



Home Office



Department
for Work &
Pensions

Review of the Balance of Competences

Internal Market: Free Movement of Persons

Call for evidence

May 2013

*Review of the
Balance of Competences*

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CALL FOR EVIDENCE ON THE GOVERNMENT'S REVIEW OF THE BALANCE OF COMPETENCES BETWEEN THE UNITED KINGDOM AND THE EUROPEAN UNION

Free Movement of Persons

Opens: 16 May 2013

Closes: 5 August 2013

INTRODUCTION

1. The Foreign Secretary launched the Balance of Competences Review in Parliament on 12 July 2012, taking forward the Coalition commitment to examine the balance of competences between the UK and the European Union. The review will provide an analysis of what the UK's membership of the EU means for the UK national interest. It aims to deepen public and Parliamentary understanding of the nature of our EU membership and provide a constructive and serious contribution to the national and wider European debate about modernising, reforming and improving the EU in the face of collective challenges. It will not be tasked with producing specific recommendations or looking at alternative models for Britain's overall relationship with the EU.
2. The review is broken down into a series of reports on specific areas of EU competence, spread over four semesters between autumn 2012 and autumn 2014. The review is led by Government but will also involve non-governmental experts, organisations and other individuals who wish to feed in their views. Foreign governments, including our EU partners and the EU Institutions, are also being invited to contribute. The process will be comprehensive, evidence-based and analytical. The progress of the review will be transparent, including in respect of the contributions submitted to it.
3. The Home Office and the Department for Work and Pensions are leading the review on the **free movement of persons**. The free movement of persons is one of the Four Freedoms which comprise the EU internal market – an area intended to ensure the free movement of persons, goods, services and capital. Greater integration within an internal market reduces the autonomy of the Member states to act independently, but can bring significant benefits as the barriers to trade between Member states are removed.
4. The Treaty provisions on the free movement of persons covered in this Call for Evidence are those concerned with the rights of citizens of the

Union to move and reside within the Member states; free movement of workers, students and those of independent means; and the freedom of establishment of self-employed persons. The principle of free movement of persons is underpinned by measures to facilitate the mobility of skills and workers, and to coordinate access to social security and public services.

5. As part of this review we are seeking evidence on the impact of the EU's competence in relation to the movement of EEA nationals and their family members entering, leaving and residing in the UK from a variety of different perspectives, including the impact on the UK economy and our labour market, as well as societal and cultural impacts, and the impact on UK nationals exercising free movement rights in other EU member states. We are also seeking evidence on the effect of EU competence with regards to social security coordination, which underpins the exercise of free movement rights.

WHAT IS COMPETENCE?

6. For the purposes of this review, we are using a broad definition of competence. Put simply, competence in this context is about everything deriving from EU law that affects what happens in the UK. That means examining all the areas where the Treaties give the EU competence to act, including the provisions in the Treaties giving the EU institutions the power to legislate, to adopt non-legislative acts, or to take any other sort of action. But it also means examining areas where the Treaties apply directly to the Member states without needing any further action by the EU institutions.
7. The EU's competences are set out in the EU Treaties, which provide the basis for any actions the EU institutions take. The EU can only act within the limits of the competences conferred on it by the Treaties, and where the Treaties do not confer competences on the EU they remain with the member states.
8. There are different types of competence: exclusive, shared and supporting. Only the EU can act in areas where it has exclusive competence, such as the customs union and common commercial policy. In areas of shared competence, such as the single market, environment and energy, either the EU or the member states may act, but the member states may be prevented from acting once the EU has done so. In areas of supporting competence, such as culture, tourism and education, both the EU and the member states may act, but action by the EU does not prevent the member states from taking action of their own.
9. The EU must act in accordance with fundamental rights as set out in the Charter of Fundamental Rights (such as freedom of expression and non-discrimination) and with the principles of subsidiarity and proportionality. Under the principle of subsidiarity, where the EU does not have exclusive competence, it can only act if it is better placed than the member states to do so because of the scale or effects of the proposed action. Under the

principle of proportionality, the content and form of EU action must not exceed what is necessary to achieve the objectives of the EU treaties.

CALL FOR EVIDENCE

This public call for evidence sets out the scope of the review of the balance of competences in the area of free movement of persons. We request input from anyone with relevant knowledge, expertise or experience. This is your opportunity to express your views.

Please send your evidence to:
FreeMovementofPersonsBoC@homeoffice.gsi.gov.uk
by midday 5 August 2013.

Your evidence should be objective, factual information about the impact or effect of the competence in your area of expertise. We will expect to publish your response and the name of your organisation unless you ask us not to (but please note that, even if you ask us to keep your contribution confidential, we might have to release it in response to a request under the Freedom of Information Act). We will not publish your own name unless you wish it included. Please base your response on answers to the questions set out below at the end of each section.

