitates the flexibility that seasonal or temporary employment requires. It also supports the

development of close cultural ties with our continental neighbours and geopolitical allies.

The Committee notes the evidence presented that the current non-EEA immigration system in the UK does not respond to Scotland's needs, particularly in relation to skills gaps, and the needs of local areas, and that the Scottish shortage occupation list has been little used. The Committee heard of the precedents in countries such as Canada, Australia and Switzerland for different immigration policies within a state and believes that this must be considered for Scotland, and other parts of the UK, following the UK's withdrawal from the European Union.

The potential for a differentiated Scottish immigration policy

152. The legal experts that the Committee heard from questioned how a differentiated approach to immigration within the UK could work in the future. Professor Spaventa queried how a differentiated system could work in practice, asking “how would you prevent someone with a Scottish visa or a London visa—if you had such things—from moving somewhere else?”¹³⁷ She commented that if somebody was employed it might be possible as the Government could impose a check on an employer, but it would be difficult if someone was self-employed.
153. Sunder Katwala acknowledged that there was “international evidence of regional systems, often in larger geographical territories”¹³⁸ but suggested that as there are very low levels of public confidence in the current immigration system then “the public would struggle with the idea of such a system.”¹³⁹ He also observed that the “UK Government is very sceptical of regional schemes because it likes to keep the powers to itself, and there would be a problem with political and public concern until it could be shown that something that is very hard to enforce is actually enforceable.”¹⁴⁰
154. In relation to the question of whether the EU would countenance an agreement with part of a territory of a sovereign state, Professor Kochenov noted that “the EU is extremely flexible in the way that it extends rights to its own citizens outside its territory” and that “EU territory does not entirely overlap with the territories of the member states.”¹⁴¹ He referred to a number of examples from New Caledonia, French Polynesia or the Dutch overseas territories in the Caribbean, as well as Greenland and the special status for the Faroe Islands and Gibraltar. He suggested—



If we draw on examples from overseas of boundaries between full membership and associate membership that are quite blurred, we see that the EU is ready to go the extra mile to meet the requirements of those territories that are rooted in their special status or their geographical and

economic position. In that sense, a lot of non-reciprocal relationships apply to EU citizens in particular territories outside the EU. Something of that kind could, theoretically, inspire negotiations. That is uncharted territory in many respects, but such negotiations could result in a special relationship between the EU and Scotland or the EU and Northern Ireland, for example.¹⁴²

155. However, he also pointed out that “the majority of those countries or overseas territories that have an asymmetrical relationship benefit from the goodwill of the EU to contribute to their wellbeing and development.”¹⁴³ He identified a need to “prove that Scotland is, in some sense, so special that the EU is convinced to apply the same deviations from its own idea of equality.”¹⁴⁴
156. Sarah Craig, Maria Fletcher and Nina Miller-Westoby emphasised that under the current devolution settlement, both immigration control and EU and treaty negotiations are reserved matters. Therefore “input from the Scottish Government and Parliament into negotiations on EU citizenship between the UK and the EU, and internally within the UK, is ultimately at the gift of the UK Government.”¹⁴⁵ They also pointed out that the “UK Government’s recent interpretations of the reserved purpose of immigration control have been very broad: e.g. the Immigration Act 2016 saw incursions into areas of law usually regarded as devolved (such as housing) which were not deemed to require the Scottish Parliament’s legislative consent, on the grounds that the main purpose of the legislation was reserved.”¹⁴⁶
157. Sarah Craig, Maria Fletcher and Nina Miller-Westoby therefore believed that any scope for “a differential settlement in Scotland to enable, for instance, a more generous or protective position for EEA nationals in Scotland post withdrawal for the UK”¹⁴⁷ as being limited. However, they did recognise that there were examples of “cooperation leading to Westminster-approved differential immigration policy in Scotland, taking account of devolved matters that overlap with immigration issues (e.g. health and education provision for asylum seekers and refugees) and different economic/job market conditions (e.g. post study work visas and shortage occupation lists).”¹⁴⁸
158. They suggested that there were a number of ways to protect EU and EEA EFTA citizens’ accrued rights under EU law, including—

” Further devolution of power, so that immigration control for EU/EEA citizens comes within the legislative competence of the Scottish Parliament, could address Scotland’s demographic and economic needs, as well as clarifying in law the scope for the Scottish Parliament and Government to continue to protect the accrued rights of EEA citizens in Scotland. This would require amendment to the Scotland Acts (including the Scotland Act 1998 reservation on immigration control), as well as political commitment and reciprocity from both sides of the border.

