

A Tale of Two Immigration Systems

How Immigration Policy Will Work Post Brexit in Northern Ireland and Ireland

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Introduction

One island, two jurisdictions and what has been up until the end of 2020 free movement for EU residents coming to live and work in both parts of the island. The UK's vote to leave the EU on the 23rd June 2016 spelled the beginning of the end for free movement within the EU for UK residents and a fundamental shift in immigration policy for the UK and by default for Northern Ireland also. In very simple terms, what this means is that from the 1st January 2021 people from the other 26 EU member states (outside Ireland) can freely travel to live and work in the Republic of Ireland while a very defined set of rules will apply for those that wish to live and work in Northern Ireland. That departure of common approach between the two economies has as yet unknown but potentially significant consequences for the way in which international workers, with a particular emphasis on skilled workers, choose to live and work on the island.

This paper sets out to explore how immigration policy in the two jurisdictions will work post 31st December 2020 when the transition period ends and negotiations around future relations between the UK and EU should be concluded. It has a particular focus on what these changes, particularly the new UK immigration policy, means for 'skilled' workers and the ability of the two jurisdictions to attract internationally skilled labour.

Why does immigration policy matter?

Immigration policy is obviously a contentious issue and one that divides opinion both economically and politically. It was one of the most important and antagonistic aspects of the UK's decision to leave the EU. Indeed, research suggests that increases in local level immigration impacts across the UK and sentiment generally towards immigration were key predictors over the UK's vote to leave the EU.¹ Concerns around immigration typically centre around the impact of free movement on increased competition for jobs, lower wages, an increased burden on the welfare state and greater pressure on health, education and other state services.

The other side of the argument is that a 'good' immigration policy is viewed by many as a very effective tool to manage the flow of labour and skills in an economy. It can help plug both short and long term skills gaps. It can upskill sectors and occupations within an economy by bringing in skills in short supply to support an upward adjustment of skills levels in the local economy. The OECD suggests that migrants fill important niches both in fast-growing and declining sectors of the economy, contribute significantly to labour market flexibility, arrive with skills and contribute to human capital development of receiving countries and contribute to technological progress in an economy.²

What does migrant labour mean to the two jurisdictions?

Around 10% of those working in Northern Ireland were born outside the UK, representing an estimated 86,000 workers in total. Ireland makes up 2% of workers in Northern Ireland with a further 5% from other parts of the EU (EU26) and 3% from other parts of the world. The share of EU26 workers in Northern Ireland peaked at 6.3% in 2016 but has been falling since then. In fact, Northern Ireland lost around a quarter of its EU26 migrants in the 3 years after the Brexit vote took place. This fall has been more pronounced among skilled workers although EU workers tend to be mostly employed in lower skilled occupations.³

Ireland is more reliant on non-Irish workers compared to Northern Ireland. Non-Irish workers make up around 17% of people in work in the jurisdiction or almost 400,000 jobs.⁴ Around half of those come from EU26 countries (8% of workers), 2% from the UK and 6% from the rest of the world.

Ireland's greater reliance on non-Irish workers for jobs is evident across all occupation groupings for both lower and higher skilled workers (Table 1). Some 28% of workers in 'elementary occupations' (requiring minimal educational requirements) in Ireland are non-Irish. When it comes to higher-level occupations around 1 in 7 workers in Managers, Directors and Senior Officials are non-Irish. What is important to draw out is the fact that both rely to some degree on non-national workers at higher skills levels. For example, in Northern Ireland 1 in 10 Professional Occupation jobs is filled by non-UK workers. This rises to almost 1 in 5 jobs in Ireland. Non-UK workers make up 12% of skilled trades jobs in that occupation and 16% of jobs in Ireland. Both jurisdictions rely on non-nationals to fill highly skilled jobs in their jurisdictions.

Table 1: Employment of Non-UK/Irish Workers by Occupation in Northern Ireland/Ireland

	Northern Ireland	Ireland
UK SOC2010	Non-UK Workers Share of Employment in NI	Non-Irish Workers Share of Employment in Ireland
1 'Managers, Directors And Senior Officials'	6%	14%
2 'Professional Occupations'	11%	17%
3 'Associate Professional And Technical Occupations'	7%	13%
4 'Administrative And Secretarial Occupations'	7%	14%
5 'Skilled Trades Occupations'	12%	16%
6 'Caring, Leisure And Other Service Occupations'	9%	16%
7 'Sales And Customer Service Occupations'	8%	14%
8 'Process, Plant And Machine Operatives'	16%	20%
9 'Elementary Occupations'	15%	28%
Overall Share of Employment	10%	17%

Source: CSO and NISRA Labour Force Statistics

What will immigration policy look like post transition?

A number of approaches have existed to support movement of people and workers in both jurisdictions over the decades. Policies in common to both the UK and Ireland include 1) The **Common Travel Area (CTA)** meaning that people can move freely to live and work in either jurisdiction and 2) **Freedom of Movement**, a fundamental principle of the EU Treaty (Article 45) meaning that as EU citizens, British and Irish citizens were entitled to freedom of movement between EU member states, including working in another jurisdiction without needing a work permit. Where the two jurisdictions have differed is in their approach to immigration involving non-EU/EEA migrants.⁵ The UK and Ireland have always maintained separate immigration policies to that effect.

So what do these policies look like and what are the implications for those policies when the UK leaves the EU? The discussion below sets out to understand what will change mean as the UK leaves the EU, largely focusing on the new immigration system developed by the UK government post-Brexit.

The Common Travel Area

The Common Travel Area (CTA) has existed in various forms for a hundred years. It dates back to the establishment of the Republic of Ireland (or Irish Free State as it was known) in 1922 and came about because there was a recognition of the importance of the interconnectedness

of the two economies (including free movement of labour) and the fact that there was no desire for a 'passport' system between the two.