BACKGROUND

10. The free movement of persons is one of the four 'fundamental freedoms' which comprise what is known as the EU's 'single' or 'internal' market – an area without internal frontiers designed to ensure the free movement of persons, goods, services and capital. The internal market was a concept at the heart of the original Treaty of Rome which envisaged the creation of a common market for the original six members of the then European Economic Community (EEC).
11. As an economic concept intended to facilitate the smooth functioning of the internal market, free movement was originally focused on those who were 'economically active' – such as workers and self-employed persons, and those giving or receiving services. Free movement was therefore intended to support the development of an EU labour market where workers could move across the EU to fill skills and employment gaps and improve their own economic opportunities. From the outset EU law included supporting provisions to ensure rules within national social security systems would not act as a barrier or disincentive for workers and their families to move between member states.
12. Free movement is not the same as not having border controls. Under the rules on free movement Member States, such as the UK, may still apply border checks. This is different from the arrangement Member States within the Schengen area have; they have abolished most controls on their

common internal borders, and established a common visa policy (including mutual recognition of Schengen visas).¹

13. Today most EU nationals who choose to exercise their free movement rights still do so for economic reasons (with work the primary motivator). However, the scope of free movement rights are now not limited to economic actors, but extend to students and those who are self-sufficient.
14. This mirrors the shift in the broader nature of the EU. The Maastricht Treaty in 1992 introduced the idea of EU citizenship for all citizens of the EU member states. It extends a general right to move and reside for up to three months to all citizens (and beyond three months if treaty rights are being exercised), as well as a set of broader rights including, for example, the right to vote and stand as a candidate in European Parliament and local elections.²
15. The free movement of persons is underpinned by a broad set of rights including the principle of protection against discrimination on the grounds of nationality with regards to employment, remuneration and other conditions of work and employment; and associated measures to facilitate free movement such as provisions on social security coordination so that people do not lose entitlement to social security benefits when they move between member states to work, study, or retire.
16. Free movement of persons is now probably the most complex area of the internal market and has developed significantly in recent years through secondary legislation and evolving case law of the European Court of Justice (CJEU) and national courts. The current state of competence is summarised below, and more detail is set out in the legal annex.

EU COMPETENCE ON THE FREE MOVEMENT OF PERSONS

17. The free movement of persons is an area of 'shared competence'. This means that where the EU has enacted legislation, the UK does not have competence to act other than in accordance with that legislation. Where EU citizens and family members are clearly exercising Treaty free movement rights, the obligations imposed on the member states in which they reside are largely set out in the EU's primary law (the Treaties) and in secondary legislation.
18. Competence for the *coordination* of social security schemes is shared between the EU and member states. However, member states have exclusive competence for the *design, organisation and funding* of their social security systems - they are free to decide who is entitled to be

¹ The borders aspects of Schengen are covered in the Asylum and Immigration Review. This review is also open from 13 May if you wish to submit evidence.

² The non-free movement aspects of EU citizenship such as elections and voting will be considered in the fourth semester review on Citizenship.

covered under their legislation; which benefits are granted and under what conditions; and how benefits are calculated.

Treaty provisions on free movement

19. As set out above, both the free movement of workers and underpinning measures to ensure social security coordination have been central to the EU since the beginning. A series of Treaties have since extended the EU's objectives beyond the economic sphere, and consequently expanded the application of free movement to citizens, whether or not they are economically active.

20. Today the two main Treaties which set out the competences of the European Union are:

- The Treaty on European Union (TEU); and
- The Treaty on the Functioning of the European Union (TFEU).

21. The main Treaty provisions relevant to the competence of the EU in relation to the free movement of persons and associated provisions on social security and welfare provision in cross-border situations are:

- Article 18 TFEU on non-discrimination;
- Articles 20 and 21 TFEU which deal with Union citizenship and free movement rights;
- Articles 45-48 TFEU on the free movement of workers and social security co-ordination; and
- Articles 49-53 TFEU as they relate to the freedom of establishment of self-employed persons.

Secondary legislation

22. The provisions of the Treaties are given further detail by secondary legislation. There are two key pieces of secondary EU legislation that are most relevant. One concerns the rights of citizens of the Union and their family members to move and reside freely within the territory of the member states Directive 2004/38/EC (the 'Free Movement Directive'). Directive 2004/38 repealed and replaced most of the previous European legislation facilitating the migration of the economically active and consolidated the rights of citizens of the Union and their family members to move and reside freely within the territory of the member states. It conferred rights on migrant EU citizens and family members, irrespective of nationality, who accompany or join them. The Directive is implemented in the UK via the Immigration (European Economic Area) Regulations 2006 and also applies to Swiss nationals and nationals of those EEA States which are not EU member states (Norway, Iceland and Liechtenstein) by virtue of separate agreements.