” Alternatively a unique bi-lateral relationship between Scotland and the EU could perhaps be developed which could be designed so as to incorporate EU free movement rights. Both of these latter two options may also be open to the UK as a whole.¹⁴⁹

159. Professor Damian Chalmers of the London School of Economics submitted written evidence to the Committee in which he perceived “no reason why Scotland could not continue to enjoy free movement of persons with the European Union whilst retaining a passport union with the rest of the United Kingdom”. However, he did consider that there “would be a number of dimensions to managing such a relationship.”¹⁵⁰

160. Professor Chalmers believed that the use of National Insurance numbers for both the employed and self-employed could “be used to secure the rights of EU citizens to work or be self-employed in Scotland but not in the roUK.” He explained that—

” It would involve Scotland having devolved powers to issue these, and such numbers being clearly marked so that they only entitle employment and self-employment within Scotland. The competence to issue such powers would have no implications for the allocation of fiscal powers between Scotland and roUK as payments made under these numbers would be treated like any other National Insurance contribution. Policing for employment would be relatively simple as employment authorities in the roUK would have access to these numbers, and if a roUK employer sought to employ an EU citizen illegally it would flag up in the system. More challenging is the position of the self-employed. In particular, an EU citizen might register in Scotland but then carry out her business in roUK. One way to prevent this would be to impose regular duties on self-employed EU citizens resident in Scotland to file regular receipts, and not simply as part of the annual self-assessment. This should determine where the work was carried out.¹⁵¹

161. For self-sufficient EU citizens and students, Professor Chalmers envisaged a registration process which might require proof of address to be checked to ensure that the EU citizen was living there rather than anywhere else in the UK. He considered that, “This could probably be legitimately required under EU law, but legal security would be greatly secured if this was also explicitly secured in any treaty.”¹⁵²

162. For those resident in Scotland, reciprocal rights in EEA States could be secured “by acquiring documents which certify their residence in Scotland and their British citizenship, and which would, in turn, be accepted by EEA States as entitling them to the rights to free movement and residence.”¹⁵³ Professor Chalmers suggested that this would need to be covered in a treaty, “as EU law currently allows for free movement

on the basis of presence of a passport or a national identity card, and such a document would almost certainly be classified as neither.”¹⁵⁴

The Committee acknowledges that there was a spectrum of views in evidence on the potential for Scotland to have a differentiated arrangement in relation EU migration. These ranged from the development of the existing immigration system to be more responsive to Scotland's needs through to the development of a system to allow EU citizens to work or be self-employed in Scotland, but not in the rest of the UK. Some considered the legal and practical difficulties to be insurmountable, while others saw the potential for National Insurance numbers to be used to facilitate a differentiated immigration system for Scotland.

The Committee is concerned both by the position of EU and EEA EFTA citizens living in Scotland and the UK citizens living in EU Member States and the impact of Brexit upon them, and the continuing need for Scotland to grow its population and fill vacancies in the labour market. While individual Committee members hold differing views on Scotland's future relationship with the EU, the Committee collectively believes that a full range of options need to be explored which may protect the rights of EU and EEA EFTA citizens and allow for EU and EEA EFTA nationals already in Scotland to remain. It should also allow EU and EEA EFTA nationals to migrate to Scotland in the future to take up employment and contribute to Scottish society.

Conclusions

We believe that this report provides strong evidence of the importance of EU migration to Scotland and the contribution that EU citizens have made to the Scottish economy and Scottish society. EU migration since 2004 has contributed to reversing the decline in the Scottish population and in increasing the number of people of working age in Scotland. It has also been of significant net economic benefit and increased Scotland's fertility rate. Scotland may no longer face the challenge of population decline to the same degree as in the early years of the Scottish Parliament.

EU withdrawal poses a major challenge for EU citizens. We are concerned about the position of the 181,000 EU migrants living in Scotland, as well as the position of Scots living in Europe. They are effectively living in a state of limbo until there is clarity on whether they will be able to continue their lives here, and if so, under what terms.

We believe that Scotland's economy could suffer if we no longer have access to European workers who have been crucial to so many sectors of our economy, ranging from agricultural workers, through those employed in food and tourism to skilled engineers and scientists in our high-growth sectors. EU citizens have become a crucial part of our labour market, and there are risks to the Scottish economy of any decline in current number of EU migrants.

