Securing UK Borders

An examination of the implications of leaving the EU for UK border management
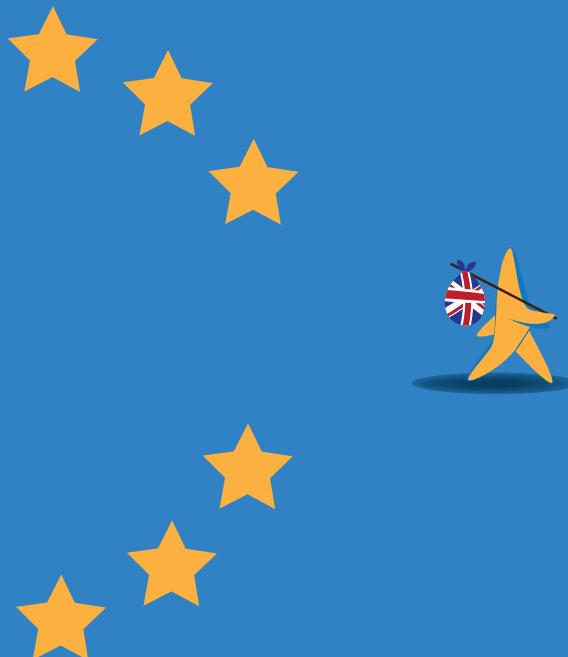
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LONDON FIRST

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Introduction

London First surveyed its members shortly after the EU referendum result in 2016. The survey revealed that around a third of members believed that dealing with the consequences for business of the EU vote should be our top priority. This sentiment is still widespread nearly a year on.

Since the referendum, London First has organised a series of meetings to: understand in more detail what London business sees as the opportunities and threats from the Brexit process, get a sense of what matters most to business in a final deal with the EU, and determine what value London First can add in achieving the best outcome for London. From these meetings has flowed a series of reports, one of which looked at Facing Facts: The impact of migrants on London, its workforce and its economy[1].

The first report of the Security & Resilience Network – What are the Security and Resilience Implications of Brexit? – looked at the national security context, the need for improved co-operation in a new regulatory and legal framework, corporate preparedness, the potential effect on innovation and research, and community safety[2]. The report was mentioned in a House of Lords debate on 20 October 2016, and formed the basis of a submission to the call for evidence at the House of Commons Foreign Affairs Select Committee Inquiry Article 50 Negotiations: Implications of 'No Deal' in December 2016.

This second report in the series focuses on the implications of leaving the EU for the management of the UK's borders. For effective management, there is a need to balance the desire to have secure borders against making it as easy as possible for international business to thrive and legitimate movement to occur. Finite resources can then be targeted effectively. The report considers how this can be done in a post-Brexit world.

The contents are directed at senior executives in the public and private sectors who need to grapple with the issues presented by Brexit. The cut-off date for submitting information for this report was 8 May 2017. No account has been taken of possible changes resulting from the general election.

The report was launched at a London First briefing on 7 June 2017 and distributed at the IFSEC 2017 exhibition (20-22 June 2017), which includes for the first time an area dedicated to 'Borders and Infrastructure'. UBM, the organiser of IFSEC, is the sponsor of this report.

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The Challenges: Past and Future

There can be no argument that transiting Europe's internal borders with relatively few formalities has been a boost for weary travellers and busy business people alike. The principles behind the European open borders policy, first introduced by the Schengen Agreement in 1985 and latterly incorporated into European law for all EU countries (except the UK and Ireland, which opted out), were sound in relation to the facilitation of free trade and movement of labour.

When Schengen, and indeed the EU, was expanding, the greatest perceived threat to western Europe was receding with the end of the Cold War and east European nations asserting their independence. In terms of terrorist threat, the UK and some other European nations were suffering domestic threats such as those from the IRA, ETA and Baader Meinhof. Yet international terrorism, although serious and sometimes high impact (e.g. Lockerbie), was relatively sporadic, its direction usually externally sourced and its intended target commonly international or third party in context.

The European open borders policy was seemingly based on an optimistic forecast in which Europe would thrive economically, in enduring peace, following the abandonment of colonialism and in the aftermath of two devastating world wars. It was a policy that put economic wellbeing and trade first, relying on secure external EU borders for security rather than those of internal nation states.

The Evolving Terrorist Threat

Perhaps the biggest shocks of the 21st Century so far include not only the proliferation of suicide terrorism as a tactic but also the threat of the so-called 'home-grown terrorist' pursuing a radical and violent ideology. On the one hand, this moves the opportunities for detection to the pre-incident phase of attack as escape is no longer a priority for the perpetrator. On the other, terrorists cannot be assumed to present themselves as external threats in the form of entities born, motivated and activated from outside regional boundaries, as they may now be EU citizens born, nurtured and matured within the internal European community. Conventional stereotyping appears to be of little value in profiling, identifying and labelling such suspects when powerful motivational processes have been employed to radicalise vulnerable individuals whatever their background or lifestyle. This device, which operates personally and sometimes inside our institutions and/or via the internet, is used without reference to geographic boundaries, whether national or regional.

As the battlefield activities of Islamic State and Al Qaeda become diminished, their targeting of western populations, especially Europe, is expected to become more intense. The ability for their operatives to move undetected across internal borders in the planning, execution and escape phases of terrorist attacks has been demonstrated over the last couple of years in relation to attacks in France, Belgium, Germany and elsewhere. This problem is exacerbated by the fact that European terrorists returning home from foreign expeditions could be bloodied in the most extreme way and thereby present a more dangerous threat, both in themselves and their potential recruitment capability among impressionable converts.

Transnational Organised Criminal Threats

'Europe and its neighbouring regions are facing an unprecedented migration crisis' stated Rob Wainwright, Director of Europol, commenting on the 1.2 million people crossing illegally into Europe in 2014[3]. He explained that 90% of those people had their journeys facilitated by criminal organisations. Criminality and terrorism do not recognise borders in the way that nation states and international organisations do. Established smuggling routes for any commodity, whether it be people, narcotics, valuables or weapons, are easily adapted for facilitating the movement of threat actors and materiel across borders.

Global Populations on the Move

Quite apart from the direct and indirect threats from terrorism and organised crime, the world is facing massive population movements as a result of fear from: conflict, thirst and hunger from environmental issues; victimisation emanating from conflict and socio-political issues; and poverty resulting from economic hardships. On the other hand, there is a greater opportunity for people generally to travel, with the internet and social media conferring both an awareness of world destinations and the tools to facilitate that travel. The overall situation is often quoted as the largest mass movement since the Second World War, and the prognosis is that it will continue for some time to come.

The ethical and moral responsibilities of the developed world in supporting such displaced persons cannot be denied and are complex within themselves. The past two years saw the reintroduction of physical barriers on borders, both external and internal, within the Schengen area in response to the sudden and large number of migrants arriving on its borders. This has generated tensions between existing Schengen members as well as aspiring EU members who may have the opportunity to advance their own causes. The open borders policy also appears to have enabled well-informed migrants to circumnavigate EU asylum and migration regulations. Ugly scenes emerged as internal border guards and police, within and between internal EU borders, restrained refugees who wished to be in destination countries of their own choice, not merely inside the EU generally.

The ability of organised transnational criminals or returning terrorist fighters to make clandestine travel plans within this understandable mass movement of people cannot be ignored.