23. The other is Regulation 883/2004 and its implementing Regulation 987/2009, which coordinate the social security systems of the member states. This includes cash benefits (such as unemployment benefit, old-age pension, sickness and maternity / paternity) as well as benefits in kind such as healthcare. The Regulations primarily regulate the conditions under which a person retains, or can acquire, social security benefits when they move between EEA member states. In particular, the rules protect workers who live in one member state and work in another and those who work in multiple member states.

Further measures

24. A number of further measures support the exercise of free movement rights. Regulation 492/2011 sets out a range of rights applicable to workers and their family members with regard to employment, equal treatment, and cooperation between national employment services. It prevents discrimination on the basis of nationality between workers in employment, pay and working conditions. It means that, for example, a French worker cannot be denied employment, or paid less than a British worker, on the basis of their nationality. It also provides the legal basis for the European Employment Services (see box below).

European Employment Services ('EURES') is a cooperation network between the European Commission and the public employment services of the member states intended to provide information, advice and act as a job-matching agent between workers and employers, especially in cross-border regions. In particular, it seeks to address information gaps, where jobseekers may not be aware of employment or training opportunities across the border, how the taxation system works in other member states and how their social security entitlements might be affected by taking a job elsewhere.

25. There is also a Directive on the Mutual Recognition of Professional Qualifications (Directive 2005/36/EC), a more specific measure which aims to support the free movement of certain regulated professionals, and harmonise minimum training in some sectors. The professions covered by this Directive are:

- architects
- dental practitioners
- doctors
- midwives
- nurses responsible for general care
- pharmacists
- veterinary surgeons.

Transitional provisions

26. Under the Accession Treaties, member states can apply transitional provisions which limit access to their labour markets for workers from a new member state for a limited period – up to a maximum of 7 years after that state joins the EU. Specific provisions currently apply to nationals from two accession states (Bulgaria and Romania) who wish to work in the UK as employees and similar transitional controls will apply to Croatian nationals on their accession to the EU. These are set out in the box below.

Workers from accession States

Until the end of 2013 Romanian and Bulgarian nationals who want to work in the UK need the permission of the Home Office in order to do so, unless they qualify under an exemption. They are able to apply to work in skilled employment on the shortage occupation list; or in low skilled employment under the Seasonal Agricultural Worker Scheme or in food processing under the Sector Based Scheme. Similar restrictions apply to Bulgarian and Romanian workers in Austria, Belgium, France, Germany, Luxembourg, Malta, the Netherlands and Spain.

Transitional provisions will also be applied to Croatian nationals who wish to work in the UK, following Croatia's accession to the EU on 1 July 2013.

IMPLEMENTATION

27. Free movement rights can be exercised by citizens of the 27 EU member states, their dependents and (in certain circumstances) other family members. They have also, in large part, been extended to nationals of the European Economic Area (EEA) who are not members of the EU (Iceland, Norway and Liechtenstein) and to Switzerland by virtue of two separate agreements. Union citizens also have the right to exercise free movement rights in these States.
28. Many EEA nationals and their family members now take advantage of this right to move and reside freely in another Member State for a range of different reasons - to work, study or retire for example, or to join their family members. Those who are neither in work nor seeking work have the right to move and reside freely within the territory of the member states as long as they have sufficient resources to support themselves and have comprehensive medical insurance.
29. The Free Movement Directive does not provide an entirely comprehensive list of the circumstances in which a person may have a right to reside in a Member State. The CJEU has ruled that in some particular circumstances a right to reside may arise for an individual who would not otherwise enjoy

free movement rights in order to ensure that *another person* is able to enjoy rights conferred upon them by the EU Treaties or EU legislation. These rights are referred to as '**derivative rights**' as they are derived from the rights enjoyed by another person. Those individuals who have a derived right to reside in the UK are not subject to immigration control and do not require leave to enter and remain in the UK. However, they do not have access to the full range of rights under the Free Movement Directive.

Social Security Coordination

30. With regard to social security coordination there are three key principles:

- generally at any one time, only one member state should be responsible for receiving a person's social security contributions and paying their benefits. This avoids 'double taxation' and the rules allow temporary periods of payment in a person's home state for temporary postings to other member states of up to two years.
- when a person claims a benefit, previous periods of work, insurance or residence in other countries are taken into account ("aggregated") if necessary.
- if a person remains eligible for a benefit in one country, with some exceptions they can receive it in another member state ("exportability").