We believe that EU citizens who have made their homes throughout Scotland should be allowed to remain. Most live in Scotland's major cities, but others have also made homes in rural communities where they have contributed to the sustainability of those communities. They have brought and shared their cultures, enriching our lives and our society. Scotland is part of Europe and would be a poorer place without these citizens from other European countries.

The evidence that we have collected shows that the demographic risks for Scotland of a reduction in the number of EU migrants are more acute than for the UK as a whole. This leads us to conclude that there has to be a bespoke – or differentiated – solution for immigration policy in Scotland in the future. The Committee also recognises that there may need to be a bespoke solution that can respond to skills or demographic needs in other parts of the UK. This need for a bespoke or differentiated solution in Scotland should be fully explored by the Scottish Government and raised by it in its discussions with the UK and other devolved administrations.

Annexe A

The Committee would like to thank all of those who submitted written evidence or gave oral evidence to us. In addition, we would also like to thank Professor Sionaidh Douglas-Scott, who is the adviser for our inquiry into the Implications of the EU referendum for Scotland, for her advice and briefings for this report.

Extracts from the minutes of the Culture, Tourism, Europe and External Relations Committee and associated written evidence and supplementary evidence

4th Meeting, 2017 (Session 5), Thursday 2 February 2017

3. EU Migration and EU Citizens' Rights (in private): The Committee agreed its report on EU Migration and EU Citizens' Rights.

3rd Meeting, 2017 (Session 5), Thursday 26 January 2017

3. EU Migration and EU Citizens' Rights (in private): The Committee considered a draft report, discussed changes, and agreed to approve the final report by correspondence.

2nd Meeting, 2017 (Session 5), Thursday 19 January 2017

3. Migration and Citizens Rights (in private): The Committee considered a draft report, proposed some changes, and agreed to reconsider the report at the next meeting

14th Meeting, 2016 (Session 5), Thursday 8 December 2016

1. The implications of the EU referendum for Scotland: EU nationals and their rights: The Committee took evidence in roundtable format from—
Professor Robert Wright, University of Strathclyde; Kirsty MacLachlan, Senior Statistician and Head of Demographic Statistics, National Records of Scotland; Professor Rebecca Kay, Professor of Russian Gender Studies, University of Glasgow; Professor Christina Boswell, University of Edinburgh; Lorraine Cooke, Policy Manager, COSLA Migration, Population and Diversity Team; Colm Wilson, Interim Manager, Fife Migrants Forum; Angela Hallam, Strategic Analysis Team, Office of the Chief Statistician and Strategic Analysis, Scottish Government.

1. The implications of the EU referendum for Scotland: EU nationals and

their rights (in private): The Committee considered evidence heard earlier in the meeting.




15th Meeting, 2016 (Session 5), Tuesday 15 December 2016

2. The implications of the EU referendum for Scotland: EU nationals and their rights: The Committee took evidence from— Professor Eleanor Spaventa, Durham University; Professor Dimitry Kochenov, Chair in EU Constitutional Law, University of Groningen; Brendan Donnelly, Director of the Federal Trust and Former MEP; Sunder Katwala, Director, British Future; Professor Catherine Barnard (via video conference), Professor of European Union Law, University of Cambridge.

3. The implications of the EU referendum for Scotland: EU nationals and their rights (in private): The Committee considered evidence heard earlier in the meeting.




5. The EU referendum and its implications for Scotland (in private): The Committee considered a draft Report and agreed to consider it further at a future meeting.

Associated written evidence

-  [Charles Goerens MEP \(131KB pdf\)](#)
-  [Professor Damian Chalmers \(National University of Singapore and London School of Economics and Political Science\) \(113KB pdf\)](#)
-  [Professor Eleanor Spaventa, Chair in European Law, School of Law, Durham University \(262KB pdf\)](#)

Annexe B

EU Migration and EU Citizens' Rights list of other written evidence received

-  [Sarah Craig, Maria Fletcher and Nina Miller-Westob \(257KB pdf\)](#)
-  [Hanna Pennig \(88KB pdf\)](#)
-  [Dr Anja Gunderloch \(156KB pdf\)](#)

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- ³¹ British Medical Association. Written submission, page 3.
- ³² British Academy. Written submission, page 4.
- ³³ University of Highlands and Islands. Written submission, page 5.
- ³⁴ National Federation of Roofing Contractors. Written submission, page 1.
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