



# 'What does a "soft" Brexit mean for immigration from the EU?

## Summary

1. A 'Soft Brexit' entails the UK remaining in the Single Market when the UK leaves the EU. While this claims to 'prioritise jobs and the economy over immigration' it would require the UK to continue to accept the free movement of people. We estimate that under such circumstances EU net migration could well continue at an unacceptable level of well over 100,000 a year for the next decade.

## Introduction - What does 'hard' and 'soft' Brexit mean?

2. Those who favoured remaining in the EU claim that the government plans amount to a 'hard' Brexit. As an alternative they propose a 'soft' Brexit, but that would involve remaining in the Single Market with no prospect of effective national controls on immigration.

3. This paper summarises the Government and Opposition's rather similar visions for Brexit and explains what they would mean for migration control. It also summarises the position of those who call for a 'soft' Brexit, which is often described as prioritising jobs and the economy over immigration.

## The Official Government Position

4. The government position on Brexit was laid out in a speech made by the Prime Minister in January 2017, known as the Lancaster House speech and further elucidated in a White Paper [of 2 February 2017<sup>1</sup>]. In her speech the Prime Minister was clear that, as Britain leaves the EU, we will not be seeking membership of the Single Market and will leave the Customs Union as well. In its place the Prime Minister spoke of her ambition to agree 'a new strategic partnership with the EU, including an ambitious and comprehensive Free Trade Agreement and a new customs agreement.' (For more information on the Single Market and the Customs Union, see Annex A).

1 [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/589191/The\\_United\\_Kingdoms\\_exit\\_from\\_and\\_partnership\\_with\\_the\\_EU\\_Web.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/589191/The_United_Kingdoms_exit_from_and_partnership_with_the_EU_Web.pdf)

5. Leaving the Single Market would allow the UK government to end its obligation to allow the free movement of people which is a condition of being in the Single Market and repatriate control over EU immigration to Westminster. The government would then negotiate with the EU on its future trading relationship free of any immigration elements (save perhaps for some provisions on posted workers in relation to cross border trade in services). It is significant that none of the trade agreements with third countries recently entered into or under negotiation by the EU cover immigration matters.

6. The Prime Minister was also clear that 'no deal for Britain is better than a bad deal.' Under this scenario, the UK is offered a punitive deal on the future relationship with the EU which is rejected by the British government and the UK leaves the EU, the Single Market and the Customs Union and falls back onto World Trade Organization rules and tariffs. Clearly, leaving the EU under these circumstances would allow the UK government to pursue an immigration policy on a unilateral basis.

7. Critics of the Government have described the position as outlined in the Lancaster House Speech and the Government White Paper as a "hard Brexit" with the latter option of 'no deal' as the hardest possible Brexit.

## The Labour Party Position

8. The Labour Party position is less explicit than the Conservative position. The Manifesto does not clearly state that they are in favour of Britain leaving the Single Market, however it does state that free movement of people should end once Britain leaves the EU, and the EU are clear that this rules out membership of the Single Market.

9. The Shadow Chancellor, John McDonnell has also stated that 'people will interpret membership of the Single Market as not respecting that referendum'. (Peston on Sunday, June 2017). Furthermore three Shadow Cabinet Ministers were sacked from their positions after defying the Labour whip and voting in favour of an amendment (put down by the Labour backbench MP Chuka Umunna) calling on the government to remain in the Single Market and the Customs Union. The manifesto does state that Labour would focus on 'retaining the benefits of the Single Market and the Customs Union'<sup>2</sup> but clearly freedom of movement is not considered to be one of its benefits since they say that this will end after Brexit.

10. From this we can deduce that the Labour leadership are in favour of leaving the Single Market and the Customs Union and negotiating a new relationship with the EU. This is the same approach as the government.

11. Where Labour and the Conservatives do differ is in their approach to the prospect of 'no deal', with the Labour Manifesto very clear that "'no deal' is the worst possible deal for Britain."

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2 <http://www.labour.org.uk/page/-/Images/manifesto-2017/Labour%20Manifesto%202017.pdf>

## Transitional Arrangements – A slower Brexit?

12. The impact of the election result on government policy is unclear. Some urge that the Government should soften their tone as a result of losing their majority in the general election, claiming that there is no longer a mandate for 'no deal'. On the eve of the start of the Brexit negotiations, the Chancellor Philip Hammond told the BBC that 'no deal would be a very, very bad outcome for Britain', suggesting a softening of the government line on this matter.

13. Others believe that the Prime Minister's preferred outcome is unrealistic, pointing to the length of time that Free Trade Agreements (FTAs) ordinarily take to negotiate. For example, negotiations between the EU and Canada on a FTA began in 2009 and concluded in 2014. Some point to the EU South Korea FTA as evidence that trade negotiations need not be so lengthy, with this particular agreement negotiated in just two years, concluding in 2009. Furthermore, the UK would have the advantage of starting from a position of full compliance with EU regulations currently in force.

14. It is worth noting that under Article 50 the UK has just two years in which to agree a future relationship, unless the EU agrees to extend this period. Time is also needed to ratify the treaty which is why Michel Barnier (the EU's Chief Negotiator) has said that the Brexit deal must be agreed by October 2018 allowing just 18 months for negotiations.

15. It is for this reason that many, including the Chancellor of the Exchequer, are now talking of the possibility of transitional arrangements or "an implementation period" that would give both sides more time to negotiate an FTA. Arguably the destination under this scenario is the same i.e. that the UK would eventually be outside the EU, the Single Market and the Customs Union, but business and individuals would have more time to prepare. A transitional period could involve the UK remaining in either the Single Market or the Customs Union for a transitional period. The European Parliament, in its response to the UK government's notification of withdrawal under Article 50 suggested that any transitional arrangement 'must be strictly limited...not exceeding three years'.<sup>3</sup> This would be essential to ensure that the terms of the transitional period do not become permanent.