31. While member states have exclusive competence to design their systems, case law has consistently held that conditions attached to receipt of benefits must not discriminate directly or indirectly against people exercising their right to free movement. This means barriers cannot be created which make it more difficult for people from other states to access benefits than for those in the 'home' state.

32. The coordination system has been built around systems operating on social insurance principles, and rules cover **contributory benefits** related to old age, invalidity and sickness, unemployment and maternity. The rules also apply to **non-contributory universal benefits**. In the UK these include Child Benefit, Attendance Allowance and Disability Living Allowance (Care).. Both types of benefit must be paid in other member states for as long as people continue to meet eligibility criteria.

33. Most member states have social security benefits which have been classed as **special non-contributory cash benefits** in EU law. These are either means tested benefits or benefits for disabled people. The key UK benefits in this class are income based Jobseekers Allowance (JSA), Employment and Support Allowance (ESA), State Pension Credit and Disability Living Allowance (Mobility component).

34. They are not subject to the "export" obligation. Further details of the legal framework are set out in the legal annex.

35. Benefits aimed at alleviating poverty (e.g. support for housing) are classified as **social assistance**, and are not covered by the EU social security coordination legislation (so are also not exportable). In the UK the key social assistance benefits are Income Support and Housing Benefit.

THE UK EXPERIENCE OF THE FREE MOVEMENT OF PERSONS

36. The free movement of persons is one of the most complex areas of the internal market, and identifying the many impacts of EU competence is challenging. We are seeking a broad range of evidence of the impact of EU competence for individuals and the UK as a whole, including economic, societal and cultural impacts.

There are some important limitations on how accurately the movement of people within the EU can be measured and understood. In part, this is because EU citizens may stay in another member state for only a short period of time, they may not be required to register their presence with the authorities of that member state and different member states collect and record data differently.

Statistics

37. Across the EU overall only a small number of citizens choose to exercise their free movement rights. According to the EU Labour Force Survey, in 2011 only 3.1 per cent of working age EU citizens lived in a member state other than their own.

38. Over the decade 2001-2010 net migration from outside the EU was more than three times the volume of net migration by EU nationals (2.1 million non-EU nationals, compared to only 640,000 nationals from other EU countries). Over the same period, non-EU migrants represented 59% of the total inflow, compared to 25% who came from the EU (the remaining 17% being UK citizens)³.

39. Following Accession in 2004 and 2007⁴ there was an increase in the inflow of EU citizens to the UK. For instance, in 2007, long-term immigration by EU8 nationals⁵ peaked, with over 100,000 migrants from the EU8 entering the UK⁶. This compares with 77,000 in 2011.

40. As one of the largest member states, the UK also has one of the largest resident populations of EU citizens, along with Germany, Spain, France and Italy⁷. For instance, in 2011 there were around 2.3 million citizens from other EU member states living in the UK. Of these, the biggest single

³ Source: <http://www.ons.gov.uk/ons/publications/re-reference-tables.html?edition=tcn%3A77-280889>

⁴ In 2004 the new member states to join the EU were: Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia, Slovenia. In 2007 Bulgaria and Romania acceded

⁵ Nationals from eight of the ten Member States to acceded in 2004: Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia, Slovenia

⁶ Source: http://www.ons.gov.uk/ons/publications/re-reference-tables.html?newquery=* &newoffset=0 &pageSize=25 &edition=tcn%3A77-280889

⁷ Source: Eurostat _Migr-popctz.

<http://epp.eurostat.ec.europa.eu/portal/page/portal/population/data/database>

group were Polish nationals – at around 687,000; followed by Irish nationals – at around 351,000. It should be noted that Irish nationals also have a right to reside under the Ireland Act 1949 and are not subject to immigration control. Together, these two nationalities account for 45 per cent of all EU nationals resident in the UK, as shown in Table 1, below⁸.

Table 1 Most common EU nationalities resident in UK, 2011

<i>thousands</i>		
	Nationality	Estimate
1	Poland	687
2	Republic of Ireland	351
3	Lithuania	134
4	France	132
5	Italy	122
6	Germany	119
7	Portugal	105
8	Romania	93
9	Spain	71
10	Latvia	64

Source: Annual Population Survey (APS) - Office for National Statistics

41. At the same time UK nationals can exercise their free movement rights in any other member state. In 2010, it is estimated that around 1.4 million UK nationals were resident in other EU member states (out of around 4.7 million UK nationals living outside the UK in total)⁹. Within the EU the largest numbers of British nationals were estimated to be in Spain (411,000), Ireland (397,000), France (173,000) and Germany (155,000)¹⁰.