UK outside the EU

Classic physical security doctrine involves the concept of 'concentric circles of protection', also known as 'security in depth', whereby layered security checks and controls are matched to levels of assessed risk in relation to specific threats.

Arguably, the Schengen area only maintains the outer layer of protection when it comes to third-nation travellers entering and traversing the common travel area. All the travel security-related risk measures, including the issue of visas, are part of the single transaction process that is required for initial entry to the external European border. This process is supported by the second-generation Schengen Information System (SIS II) which is designed to share relevant data on authorised travellers as well as warnings on suspect travellers. Due to its positioning outside Schengen, the UK currently has access to most but not all data held on the SIS II database.

Frontex, the European agency for co-operation at the external border, has mostly performed a facilitating and supporting role to member states. However, following the migration crises of 2015-2016 that role has seen Frontex develop a more operational capability as the European Border and Coastguard Agency. This has allowed it to offer more direct support to members as well as maintaining its aspiration for establishing common entry standards across the Schengen area.

The UK's position outside the Schengen area has also resulted in limited engagement with Frontex, whereby it can benefit from Frontex's support and joint operations on a case-by-case basis. The Schengen agreement does allow for the temporary reintroduction of border controls in exceptional and strictly time-limited circumstances.

This option refers to two sets of circumstances. First, 'when there is a serious threat to public policy or internal security' in a member country, that country may unilaterally reintroduce border controls as a last resort and for strictly limited periods of time, reporting as appropriate to other member states and the EU hierarchy. Second, where serious deficiencies in external border control put the 'overall functioning' of the Schengen area at risk, the EU Council of Ministers may recommend such measures in one or more member states for limited periods. The EU and individual Schengen members have taken advantage of this facility in recent years in relation to potential major disorder, surge levels of uncontrolled refugee/immigration flows, national border discrepancies and high levels of terrorist threat.

The UK's 'special arrangement' includes remaining outside the Schengen area, thereby maintaining control over its own borders. It made a conscious decision not to join the Schengen area and has maintained it. It can be argued that this position adds to the 'security in depth' doctrine in relation to conducting physical immigration and security checks, something EU/Schengen neighbours can only resort to in emergency situations. The fact that it remains an option for Schengen members may well indicate its perceived value. Regardless of where, when and how such checks are conducted, benefits can only be achieved if those checking have access to accurate, relevant and timely intelligence from a rich collection of information sources.

The UK's counter-terrorism strategy (CONTEST) is well established. A revision which is expected to include a greater role for the private sector awaits final approval. The UK's intelligence and law-enforcement agencies have among the most seasoned professional working relationships, delivering exceptional results alongside all their partner agencies, private-sector partners and communities across the world: many have come within the scope of the UK's EU membership e.g. with Europol, SIS II and Frontex. This special access and sharing arrangements will have to be renegotiated following Brexit. The UK should be in a strong position in such negotiations as indicated by Europol's Director, while giving evidence to the UK Parliamentary Home Affairs Select Committee in March 2017, when he acknowledged the major role the UK plays as a contributor and user of Europol's services and concluded that Europol 'would be weaker without British engagement'. [4]

The UK enjoys other highly valuable information-sharing relationships outside the EU mandate, some of which include EU neighbours, for instance the Club of Berne and the Terrorism Working Group. Others are more global in context, particularly the so-called 'Five Eyes' intelligence relationship between US, Canada, Australia, New Zealand and UK, which is often described as the richest and strongest global intelligence relationship. Significant opportunities therefore lay in how the UK can galvanise and broker intelligence and security co-operation with both European and wider international partners not only to protect UK borders but also to contribute to more robust global travel security arrangements.

Part 2

Border Control and Identity Management

The policies and structures enforcing border control have remained largely unchanged since April 2012 when the Home Secretary, then Theresa May, separated Border Force from the UK Border Agency. This followed concern about routine suspensions of border checks at Heathrow and other ports of entry. Border Force was then established as a directorate of the Home Office. Other parts of the Border Agency were replaced in 2013 with two directorates of the Home Office, namely the Immigration Enforcement Directorate and the UK Visas and Immigration Directorate.

Against the backdrop of world migration trends, war and economic uncertainty, the challenges faced by Border Force and its sister departments are significant and the practical difficulties they face are likely to be magnified whatever the final nature of the post-Brexit deal. It may indeed necessitate a fundamental rethink of strategy and processes.

Border Force was created to engender a change in management culture and to develop its own identity as a law-enforcement organisation, akin to border police forces that exist elsewhere in the world. This was reinforced by new uniforms, badges of rank and new signage at ports. Importantly, a new operating standard – namely 100% checking of individual passengers at the border – was established, following an investigation into inconsistent practice across the UK border presented to Parliament in 2012.

The Challenges

While figures published by the Office of National Statistics (ONS) in February 2017 for passenger journeys into the UK showed there were 110 million British, European Economic Area (EEA) and Swiss arrivals into the UK last year – up 4% on the previous year and 16% higher than non-EEA journeys in 2016 – the Border Force budget has been reduced by 15% from £617 million in 2012/13 to £558 million in 2015/16.[5]

Pressures are sometimes apparent as regular passenger travelling through key airports during busy periods can attest. The prioritisation of full passenger checks sometimes leaves fewer resources for other duties. Border Force has made significant progress in terms of installing e-gates at busy airports which have enabled it to keep queuing times within acceptable limits amid growing passenger numbers and shrinking financial resources.

Border duties include routine customs work such as tackling drug smuggling and other illicit goods and now, importantly, preventing and detecting people trafficking. In 2016, after 18 migrants were rescued from a sinking inflatable off the Kent coast, it emerged that just three coastguard cutters were being deployed by Border Force to patrol 7,723 miles of UK coastline. Moreover, the National Crime Agency (NCA) Border Policing Command warned of evidence that criminal gangs are now targeting less busy ports in the north of England.

Border security activities also encompass fiscal and regulatory checks – known as international trade – conducted on behalf of HM Revenue and Customs (HMRC) or the EU in order to ensure that correct rates of duty and VAT have been paid, goods are eligible for import into the EU and, where relevant, correct licences have been obtained. The satisfactory resourcing of both aspects is critical not only to the UK's physical security but also to its economic security, with respect both to revenue collection and the minimisation of the wider human and economic costs associated with different forms of organised crime.

Illegal migration facilitated by organised criminal gangs is a recent and growing threat to the UK as highlighted in the latest NCA National Strategic Assessment.[6] Any further restriction on legitimate travel from countries within Europe – which may no longer benefit from unfettered access to the UK in future – has the potential to increase demand for forged and stolen documentation as well as risk new and more dangerous forms of illegal travel to the UK. This will necessitate greater intelligence sharing as well as joint working, all of which requires investment in new technology and sufficient numbers of Border Force officers on the ground and at sea to protect 138 ports across

the UK and at juxtaposed controls in France and Belgium. A report by the Chief Inspector of Borders and Immigration on the challenges along the UK's east coast has apparently been delayed until after the general election.[7]

What is more, pressures on day-to-day operation of immigration checks at ports are likely to intensify if more passengers are required to have visas to enter the UK, unless the system is fundamentally changed. Currently, one benefit of holding an EU passport, or being the citizen of an EEA country (Norway, Iceland, Liechtenstein) or Switzerland, is that an entrant has a dedicated EEA channel at the UK border.