16. Were the UK to remain in the Single Market for a period after withdrawal then this would entail continued free movement for the duration. Remaining only within the Customs Union would, however, allow the government to pursue its own immigration policy on a unilateral basis.

## A 'Soft Brexit'

17. While the government and the Opposition both favour leaving the Single Market there are many other voices advocating alternative approaches, some of which have significant implications for our ability to control and reduce migration from the EU.

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3 <http://www.europarl.europa.eu/sides/getDoc.do?type=MOTION&reference=B8-2017-0237&language=EN>

## **a) Leave the EU but remain in the Single Market**

18. The option that many in the business community have advocated is for Britain to leave the EU but remain in the Single Market on a permanent basis. This is essentially the position of the EFTA countries (Norway, Iceland and Liechtenstein) in the European Economic Area. Some describe this option as prioritising the economy over immigration.

19. Remaining in the Single Market would mean that the UK would be obliged to continue to accept the principle of free movement of people since the EU is clear that the four freedoms (in goods, services, capital and persons) are indivisible. It would also mean that the UK could continue to trade in goods and services as at present but the government would continue to have no control over the level of migration to the country. It is likely that EU net migration would continue to run at well over 100,000 a year for the next decade.

20. Advocates of this position point to 'Safeguard Measures' contained in the EEA agreement (at Article 112-114 of the agreement<sup>4</sup>) which allow contracting parties to take unilateral measures in the event of 'serious economic, societal or environmental difficulties of a sectorial or regional nature' and which are 'liable to persist'. This, they argue, provides an 'emergency brake' that would allow the UK government to control immigration.

21. However, the EEA agreement is also clear that any country wishing to take unilateral action must 'notify the EEA Joint Committee without delay and enter into consultations with a view to finding a commonly acceptable solution' (the EEA Joint Committee includes ambassadors of the EEA states as well as the European External Action Service, otherwise known as the EU's Diplomatic Service). Moreover there must be consultations every three months with a view to the abolition of the safeguarding measures. Norway, an EEA member, has never used this 'emergency brake' - reportedly for fear that it would provoke a retaliatory response from the EU. It seems clear that this would not in any way be an adequate measure to control EU migration to the UK.

22. Moreover, the UK would be bound by free movement rules but would have no vote nor any influence over them. As Open Europe note of Norway in particular (but the same would apply to the UK)<sup>5</sup> This would be far worse than our current situation because while presently we must apply free movement rules at least we have some ability to influence those rules.

## **b) Leave the European Union but remain in the Customs Union**

23. This would put the UK in a similar position to Turkey, which is in a customs union with the EU. The Customs Union is simply an area within which there are no import tariffs for goods but which has a common external tariff. The UK would therefore be able to pursue an immigration policy on a unilateral basis but would not, of course, be free to reach separate trade deals with third parties.

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4 See here: <http://www.efta.int/media/documents/legal-texts/eea/the-eea-agreement/Main%20Text%20of%20the%20Agreement/EEAagreement.pdf>

5 <http://openeurope.org.uk/intelligence/immigration-and-justice/norway-and-switzerland/>

# Conclusions

24. The terms 'hard' and 'soft' Brexit have no agreed definition. However, generally speaking, those who advocate a 'soft' Brexit wish the UK to remain in the Single Market when the UK leaves the EU. This would require the UK to continue to accept the free movement of people and it is likely that net migration from the EU would be well over 100,000 a year for the next decade.

17<sup>th</sup> July 2017

# Annex A

## What is the Single Market?

The Single Market is an area within which there is free movement of capital, services, goods and workers. The EU are absolutely clear that “access to the Single Market requires an acceptance of all four freedoms”.

If you do not accept all four freedoms then as a matter of definition you are not seeking membership the Single Market. For example, Canada is not a member of the Single Market and nor are Ukraine or Turkey, because there are no provisions for free movement of workers in the agreements they have with the EU. Nonetheless, all three countries have access to EU markets to varying degrees. Turkey’s access is largely restricted to trade in goods, but Canada’s and Ukraine’s extend to trade in services and to investment (capital) too.

Freedom to trade (whether with the EU or anyone else) is not contingent on free movement of workers or any others, nor has the EU even in its most recent and deepest free trade agreements sought to provide for any such movement.

## What is the EU Customs Union?

The EU Customs Union is an area within which there are no import tariffs for goods but which has a common external tariff. The former necessitates the latter, otherwise importers could simply bring in goods to the country with the lowest external tariff and then move them freely into the other countries, thus circumventing the higher external tariffs applied by other member countries. However, a common external tariff does not mean that the same tariffs are applied to imports from all third countries. Instead, imports from any particular country have the same tariff applied by all members of the Customs Union. Thus where the Customs Union enters into a trade agreement with a third country, all members of the union collectively reduce or remove tariffs on imports from that country. Leaving the Customs Union of which the UK is presently part means that UK exports to the countries remaining in the Customs Union would then be subject to their common external tariff in the same way as the US, China or Japan. To preserve the present trade in goods between the UK and the EU would require a new agreement between the parties.

## Notes

The EU Customs Union includes all members of the European Union, Monaco and UK territories which are outside of the EU (such as the Isle of Man, Guernsey and Jersey). In addition, the EU has a customs agreement with Andorra, San Marino and Turkey, with exceptions for certain types of goods. These countries are not therefore in the EU Customs Union but instead they have a customs union with the EU’s Customs Union.