Call for Evidence questions

1. What evidence is there that the ability to exercise free movement rights in another member state impacts either positively or negatively on a) UK nationals; and b) the UK as a whole?
2. What evidence is there that EU competence in this area makes it easier for UK nationals to work, access benefits and access services in another member state?
3. What evidence is there of the impact on welfare provision and access to public services in the UK?

⁸ Source: http://www.ons.gov.uk/ons/dcp171776_277619.pdf

⁹ Source: World Bank Global Migrant Stocks Database, 2010. The majority of UK nationals overseas were in Australia (1.2 million), the US (701,000) and Canada (675,000).

¹⁰ Source: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/116025/horr68-report.pdf

4. What evidence is there that a) more EU action; or b) less EU action would improve the situation of UK nationals exercising free movement rights in other member states? What obstacles, if any, do UK nationals face when exercising their free movement rights in other member states?

The labour market

42. Most EU nationals enter the UK in order to work. For instance, in 2011, 59 per cent of EU migrants stated that their main reason for migrating to the UK was for work related reasons (compared with 26% for formal study and 6% to join/accompany a family member).¹¹

43. In 2012 the two biggest work sectors for EEA nationals in the UK were 'distribution, hotels and restaurants' (employing around a quarter of working-age EEA nationals) and 'banking and finance' (employing around a fifth).

Table A1: Employment of Working-age UK, EEA (ex UK) and Non-EEA Nationals by Industry

Industry sector	UK	EEA (excluding UK)	Non-EEA
Agriculture, forestry and fishing	1%	1%	*
Energy and water	2%	1%	1%
Manufacturing	10%	15%	7%
Construction	7%	9%	4%
Distribution, hotels and restaurants	18%	23%	24%
Transport and communication	9%	10%	11%
Banking and finance	16%	18%	19%
Public admin, education and health	31%	18%	28%
Other services	5%	5%	6%
TOTAL (Volume)	25.6m	1.4m	1.2m

Source: Annual Population Survey (APS), January 2012 – December 2012, HO internal analysis

Notes:

* Indicates that number is too small to be statistically significant

¹¹ Source: <http://www.ons.gov.uk/ons/publications/re-reference-tables.html?edition=tcn%3A77-280889>

44. In terms of occupation, a quarter of EEA national workers in the UK were in 'elementary occupations' and around 16 per cent were in 'professional occupations' in 2012, as shown in the table below.

Table A2: Employment of Working-age UK, EEA (ex UK) and Non-EEA Nationals by Occupation

Occupational category	UK	EEA (excluding UK)	Non-EEA
Managers, Directors And Senior Officials	10%	6%	8%
Professional Occupations	20%	16%	25%
Associate Professional And Technical Occupations	15%	11%	12%
Administrative And Secretarial Occupations	11%	7%	7%
Skilled Trades Occupations	11%	12%	8%
Caring, Leisure And Other Service Occupations	9%	7%	11%
Sales And Customer Service Occupations	8%	5%	8%
Process, Plant And Machine Operatives	6%	11%	6%
Elementary Occupations	10%	25%	16%
TOTAL	25.6m	1.4m	1.2m

Source: Annual Population Survey (APS), January 2012 – December 2012, HO internal analysis

45. In the 2004 and 2007 enlargements many people went to rural locations as a result of employment opportunities there in the agricultural and food processing sectors. The Migration Advisory Committee (MAC) published a study on this subject on 14 May 2013.

Call for Evidence questions

5. What evidence do you have of the impact on the UK economy of EU competence on the free movement of persons?
6. What is the impact of this area of EU competence on employment sectors, such as 'distribution, hotels and restaurants', 'banking and finance', agriculture, or other sectors?
7. What evidence do you have of the impact on UK nationals and non-UK nationals in the UK in terms of employment opportunities, wages, employment conditions or other factors?
8. How would these sectors and UK nationals benefit from the EU doing a) more or b) less in this area?