At the border, passports are checked against the 'warnings index'. This index alerts the immigration officer to any immigration offence, criminal offence or to intelligence which might warrant further scrutiny of an entrant. Entry can be refused to travellers who do not travel with valid identity documents, even if they are from another EU member state. In the vast majority of cases this is relatively swiftly addressed and it has been very much assisted by a considerable investment in e-gates. Allowing holders of biometric passports to self-check, e-gates make more efficient use of staff and accelerate the flow of passengers during peak periods where resources are under the greatest pressure.

By comparison, the non-EEA traveller faces different visa – or visa waiver – requirements depending on the purpose of their visit and its duration. A visa is a conditional authorisation granted by a country to a foreigner, allowing them to enter and to remain temporarily within that country. Visas typically include limits on the duration of the foreigner's stay, and the dates they may enter. Although nationals from some countries, such as the USA, Brazil and Japan, require no visa for visits to the UK of six months or less, most non-EEA visitors will have applied and paid for a visa for the privilege of entering the UK. They make this application in their country of origin. At the UK border, in addition to the basic passport check, they will undergo a further fingerprint check to ensure a biometric identity match with the fingerprint sample given at the visa application centre in their country of origin. This more thorough process necessarily takes longer than a standard passport check as the immigration officer must

satisfy him/herself that the purpose of the visit for which the visa was sought is still valid. In each instance, a visa is subject to entry permission by an immigration official at the time of actual entry; it can be revoked at any time.

While there has been much speculation about how the UK Government would regulate migration of EEA travellers in the future, if the government were to decide on some form of short-term visa scheme for EEA nationals, using present processes, questions must arise about the ability of Border Force to deal with the increased workload as well as the physical capacity of receiving airports and other points of entry.

Passport and Visa Checks

The UK could, of course, begin introducing the sort of Electronic Travel Authority visa system that countries such as the USA have had for some years. Australia is a visa-only country for non-citizens and has an efficient system that allows online applications for 90-day visits or business visa applications which can be granted within a day. Visitors are thereby given pre-authorised entry to the country. The advantage for the authorities is that such a system pushes the border out to the country of origin. Without pre-authorisation in place, the traveller is denied boarding to travel in their country of origin.

In addition, there is a move across the world to use passenger reservation data to complement biometric passport data more widely. There is also increasing use of open-source information. All information gleaned enables governments to create procedures commensurate with the risk posed by certain applicants for entry.

Furthermore, increased differentiation of risk allows authorities to establish trusted traveller programmes for low-risk frequent travellers who can then 'fast track' through borders with minimal scrutiny. One of the best examples is Global Entry, a US Customs and Border Protection (CBP) programme that allows expedited clearance for pre-approved, low-risk travellers upon arrival in the USA. Programme members proceed to Global Entry kiosks, present their machine-readable passport or US permanent resident card, which verifies their identity through fingerprint recognition, before being issued with a transaction receipt directing them to baggage reclaim and the exit.

In summary, practice at the border will have to change. While the scale may appear daunting, Brexit represents an opportunity to modernise current practice and technology and adopt best practices from elsewhere in the world to improve both border security and customer experience ahead of, or at, the border.

Removals

While the extent of clandestine migration is – for obvious reasons – unknown, the number of arrests made by Border Force of people found in lorries is running at several thousand per year. Another common breach of immigration control, but one that is unquantifiable, is by people who legitimately arrive in the UK but fail to leave after their time is up.

Unlike clandestine illegal migration, the government should know who and where over-stayers are. It should also have systems in place to ensure that they leave. History, however, tells us that this has not been a priority for the Home Office. In 2013, a report from the Independent Chief Inspector of Borders highlighted that there was no strategy in place by the then Border Agency to address over-staying in any meaningful way. This remains a real issue. Only in November 2016, the UK Prime Minister called on the Indian Prime Minister to assist the Home Office to speed up the removal of Indian over-stayers from the UK in return for post-Brexit concessions for Indians travelling to the UK.

It is challenging to remove people who are intent on making a better life for themselves in the UK. Usually, one thinks of this in relation to those claiming asylum under international conventions, which in the UK is a relatively small number of applicants a year (40,000). In 2015, 40,896 people were either removed from the UK or departed voluntarily after the initiation of the removal process. Enforced removals from the UK fell by 11% to 12,193 in 2016 from 13,690 in 2015.[8]

Any deal to allow EEA nationals some kind of temporary visa to work or study in the UK, which, by definition, will be time limited – five years has been suggested – will create considerable challenges for immigration enforcement in addressing the overstay problem. It would also necessitate the creation of a new bureaucracy to, first, decide

upon entitlement to stay and, secondly, enforce someone to return once the reason for staying no longer applies or the period of permitted stay expires.

Identity Management

The post-Brexit immigration world will undoubtedly bring a much greater focus on identity, both knowing who people are and, importantly, where they are. Identity is a valuable commodity for terrorists and criminals, and identity fraud is a key area of weakness for the border in terms of health tourism and benefit fraud. Already, counterfeit and forged documents which are sophisticated and hard to detect are being used. They are used for fraudulent visa applications, applications for leave to enter and for leave to remain in the UK. Crimes involving identity theft and fraud impact heavily on individual victims, organisations and government at considerable human and economic cost.

The last time the UK Government attempted to introduce an identity card was in 2007 as a voluntary scheme. The initiative was abolished by Theresa May in 2010 when she was Home Secretary. This notwithstanding, the UK has an effective identity card by another name for some of its entrants. It is well established and used by visa nationals and visitors to the UK from non-EEA countries who wish to stay in the country for more than six months. Called the Biometric Residence Permit (BRP) it has been rolled out successfully – and without controversy – not least because many foreign nationals already use identity cards to establish who they are and their entitlement for services. An extension of the BRP scheme could be a mechanism to use for EEA nationals in

a post-Brexit Great Britain. It would show both immigration status and evidence of permission to stay in the UK.

It could be argued that in the post-Brexit world priorities around identity have changed and public acceptability may have shifted. People now appear to be more tolerant of being tracked on their mobile phones, while there is widespread use of CCTV monitoring across the country and many people carry a photo-enhanced driving licence as a form of identity.

On the other hand, a number of arguments have been levelled against any identity cards or apps.[9] For example, it is often highlighted that there is little evidence that crime levels in countries that already have identity cards (e.g. France, Germany, Italy and Spain) have been reduced by having them. Should it become compulsory to carry identity cards, there might also be concern about stop-and-search practices. Additional concerns are expressed about intrusion as well as any prospect of more information being added to a national identity register and potentially shared with public and private organisations. And could the possibility of data loss by government departments or other organisations holding the information present a risk to the individuals registered?

As the government confronts the identity management challenges associated with managing post-Brexit immigration, there is a possibility of 'policy creep' in the form of ID cards through the back door. Such questions may need to be resolved both practically and politically.[10]

Part 3

Implications of Brexit
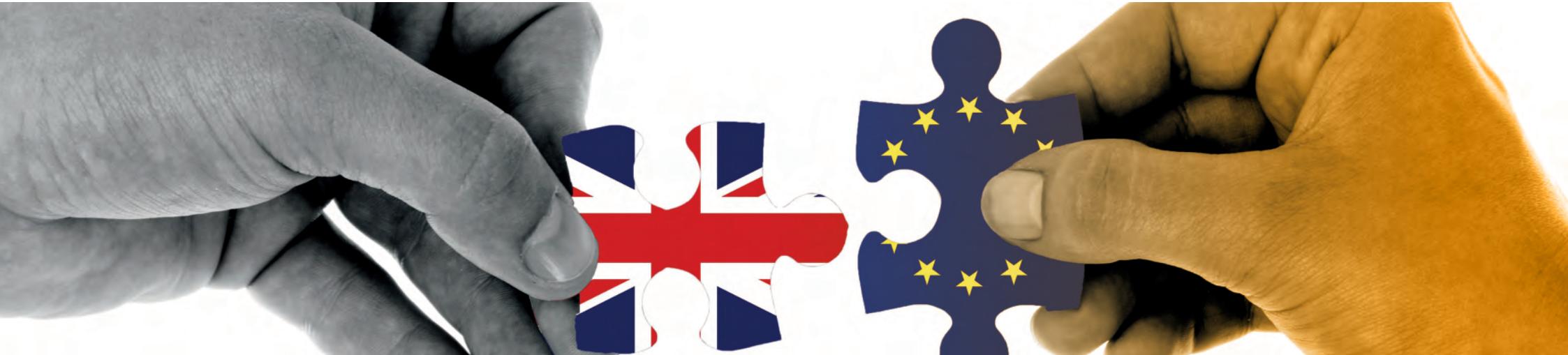
The UK Government's White Paper on exiting the EU, published on 2 February 2017, is the most authoritative statement so far on the UK's negotiating stance following the decision to leave the EU in a national referendum on 23 June 2016.[11] The declaration on 29 March 2017 of the intent to invoke Article 50(2) of the Lisbon Treaty reinforced the position to be adopted.[12] With that declaration, the departure from the EU in 2019, if not from Europe, has begun.

From 2019 the UK will effectively have a third-country relationship with the EU and its institutions. The new arrangement will have considerable impact on the way the UK manages its border security, particularly around intelligence-sharing and information-exchange platforms with its EU neighbours. Clearly, the desire of the UK Government is to strengthen controls at UK borders and information exchanges behind those borders, so that the government has a much better picture of who is coming in and out, and can control that flow. This needs to be balanced with the need to keep the border flowing smoothly for legitimate travellers, a need in fact heightened by Brexit itself as the UK establishes a new trading relationship with the rest of Europe and beyond.

The EU Commissioner for the Security Union at the European Commission, Sir Julian King, made it clear in his appearance before the House of Commons Home Affairs Committee on 28 February 2017 that exchanges on core intelligence take place 'very effectively' outside the EU framework so he saw no reason why those exchanges should be affected by withdrawal.[13]

In terms of information-exchange platforms, a House of Lords Select Committee Inquiry report published on 16 December 2016 found considerable consensus about the EU tools and capabilities that should be retained or adequately replaced. Europol, Eurojust, SIS II, the European Arrest Warrant (EAW), the European Criminal Records Information System (ECRIS), the Prüm Decisions and the Passenger Name Records (PNR) were consistently listed among our witnesses' top priorities.[14] According to Sir Julian King, SIS II is 'arguably the most important', with over 160,000 alerts on the platform in 2017. Outside non-EU Schengen countries there is no precedent for third countries to access information-sharing platforms so a new arrangement would have to be created through negotiation.

Once the UK is not a member of the EU then it cannot be a full member of Europol, so there will have to be a new hybrid arrangement or partnership through agencies, information systems and a legislative framework. This exists with other countries. As the Director of Europol made clear in his submission to the Home Affairs Committee on 7 March 2017, Europol has operational agreements with 19 non-member states including the USA, Norway, Switzerland, Australia and many in the western Balkans. Those operational agreements give considerable benefits to these third parties but not quite as many as full members.[15] The UK Government has repeatedly indicated that it attaches a great deal of importance to Europol, to effective information exchange and to practical operational co-operation, particularly in the field of police and law enforcement.

With regard to extradition and the important EAW, then again a new arrangement for the UK would need to be found.[16] Interestingly, the House of Lords report said that the cost of replicating the EAW capability outside the EU is expected to exceed substantially (by a factor of four) the cost of operating the EU measure. Norway and Iceland have been trying to negotiate a form of EAW with the EU but this has taken 15 years and is still to be ratified by every member state. Such matters come up against the firm desire of the UK to withdraw from the European Court of Justice (ECJ) which covers jurisprudence in this area. However, arrangements on data exchange and data adequacy with regard to information sharing can fall under ECJ jurisdiction, but not automatically.

There are understandably some blurred but important edges to the UK's negotiating position. The new French President has said, for instance, that he is keen to review the Le Touquet Agreement, an agreement which effectively moved the UK border to Calais. Then there is the status of the Irish/EU border with Northern Ireland, the Spanish/EU border with Gibraltar, as well as the prospect of Scotland leaving the UK after a possible second independence referendum. The EU Council's negotiating stance over the Northern Irish border and the status of Gibraltar were set out in a statement issued on 29 April 2017.[17]

The UK Government's White Paper addresses the implications for border security after the UK leaves the EU in the following ways:

Applying Immigration Controls to EU Nationals
Paragraph 5.4: 'we will design our immigration system to ensure we are able to control the numbers of people who come here from the EU. In future, therefore, the Free Movement Directive will no longer apply and the migration of EU nationals will be subject to UK law.'

The EU referendum showed that a majority of voters were concerned about immigration to the UK. Surveys have revealed, however, that most people's concerns appear to be less about precise numbers of teachers, doctors, cleaners and agricultural workers and more about uncontrolled access.[18] The popular perception is that the entry system to the UK is inefficient and ineffective, and has been so for some time. According to ONS figures published in February 2017, net immigration was estimated to be 273,000 over the 12 months ending September 2016, comprising 165,000 EU citizens and 164,000 non-EU citizens and minus 56,000 British citizens (i.e. more emigrated than arrived).[19]The government has long had the goal of bringing total net-migration below 100,000. To achieve this, however the government eventually designs its post-Brexit immigration system, control will certainly require a larger and more effective Border Force.

What is more, with no population register – unlike most of the 27 remaining EU states – the UK is handicapped in achieving its target by not having information or systems in place to identify who should stay, come or go. Identity management will clearly need reform.

Establishing New Trade Arrangements
Paragraph 9.17: 'As part of leaving the EU the UK will need to establish our own schedules covering trade in goods and services at the WTO, providing clarity for UK

business about their access to overseas markets around the world and also providing a clear basis for negotiating new trade agreements, not just with the EU, but also with old friends and new allies from outside Europe too.'

Prime Minister Theresa May set out in a speech on 17January 2017 the 12 principles that could guide the government in fulfilling its obligations.[20] This speech included the fact that Britain would leave the customs union when the country leaves the EU, meaning goods leaving and arriving could be subject to customs declarations.