Social Security Coordination

46. In general the UK social security system requires those who come to live in the UK to be able to support themselves and their families financially through work or other private sources of income. The coordination system ensures that contributions made in other member states support access to contributory benefits here. Access to other benefits is in general restricted to those who are working, self-employed or are actively looking for work and have a real prospect of finding it.
47. Access to social security benefits is inevitably a controversial matter and has been the subject of considerable public debate in the UK and across the EU, including whether the current arrangements are having a disproportionate impact on the social security systems of some member states. There are a number of areas where the current balance of competence has been challenged, on which we would particularly welcome evidence. The UK Government has stated an intention to protect the integrity of the system through changes to UK law, and working with other member states and the European Commission to explore how the European system can be reformed.
48. One such area concerns the residence requirements attached to benefits eligibility. The UK has a strict Habitual Residence test which is part of UK law and includes an element which tests whether EEA nationals have a “right to reside” under EU law. This ensures that only those who are in work or are actively seeking work can access non-contributory benefits. The legality of this requirement was challenged on the basis that it is discriminatory i.e. it treats people from other member states differently from UK nationals. The UK Supreme Court upheld the test, however the European Court of Justice may be asked by the European Commission to consider the same question.
49. Another area of coordination which has raised concerns is the exportability of universal benefits. Exportability is a key principle, and allows those who have worked and made contributions in one state to receive for example their state pension when retiring to another state. But case-law from the European Court of Justice which requires the payment of universal benefits such as Child Benefit in other member states has raised important questions about the degree to which member states can insist on current residence as an eligibility test for non-contributory benefits, particularly where these benefits are designed to meet extra costs associated with living in the UK.
50. The EU signs agreements with countries outside the EU, some of which cover aspects of free movement and social security. In the case of Switzerland and the EEA countries, the agreements mean that the EU legislation applies in those countries. In other cases, the agreements are generally limited to reciprocal arrangements for workers moving between a non-EU state (e.g. Turkey) and one or more EU Member States. In recent

years there has been extension of provisions in this area. There is a question on whether the UK should have a right to decide whether to take part in such arrangements. There continue to be complex and controversial discussions about EU competence in this area, and we would particularly welcome expert evidence on this.

51. The UK Government is engaged on an extensive programme of welfare reform. The question of how new welfare benefits such as Universal Credit and the Personal Independence Payment should be classified in EU law is complex, in part because new provision does not fit easily with classic models. The Government considers the Universal Credit by its nature a social assistance benefit and it is therefore outside the scope of social security coordination.

Call for Evidence questions

9. What evidence is there of the extent to which the current EU provisions on social security coordination are necessary to facilitate an effective EU labour market?
10. What evidence is there that changes to the current balance of competences are needed to ensure that rules on social security coordination do not have a disproportionate impact on the UK benefits system, or undermine public confidence in that system?

Long term immigration and its impact on the UK

52. EU competence on the free movement of persons has implications for immigration as EEA nationals do not require leave to enter or remain in the UK (although they must be 'exercising a Treaty right' as a worker, self-employed or self-sufficient person). Recent estimates show that EU nationals comprise around 30 per cent of total immigration to the UK (in the year ending June 2012)¹². The majority (55%) was from outside the EU.
53. As the graphs below from the Balance of Competence Review on Asylum and Immigration show, there has been a significant rise in net migration to the UK beginning in 1998 and boosted further by the removal of controls on new EU members in 2004.

¹² Source: http://www.ons.gov.uk/ons/dcp171778_300382.pdf

Chart 1: Long-term International Migration estimates of all citizens, 1975 – Year Ending June 2012

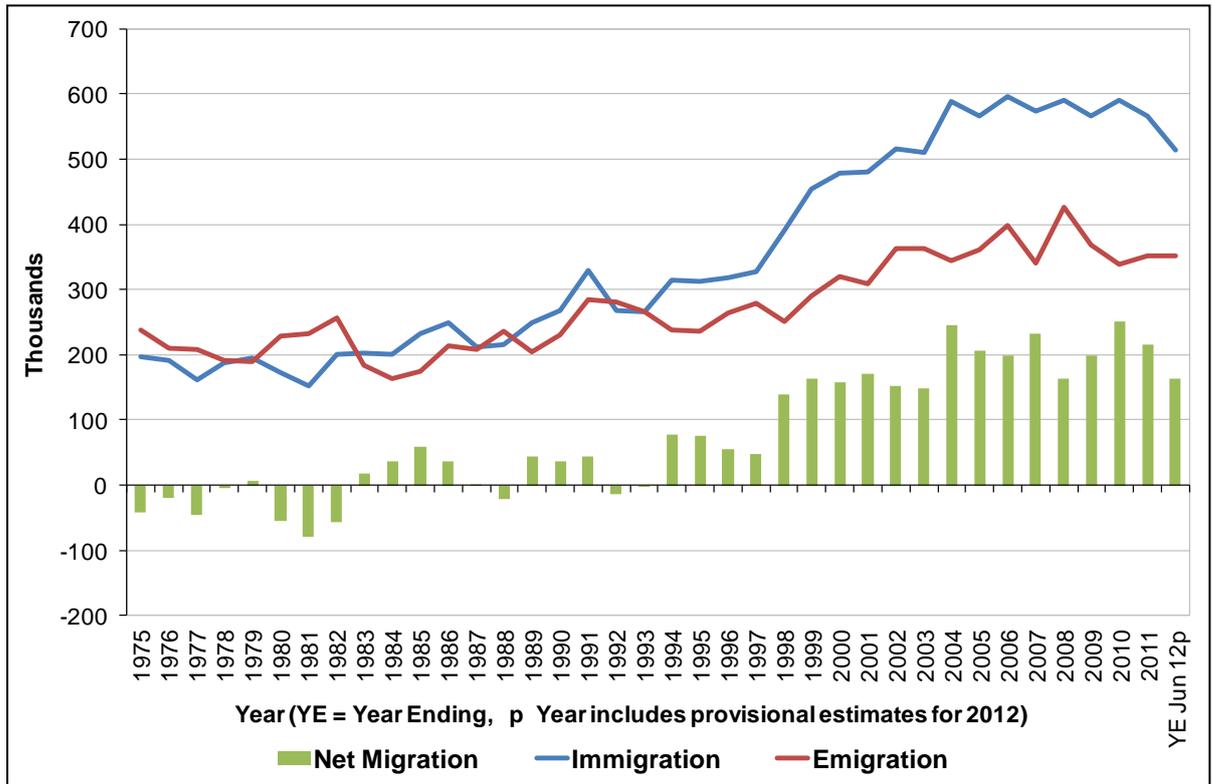
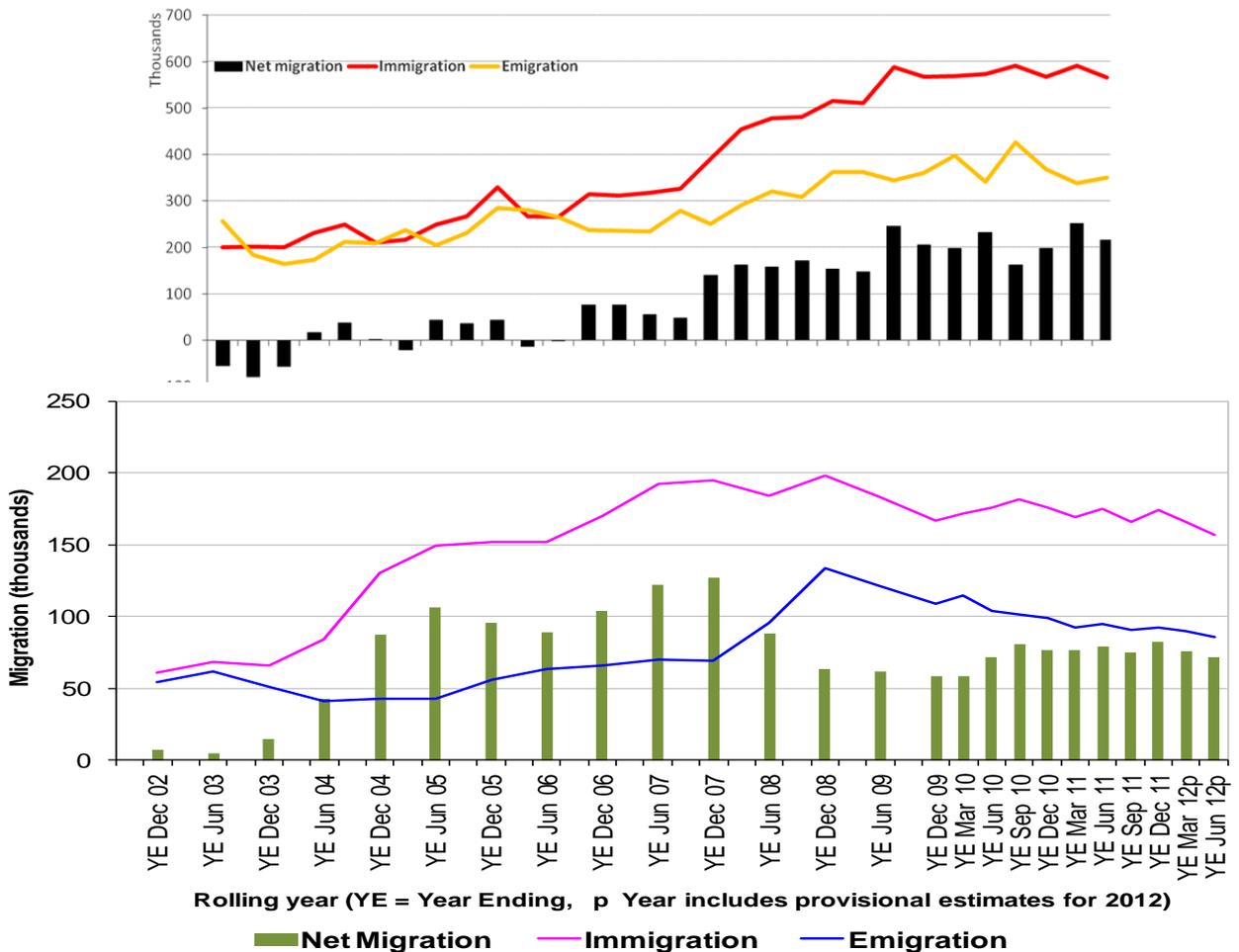