If EU talks collapsed and there was no deal, the World Trade Organisation (WTO) would be expected to set out the UK's trade tariff levels with Europe and the rest of the world. This would almost certainly involve the immediate imposition of tariffs across a range of sectors with differentiated impact: low on products such as automotive parts (5%) but high in sectors such as agriculture (30-40%). The WTO holds documents known as the 'schedules' or obligations which list these tariffs in full. Unfortunately, the UK does not have its own 'schedule' at the WTO because the EU has governed UK trade. The UK Government has begun negotiations to draft a new schedule but this is not expected to be easy and it is doubtful that it can be completed in two years.[21]

If a schedule was not present on day one of our departure from the EU, there could well be confusion at borders. While there is no absolute legal requirement to make customs declarations, it is hard to see how the government could police any new tariff regime without one. In a letter to the Treasury Select Committee as part of its ongoing inquiry on the UK's future economic relationship with the EU, HMRC estimated that the number of customs declarations at UK sea ports and airports could rise from 60 million to 300 million a year after the UK leaves the EU.[22]

An industry-prepared annex to the Minutes from the Joint Customs Consultative Committee (JCCC), the government-industry body that oversees border issues, issued in July 2016 warned that: 'The possible reintroduction of customs declaration requirements and frontier controls could potentially cause major disruption at the border, particularly at the UK's ferry/Ro-Ro ports and for trade using the Channel Tunnel.'[23]

There is seemingly a real danger of 'everything grinding to a halt' according to the Road Haulage Association.[24] Only around 1% of the 4.4 million lorries that enter the UK every year go through customs procedures, a figure that could rise to 100% after EU withdrawal. It is estimated that as many as 30% of those vehicles carry multiple consignments, each of which require separate processing. Holding facilities at major ports would also have to be very significantly upgraded while the number of customs officials may have to double. [25]This is why it is important for the government to, as best they can, maintain the free trade of goods and services between the UK and EU, including developing a transitional arrangement.

Maintaining Effective Customs Systems and Processes

Paragraph 8.48: 'Alongside a new arrangement with the EU, we will also look to ensure that the UK's customs systems and processes continue to be as effective as possible. We will have an open mind on how we implement new customs arrangements with the EU and will work with business and infrastructure providers to ensure those processes are as frictionless as possible, including through the use of digital technologies.'

Andrew Tyrie, when Chairman of the House of Commons Treasury Committee, expressed concern in a series of written exchanges with the Director General of HMRC that the new computer system for handling customs declarations – called the Customs Declaration Service (CDS) – will be unable to cope with the consequences of Brexit.[26]

CDS is a three-year, £71 million IT project scheduled to enter service at the beginning of 2019, just before the UK leaves the EU. The system is intended to cope with 'much higher volumes', estimated to be around 100 million records per year. The project has been flagged as 'Amber/Red' under the official traffic-light warning system used for major government projects.[27] It has been reported that the delivery of CDS may not be ready by March 2019.[28]

The present computer system, called CHIEF (Customs Handling of Import and Export Freight) is 25 years old and was designed to handle over 60 million records a year.[29] HMRC is planning to operate CDS and CHIEF in tandem during the transition. This would

provide extra contingency to ensure the UK has a robust border declarations service, providing the system functions as intended. HMRC currently operates 57 systems at the border, of which CHIEF is the major declaration processing system (and will be replaced by CDS). HMRC is reviewing 24 other systems that may require to be ready by day one of life outside the EU.[30]

However, the JCCC trade assessment annex states that: 'Potentially CHIEF and/or CDS could be required to process more than double the current volume of declarations. It is difficult to see how this could be successfully deployed within the six months leading up to the invoking of Article 50 of the Lisbon Treaty or the following two years if there are any substantial changes to what we do now.'

Then there would be management of PNR with the airlines and dozens of countries. The European Parliament approved, on 14 April 2016, the PNR Directive 2016/681, which obliges airlines to collect passengers' data and hand it over to EU member states. It would be necessary to have the means to handle UK-relevant data.

Maintaining Effective Security Co-operation with the EU
Paragraph 11.7: 'As we exit, we will therefore look to negotiate the best deal we can with the EU to cooperate in the fight against crime and terrorism. We will seek a strong and close future relationship with the EU, with a focus on operational and practical cross-border cooperation.'

London First's initial Brexit report made a clear recommendation that the UK Government should pursue as far as possible continued involvement with EU security institutions, especially Europol. Hitherto, the UK has chosen to 'opt in' to some EU security arrangements and co-operate collectively with other EU countries through the SIS, the EAW, the European criminal records system and EU-Interpol co-operation.

When the UK leaves the EU it might lose direct access to some of these arrangements, such as the EAW, which does not currently apply to non-EU member countries. That said, other non-EU member states such as Norway still participate in the SIS without being members of the EU and have negotiated similar arrangements to the EAW.

The EU's Commissioner for the Security Union has advised MPs that Brexit could sever the UK from law-enforcement systems crucial for fighting crime and terrorism. The Commissioner has said that Britain could not expect automatic access to crime databases, record systems, passenger travel lists and other sensitive information shared by EU members.[31] What is more, while the government hopes to preserve maximum access to Europol and other European security projects after Brexit, it is not clear if this goal is compatible with the Prime Minister's determination to leave the European Court of Justice.

The former Independent Reviewer of Terrorism Legislation, David Anderson QC, stated at a public lecture on 6 December 2016 that the loss of access to EU databases is a major risk. What is more, the squeeze on negotiations because of other political issues could result in a bargaining position being taken to the detriment of security sharing, which would be consequently weakened.[32] This positioning was apparent in the Prime Minister's letter to the EU activating Article 50.[33]

Maintaining a Seamless and Frictionless Border in Ireland
Paragraph 4.4: '...we aim to have a seamless and frictionless a border as possible between Northern Ireland and Ireland, so that we can continue to see trade and everyday movements we have seen up to now.'

If the UK leaves the EU with no deal in place, it will also exit the EU's customs union. This means that even if the UK and Ireland were to maintain complete free movement of people within the UK/Ireland Common Travel Area, there would have to be some form of customs checking arrangement put in place immediately. Commissioner Julian King has stated that there 'is going to be a border' ... the question is 'to what degree can you find arrangements that limit or eliminate the friction that individuals would experience going backwards and forwards across the border'.[34]

Bringing back a border after Brexit could mean reintroducing customs, security and immigration checks on key cross-border arterial routes. It might even lead to the closure of more than 100 secondary cross-border roads and the deployment of border patrols. Nonetheless, there are unconfirmed reports of the Irish Government carrying out some early planning on the sighting of possible border crossing points.[35]

A system along these lines would be severely stretched if, in the wake of Brexit, trade between Ireland and Northern Ireland were conducted on WTO terms, with tariffs of up to 40% on products regularly traded in both directions. Tariff levels as high as this might in some cases bring lawful cross-border trade to a standstill, and provide huge incentives for smuggling. There is no doubt the UK would make every effort to maintain the status quo and avoid any semblance of a hard border, as would Ireland, but Ireland would not be a free agent, having to account to the EU for its collection of tariffs on UK exports to Ireland, 80% of which would amount to 'own resources' of the EU.

However, since Brexit has been inspired by the desire to curb freedom of movement from the European continent, it does not seem plausible that the UK Government could entertain the continuation of an open Irish border. While the land border is almost completely open, airlines and ferry operators currently require photo identity, so passports are still needed when travelling across the Irish Sea. Passengers are also asked for passports at airports where immigration officers cannot tell that they have come from within the Common Travel Area.

If the UK wanted to impose restrictions on EU immigration or short visits after leaving, that might generate more illegal cross-border movement. It is at least possible that increased pressure on the UK's Border Force could cause demand either for passport checks at the north/south border, or passport checks between Northern Ireland and the rest of the UK. Northern Irish politicians report that heavier policing at ports and airports, rather than the land border, would be the government's preferred solution. Either would be politically difficult. People can use the open border now to travel illegally from Ireland to Northern Ireland and on to the rest of the UK, and likewise in the other direction.

One commentator has suggested that an alternative to bordering the UK state would be to border the island of Great Britain. This would avoid causing problems to the peace process on the island of Ireland and would be both easier to establish and less costly to manage.[36]

Initiatives for securing the border of Great Britain – rather than that of the United Kingdom of Great Britain and Northern Ireland – have historical precedent. After France fell to Germany in 1940, security concerns dictated that travellers from the island of Ireland were required to carry passports or limited travel documents to gain entry to Great Britain. A full return to freedom of movement in a common travel area did not happen until 1952. A bordered Great Britain became visible again in 1974 after the IRA bombing of pubs in Birmingham. The government was given the power to prevent people moving from Northern Ireland to Great Britain and to deport people from Great Britain to Northern Ireland.

Legal Implications and Obligations

Since the Stockholm Programme was agreed in 2010, there has been substantial growth in judicial co-operation in criminal matters across the EU and a corresponding increase in EU-wide police and security co-operation.[37] This collaboration has taken the form of information sharing, according to EU data protection principles, through the development of EU-wide databases such as the ECRIS, Eurodac, SIS II and PNR. Other criminal justice tools developed since 2000 include the EAW, the Mutual Recognition of Asset Freezing and Confiscation Orders, the European Investigation Order, and the European Supervision Order. Furthermore, there has been substantial development of EU police/judicial co-operation with the creation of Europol and Eurojust. The extent of the legal impact of repeal of the European Communities Act 1972 (ECA) on the UK's access to these systems, which are so vital to UK security post-Brexit, is important.

There is a widespread presumption that the UK will keep access to the systems listed above post-Brexit. However, repeal of the ECA, which will take place once the UK ceases to be a member of the EU, will result in all EU regulations and decisions ceasing to apply to the UK, and the legal framework relating to the UK's involvement in judicial and security co-operation will change radically.[38]

The Great Repeal Bill, which sets out the UK Government's proposals for ensuring a functioning statute book once the UK has left the EU, aims to avoid the overnight repeal of thousands of legislative instruments by creating an Act of Parliament that effectively repatriates all existing EU law into UK law. [39] However, the House of Lords Constitutional Committee identified a number of problems with attempting to repatriate EU law back into UK law in this way. According to some legal experts, the ECA cannot technically be repealed until the UK actually leaves the EU since there would be no legal basis for the application of EU law in the UK. It is also broadly recognised within the legal community that there are substantial difficulties in converting the acquis into UK law within the timescales available.[40]

Once enacted, repeal of the ECA will result in the legal framework governing the UK's access to EU systems and frameworks changing radically from the moment the repeal takes effect. If it were not possible during the Brexit negotiations to secure continued access to these frameworks, and/or implement necessary UK legislation to give effect to EU regulations and decisions prior to the ECA being repealed, then the UK would simply drop out of these legal frameworks.

As a result, all EU regulations and decisions will cease to apply to the UK. If a directive has been implemented into UK law as an Act of Parliament, then it will remain post-Brexit as it will already be part of the UK legal system. However, if a directive has been implemented as a statutory instrument, using the ECA as the parent act, once the ECA is repealed the statutory instrument enacting that directive will be repealed also. This is likely to cause significant disruption to EU-UK judicial and security co-operation, as many important EU regulations will be repealed once the ECA is repealed (see Annex A).

Failure to negotiate equivalent access to EU systems and frameworks post-Brexit would result in the UK losing access that is important to UK security such as Europol, Eurojust, Eurodac, EAW, ECIS, SIS II, and the Visa Information System (VIS). Additionally, important EU decisions and framework decisions will also cease to apply to the UK (see Annex B).

It is clear therefore that repeal of the ECA will entail significant changes to the current legal framework relating to judicial, police and security co-operation. The current system of security co-operation is divided into two systems: those that apply to non-EU countries such as extradition and Interpol, and the system that applies to EU member states. All member states that apply the rules are subject to a common legal framework of data protection and accept the jurisdiction of the Court of Justice of the European Union (CJEU). Rejoining these systems will therefore be a matter for negotiation and if those negotiations are unsuccessful then the UK will lose access to all vital EU intelligence and organisational security systems described above.

While maintaining access to these systems is seen as a key objective of the Prime Minister in the forthcoming Brexit negotiations, there is a key conflict with a core principle underlying Brexit: restoration of the supremacy of the UK justice system over the CJEU. Consequently, the House of Lords EU Select Committee in its recent inquiry on Brexit: UK-EU Security and police cooperation highlighted the following key concerns:[41]

38. It seems inevitable that there will in practice be limits to how closely the UK and EU-27 can work together if they are no longer accountable to, and subject to oversight and adjudication by, the same supranational EU institutions, notably the CJEU.

39. There must be some doubt as to whether the EU-27 will be willing to establish the 'bespoke' adjudication arrangements envisaged by the Government, and indeed over whether such arrangements can adequately substitute for the role of the supranational institutions from the perspective of the EU-27. We anticipate that this issue may pose a particular hurdle for negotiations on the UK's future relationship with EU agencies such as Europol, and also affect the prospects for maintaining mutual recognition of judicial decisions in criminal matters. It seems conceivable, therefore, that the Government will encounter a tension between two of its four overarching objectives in the negotiation —bringing back control of laws to Westminster and maintaining strong security co-operation — with the EU. In our view, the safety of the people of the UK should be the overriding consideration in attempting to resolve that tension, and we urge the Government to ensure that this is the case.

In summary, these judicial, security and police systems are vital to UK security and were described as such when the UK decided to opt back into them in 2014. In order to avoid yawing gaps in the post-Brexit legal and security framework, the forthcoming Brexit negotiations will need to put in place an agreement that secures the UK's continued access to these vital systems before the ECA is repealed. Failure to achieve this would result in significant operational disruption and a potential threat to the UK's ability to fight cross-border crime and terrorism.

The Future of Border and Immigration Management

Border management is based on striking the right balance between facilitating the mobility of increasing volumes of people and managing the risks associated with cross-border travel: irregular migration, crime, terrorism and vulnerability to pandemics. Today, a significant component of border management is the management of travellers' digital identities, not only at national borders but also through checks before arrival and ideally before departure.

The related and much broader, more complex area of immigration planning and management is a matter of national and local economic policy and politics as well as public administration, taking account of the dynamics of international migration, the country's economic needs, the politics of migration around free movement (outgoing as well as incoming) and the integration of migrants, identity management and asylum arrangements. In the UK, both policy areas fall under the remit of the Minister for Immigration, even though in many respects they are very different briefs.