Chart 2: Long-term international migration estimates of EU citizens (excluding British) 2002 to 2012



54. Free movement rights also apply to the family members of EEA nationals - regardless of their nationality. The attractiveness of this 'Europe route' as a means of circumventing domestic immigration controls does lead to abuse, and this has been recognised as an EU-wide problem (the EU's 'Roadmap' EU Action on Migratory Pressures – A Strategic Response, for example, lists tackling abuse of free movement by third country nationals as a strategic priority for the Council).
55. Non-EEA nationals seeking to abuse free movement rights primarily target false claims of family relationship or fraudulent claims of Union nationality. In 2011 the then UK Border Agency received 1,741 reports of suspected marriages of convenience and Border Force detected around 1,500 non-EEA nationals attempting to gain entry to the UK by falsely presenting themselves as a national of a member state with a right of free movement.

Call for Evidence questions

11. What evidence do you have of the impact of EU competence in this area on immigration in the UK?
12. What evidence do you have of the impact on local communities and their economies, including rural areas?
13. What evidence is there that a change in the balance of competence is needed to minimise abuse of the free movement rights afforded to citizens under EU law?

LINKS TO OTHER BALANCE OF COMPETENCES REVIEWS

56. The Balance of Competences Review opened with an overarching, synoptic report on the internal market. The call for evidence for this has now closed and the Department for Business, Innovation & Skills will publish its report in due course. This will be available at the following web address: www.gov.uk/review-of-the-balance-of-competences. Separate reviews on the other three elements of the internal market are as follows:

- Free movement of goods, including the customs union and intellectual property (Articles 28 to 37, and 118 of the TFEU). The call for evidence for this report is now open and available at the following web address: www.gov.uk/review-of-the-balance-of-competences.
- Free movement of services, including financial services, public procurement, certain establishment provisions, and the digital single market (Articles 56 to 62 of TFEU). This call for evidence will be published in semester 3 (Autumn 2013 – Spring 2014).
- Free movement of capital (Articles 63 to 66 of TFEU). The call for evidence for this report will be published in semester 3 (Autumn 2013 – Spring 2014).

All calls for evidence will be made available at www.gov.uk/review-of-the-balance-of-competences.

Other relevant reviews

57. As well as the internal market reviews above, you may also be interested in other reviews, namely:

- Asylum and immigration, led by the Home Office also in semester 2 (15 May – 5 August). This review looks specifically at the immigration and asylum competences that affect nationals from outside the EU/EEA, those not exercising EU/EEA rights and the control of the UK's borders
- Health, led by the Department of Health in semester 1. This call for evidence has now closed. The full report and summary of evidence submitted will be published in due course at <https://www.gov.uk/review-of-the-balance-of-competences>. This review covers medicines and medical devices, public health and nutrition, food labelling and the aspects of EU competence on the free movement of persons applicable to healthcare provision. Specifically, it will consider the coordination of healthcare under the EU social security rules and the mutual recognition of professional qualifications for healthcare professionals. We would welcome further evidence regarding the coordination of healthcare provision in response to the Free Movement of Persons call for evidence.

- Social and employment policy led by the Department for Business, Innovation and Skills, Government Equalities Office and Department for Work and Pensions in semester 3, this review will cover EU competence on the labour market, employment services, social protection and employment policy.
- Police and Judicial cooperation report, led by the Home Office and Ministry of Justice in semester 4, this review will address judicial co-operation on criminal matters and police cooperation
- Cross-cutting report, led by the FCO, Ministry of Justice and Cabinet Office in semester 4 will cover the non-free movement aspects of EU citizenship (for example the right to vote and stand as a candidate in elections for the European Parliament and in municipal elections; to petition the European Parliament; and to enjoy diplomatic and consular protection in a third country).

FINAL CALL FOR EVIDENCE QUESTIONS

58. In addition to the questions above, you may wish to contribute evidence in response to the more general questions set out below:

Call for evidence questions

Future options and challenges

14. What future challenges and/or opportunities might we face in relation to EU competence in the area of free movement of persons and what impact might these have on the UK national interest?
15. What impact would any future enlargement of the EU have on the operation of free movement?

General

16. Do you have any evidence of any other impacts resulting from EU action on free movement of persons that should be noted?
17. Are there any general points you wish to make which are not captured above?
18. Are there any published sources of information to which you would like to draw to our attention for the purposes of this review?