There is no evidence that non-UK-born individuals are any more likely to commit criminal offences than UK citizens born here but the government should be able to deport foreigners or those granted citizenship who are undesirable. There is also public concern about acts of terrorism committed by foreign nationals although it should be noted that the perpetrators of the bombings on 7 July 2005 were UK nationals, and of the 120 people in UK custody for terrorism-related offences as of 30 September 2013, 79% were British nationals. Despite this, the Migration Observatory argues that common questions about security in the media and parliamentary questions relate to three stages of the migration process:

1. Entry: Why did the British state allow a potentially dangerous individual to enter the country?

2. Residence: What does (or should) the state know about foreign nationals in the UK?

3. Removal: Why has a potentially or demonstrably dangerous person not been removed? [42]

Among the ways the UK Government controls entry to the country are: collecting advance information about visitors from airlines, security agencies or other sources; requiring non-EU nationals to apply for visas; and carrying out checks on people arriving at the border. Such checks significantly reduce security risks but do not eliminate them entirely. And, importantly, the more rigorous the checks, the higher the costs, both in terms of operational expenses and any reductions in travel, tourism and trade resulting from the inconvenience caused to travellers. The challenge for the UK and other countries with respect to border management is to achieve the right balance between competing objectives of utility and efficiency, national security, and the privacy of a country's residents and visitors.

The Costs of Border and Immigration Management

The National Audit Office Departmental Overview 2015-16 of the Home Office reports five strategic priorities for the department in 2015-20, including to 'reduce operating costs while continuing to improve the efficiency and effectiveness of services'.[43] Controlling immigration is another priority, based on plans to reduce annual net migration to the UK, tackle illegal migration and enhance border security. The Home Office expenditure over that period is summarised in the table below, which presents spending reductions on the previous year in all areas except for UK Visas and the Immigration Command, Border Force and Counter Extremism.

Among its longer-term programmes are the Digital Services at the Border (DSaB) programme, the successor to the e-borders programme with the aim of further developing risk-based digital identity management, and the Immigration Platform Technologies programme, which aims to improve the efficiency and effectiveness of visa and other immigration transactions with the public.

Table: Home Office Expenditure in 2015-16

Home Office Departments	Total Expenditure 2015-16 (£m)
Crime and Policing Group	9,994
Office for Security and Counter Terrorism	962.4
Back-Office Functions (including Corporate Services, Communications Directorate, Human Resources Directorate and Strategy, Delivery and Private Office Group)	948.9
UK Visas and Immigration Command	906.4
Border Force	590
Immigration Enforcement Command	463.5
Her Majesty's Passport Office	369.7
International and Immigration Policy Group	32.4
Counter Extremism	3.7

Immigration Management after Brexit

The UK's system of border and identity management needs to develop and implement new arrangements to cover EU citizens visiting, working, studying or residing in the UK, which will stretch Home Office budgets significantly further. To date, the UK Government has adopted a laissez-faire approach to migration to the UK of EU citizens, and in public discourse this has often been wrongly conflated with free movement. The government's current strategy to 'control immigration' is based on controlling numbers by restricting the flow, but this is only half the story. The UK requires mechanisms for tracking the movement of people at national and local government levels, which are currently lacking.

In the absence of a system of registering EU migrants, little is known about where they live, whether they have families, whether they move in or out of the UK, their education and skill levels, or who employs them and in what jobs (above that described in National Insurance data), meaning that little can currently be done to manage impacts on local communities e.g. from increased demand for local public services.[44]

Border and Identity Management after Brexit

Future border and identity management arrangements will need to adapt to any additional controls placed on EU nationals, as well as the likely continuing growth in the flow of travellers and the scale and pace of trade. With respect to the former, Brexit may bring tighter controls on the migration of EU nationals. Alternatively, movement could remain largely unaffected if the UK were to follow a model such as that of Norway, which is not an EU member but has access to the EU single market as part of the EEA. Any admission requirements imposed on EU citizens after Brexit would not necessarily be the same as those currently applying to non-EU nationals, although it is reasonable to assume that the skill or salary level of the job would continue to be an important part of any selection scheme.

At the moment, for non-EU nationals, the Tier 2 visa (the main UK immigration route for skilled workers coming to the UK to take up employment) is usually reserved for workers in graduate-level jobs that pay at least £20,800. However, as recognised in a recent report by the Migration Observatory, some occupations and industries in which employers have relied most on workers from EU countries in recent years are also those in which the smallest shares of jobs are currently eligible for work visas. For example, the distribution, hotels and restaurants industry category is the largest employer of EU-born workers, but only 6% of all employees in this sector were in graduate jobs paying at least £20,000 in 2015. Introducing admission requirements for EU nationals would represent a substantial departure from the status quo. The Migration Observatory also notes that any selection system based on earnings and proposed occupation would have very different implications depending on the industry, occupation and, to a lesser extent, region.[45]

Growing pressures on the UK's border and immigration management arrangements will come from not only additional controls on EU nationals but also the general growth in legitimate and illegitimate travel and trade in licit and illicit goods. As noted above, the Home Office is investing in new technologies to enhance risk-based identity management and immigration and visa transactions with the public. It is likely that we will see advances in technological solutions across all dimensions of border and identity management by government and in partnership with other agencies. Biometric technology is now present in British passports and the e-gates used in conjunction with these, and has the potential to transform the entire airline check-in and departure process, while biometric residence permits are now issued to visitors outside the EU with permission to stay in the UK for six months or more.[46]

With respect to the UK's sea borders, while recent years have seen cuts in Royal Navy and police marine unit patrols of the UK coastline, cutting-edge technologies such as sea drones may help to enhance sea border protection in due course.[47] However, effective security technologies remain especially lacking in the security of sea ports and, particularly, the screening of containers. To date, security has mostly relied on human intelligence and inspection of shipping manifests looking for suspicious cargo, meaning that only a tiny proportion of containers are selected for detailed inspection. The challenges to the UK's customs security protections have been compounded by spending cuts that have seen customs staff diverted to passport checks and large numbers of staff leaving Border Force, leading to a significant loss of expertise.[48]

Conclusion and Recommendations

It is the first duty of any state to provide security for its citizens. That national responsibility is recognised in Article 4.2 of the Lisbon Treaty. Security depends largely – but not exclusively – on the state's ability to protect its borders. Often that task is made more complex by having, as is the case in the UK, overseas dependencies as well as treaties and arrangements with neighbouring countries such as the Treaty of Utrecht (with Spain since 1713) and the Le Touquet Agreement (with France since 2003). Such relationships can provide easier access for low-risk travellers and greater advance details of travellers. This notwithstanding, the physical security of national borders is the primary barrier to a growing range of persistent and pernicious threats. It is why the UK chose to remain outside the Schengen area while inside the EU. Outside the EU from 2019, the UK will have to reinforce its border security to meet the international challenges ahead while protecting its citizens.

The post-Brexit challenge for the UK on maintaining the security of its borders will relate less to how it maintains its existing physical border arrangements and more to how it continues to gather, share and receive suspect travel and threat intelligence from its international partners, with both those outside and inside the EU and Schengen. While exchanges on core intelligence can continue very effectively outside the EU framework, it is access to certain key European databases that will be crucial to maintaining timely and actionable measures in law enforcement and policing. It would be damaging to see this access undermined by it becoming a bargaining chip in Brexit negotiations.

Against the backdrop of world migration trends, conflict and economic uncertainty, the challenges faced by the UK in defending its border are significant and the practical difficulties any border force faces are likely to be magnified whatever the final nature of the post-Brexit arrangements. This will likely necessitate a major rethink of strategy, processes and, possibly, some substantive changes to existing structures. If only in practical terms, there will have to be a significant investment in people, resources and databases to cope with anticipated volumes of traffic through ports, airports and tunnels. Given budgetary constraints, this task will not be easy. Equally, Brexit does offer the opportunity to rethink operation of the border and further deploy technology to realise further efficiencies.

Knowing who comes to and from the UK shores depends on being able to identify travellers. Extending the BRP scheme for use with EEA nationals in a post-Brexit Britain could be one way of managing identity; it may well help to reduce health tourism and benefit fraud. While it could be argued that in the post-Brexit world priorities have changed and public acceptability may have shifted, the political disincentives to any identity management system are likely to be strong.

It is clear that a number of trade-offs will need to be made in post-Brexit labour migration policy. The government has made a clear commitment to controlling migration which is likely to have a strong influence on policy decisions. Other objectives include improving the employment prospects of existing UK residents, giving employers access to the skills and labour they require, supporting broader policy goals outside of immigration, negotiating a mutually beneficial economic relationship with the EU, and negotiating mutually beneficial trading relationships with non-EU countries, which may require an easing of restrictions on the mobility of skilled workers and students from those countries.[49]

Labour migration policy could be tailored to meeting varying policy goals, such as by creating rules customised to various business sectors or based on creating a simple, transparent system with more uniform rules that are easier to manage and enforce.[50] Above all, there is an imperative to have not only a secure border but also one that is as easy as possible to transit through for legitimate passengers, and thus as easy as possible to operate because resources can be targeted effectively.

The task of securing the UK's borders post-Brexit is not an exercise that begins with a blank sheet of paper. There are many legacy policies and systems to massage into a new, coherent strategy: the 2019 target for Brexit will surely focus minds. Then there are the imponderables of a second Scottish referendum, the possibility – albeit remote – of Northern Ireland exercising its right to vote to join the Irish Republic and remain in the EU, and the prospect that the Le Touquet Arrangement may be renegotiated, forcing all controls onto UK or British shores. The idea of bordering Great Britain challenges the idea of a UK border that is coterminous with the UK. However, imponderables are not plans and solutions may emerge through negotiations. As is often the case, it is events, as Harold Macmillan once said, that may prove to be the real determinants.

From this report come five key recommendations:

1. Border security should be (re)designed in response to, and proportionate to, foreseen international threats. It would be advantageous if HMRC/Border Force published open and classified versions of a national threat assessment along the same lines as that published by the NCA. The assessment could feed into the UK National Risk Register and be overseen by the National Security Council.

2. Effective border security should not be undermined by becoming a bargaining chip in Brexit negotiations. It is too important to be compromised. In fact, it should be viewed as a unique opportunity to enhance global co-operation and ease access for legitimate travellers.

3. Every effort should be made to preserve access to key EU databases so as to allow law enforcement and police the means to conduct their investigations for the benefit of all Europeans.

4. Adequate resources should be made available to fund the UK Border Force to levels that permit its effective operation in post-Brexit Britain and help it deliver the best possible border and pre-arrival experience for legitimate travellers, including maintaining juxtaposed controls.

5. The question of how to establish identity must be revisited. Extending the BRP identity scheme for use with EEA nationals post-Brexit could be one possible mechanism; it may have clear benefits, including reducing health tourism and benefit fraud.

ANNEX A: EU Regulations to be repealed once the ECA is repealed

- Regulation (EU) 2016/794 on the European Union Agency for Law Enforcement Cooperation (Europol).

- Regulation (EU) 2016/1953 on the establishment of a European travel document for the return of illegally staying third-country nationals.
- Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data.
- Regulation (EU) 2015/2219 on the European Union Agency for Law Enforcement Training (Cepol).
- Regulation (EU) No 1382/2013 establishing a Justice Programme for the period 2014 to 2020.
- Regulation (EU) No 1294/2013 establishing an action programme for customs in the European Union for the period 2014-2020 (Customs 2020).
- Regulation (EU) No 1052/2013 establishing the European Border Surveillance System (Eurosur).
- Regulation (EU) No 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person.
- Regulation (EU) No 603/2013 on the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of Regulation (EU) No 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person and on requests for the comparison with Eurodac data by Member States' law-enforcement authorities and Europol for law-enforcement purposes.
- Regulation (EU) No 1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice.
- Regulation (EU) No 439/2010 establishing a European Asylum Support Office.
- Regulation (EC) No 810/2009 establishing a Community Code on Visas (Visa Code).
- Regulation (EC) No 390/2009 amending the Common Consular Instructions on visas for diplomatic missions and consular posts in relation to the introduction of biometrics

including provisions on the organisation of the reception and processing of visa applications.

- Regulation (EC) No 767/2008 concerning the Visa Information System (VIS) and the exchange of data between Member States on short-stay visas (VIS Regulation).
- Regulation (EC) No 1986/2006 regarding access to the Second Generation Schengen Information System (SIS II) by the services in the Member States responsible for issuing vehicle registration certificates.
- Regulation (EC) No 1987/2006 on the establishment, operation and use of the second generation Schengen Information System (SIS II).
- Regulation (EC) No 1889/2005 on controls of cash entering or leaving the Community.
- Council Regulation (EU) 2016/369 on the provision of emergency support within the Union.
- Council Regulation (EC) No 377/2004 on the creation of an immigration liaison officers network.
- Commission Regulation (EC) No 1560/2003 laying down detailed rules for the application of Council Regulation (EC) No 343/2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national.
- Council Regulation (EC) No 693/2003 establishing a specific Facilitated Transit Document (FTD), a Facilitated Rail Transit Document (FRTD) and amending the Common Consular Instructions and the Common Manual.
- Council Regulation (EC) No 694/2003 on uniform formats for Facilitated Transit Documents (FTD) and Facilitated Rail Transit Documents (FRTD).
- Council Regulation (EC) No 1030/2002 laying down a uniform format for residence permits for third-country nationals.
- Council Regulation (EC) No 1339/2001 extending the effects of Regulation (EC) No 1338/2001 laying down measures necessary for the protection of the euro against counterfeiting to those Member States which have not adopted the euro as their single currency.

- Council Regulation (EC) No 539/2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement.
- Council Regulation (EC) No 1683/95 of 29 May 1995 laying down a uniform format for visas.

ANNEX B: EU Decisions and Framework Decisions that will cease to apply to the UK

- European Arrest Warrant - Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States.
- The European Criminal Records Information System (ECRIS) - Council Framework Decision 2009/315/JHA of 26 February 2009 on the organisation and content of the exchange of information extracted from the criminal record between Member States and Council Decision 2009/316/JHA of 6 April 2009 on the establishment of the European Criminal Records Information System (ECRIS) in application of Article 11 of Framework Decision 2009/315/JHA.
- Law Enforcement cooperation - Council Decision 2007/533/JHA of 12 June 2007 on the establishment, operation and use of the second generation Schengen Information System (SIS II).
- Council Decision 2008/633/JHA of 23 June 2008 concerning access for consultation of the Visa Information System (VIS) by designated authorities of Member States and by Europol for the purposes of the prevention, detection and investigation of terrorist offences and of other serious criminal offences.
- Commission Decision of 1 December 2014 on the notification by the United Kingdom of Great Britain and Northern Ireland of its wish to participate in acts of the Union in the field of police cooperation and judicial cooperation in criminal matters adopted before the entry into force of the Treaty of Lisbon and which are not part of the Schengen acquis.
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15. Home Affairs Committee Oral evidence: EU policing and security issues, HC 806,7 March 2017. Witness: Rob Wainwright. This gives a very good description of exiting and third party arrangements, as provided by the Director of Europol.

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