In simple terms the CTA is a special travel zone between the Republic of Ireland and the UK, the Isle of Man and the Channel Islands. British and Irish citizens can travel freely within the CTA without being subject to passport controls. Citizens from those jurisdictions have permanent immigration permission to remain in the other jurisdictions. This includes access to employment, healthcare, all levels of education and social benefits on the same basis as citizens of the other State, as well as the right to vote in local and national parliamentary elections. The CTA therefore allows British citizens in Ireland and Irish citizens in the UK the right to work, including on a self-employed basis, without any requirement to obtain permission.

Both Irish citizens in the UK and British citizens in Ireland will continue to enjoy these rights now that the UK has left the EU. The British and Irish governments have pledged to continue the CTA after Brexit and signed a new Memorandum of Understanding (MOU)⁶ in May 2019 upholding the rights that currently exist under the CTA.⁷ It reaffirmed that the status that British and Irish citizens enjoyed in each other's state would be upheld as would the '*reciprocal rights and privileges enjoyed by British and Irish citizens in each other's state*'.

The CTA was also recognised throughout the EU-UK negotiations and there is an agreement in the Ireland/Northern Ireland Protocol that the UK and Ireland '*may continue to make arrangements between themselves relating to the movement of persons between their territories*'.⁸

The Irish Immigration System

Ireland's membership of the European Union means that its immigration policy makes an important distinction between people from within and outside the European Economic Area (EEA). Essentially, because of freedom of movement, EEA nationals are allowed the unrestricted right to migrate and take up employment in Ireland.

Those who are non-EU/EEA and non-Swiss citizens that wish to stay in Ireland must have immigration permission. There are different rules depending on whether an individual is studying, training, working, setting up in business, volunteering or wanting to live in the country. For those that want to work there are specific policies for academics, doctors, nurses and some trainees (accountancy, interns). In order to undertake any other form of work an individual must have a work permit. There are nine types of employment permit in Ireland, including a Critical Skills Employment Permit, Dependant/Partner/Spouse Employment Permit and a General Employment Permit.⁹

The *Critical Skills Employment Permit* is designed to attract highly skilled people into the labour market in Ireland and encourage them to take up permanent residency in the country. The type of occupation and salary offered are the main determinants for eligibility. The prospective employee or employer can apply for the Critical Skills Employment Permit on the basis that a 2-year job offer must be secured. There are two categories of eligible occupations including:

- 1 Jobs with annual salaries of €64,000 or more. A degree or equivalent experience is required. A non-EEA national who does not have a degree qualification or higher, must have the necessary level of experience; and

- 2 Jobs with annual salaries of €32,000 or more that are considered of strategic importance and are listed on the Critical Skills Occupation List. The occupations on the list are those that are considered in shortage in respect of qualifications and skills experience needed for the 'proper functioning of the economy'. The list includes ICT professionals, technologists and engineers. A relevant degree or higher is required.

The *Dependant/Partner/Spouse Employment Permit* allows those connected to Critical Skills Employment Permit holders to apply for an employment permit to work in the State. The *General Employment Permit* is a job-offer based work permit which allows immigrants to work in Ireland in a role that pays at least €30,000 per year,¹⁰ although with some exceptions. Unlike the Critical Skills Employment Permit there is no list of eligible occupations, although there is a list of '*ineligible categories of employment for employment permits*'.¹¹ Ineligible categories include administration roles, personal services, some health services roles and skilled trades.

Other work based Permits include the Intra-Company Transfer Employment Permit, Contract for Services Employment Permit, Reactivation Employment Permit, Internship Employment Permit, Sport and Cultural Employment Permit and Exchange Agreement Employment Permit, all designed to facilitate certain types of non-EEA workers to work in or continue to work in Ireland.

Post 2020 there will be little if any change to immigration policy and the movement of non-nationals into Ireland. The CTA will continue in its current form allowing free movement of workers between the UK and Ireland, as will free movement for citizens from the other 26 EU member states coming to Ireland to work. Ireland's Work Permit criteria will also continue to apply after this time to non-EEA nationals.

The UK (and Northern Ireland) Immigration System

The context to understanding what happens in Northern Ireland is the fact that the Northern Ireland Executive has no direct role to play in terms of the UK government's (UKG) decision-making on immigration policy. This is because migration is considered an '*excepted matter*' in Northern Ireland meaning that UKG remains solely responsible for it because it is of '*national importance*'.¹² Northern Ireland therefore follows UKG rules on immigration policy.

Up until the UK's historic vote to leave the EU, provisions in EU law relating to free movement between residents within the EU governed provision for EU workers in the UK, as with Ireland. UK migration policy in relation to non-EU workers was largely subject to UK immigration law meaning that permission to enter and stay in the UK was reviewed on a case-by-case basis by the Home Office. Non-EU rules only admitted high skilled workers to the UK and imposed controls through minimum skills and salary levels, a cap on numbers and the need to test the availability of local workers before recruiting abroad. This relied on a visa approach using 'Tiers' to identify different types of workers. This ranged from Tier 1 visas preserved for experienced business people to set up an innovative business in the UK, through to Tier 5 visas for short-term voluntary and educational programmes. The two most commonly used have been Tier 2 skilled worker visas and Tier 4 student visas. These visas worked on a points-based system that included salary caps, a knowledge of English, the need for a sponsor and agreeing not to claim benefits for a period of time.

However, when the UK voted to leave the EU it meant that a new immigration policy had to be established. Different rules had to be developed and applied under UK law and a new border and immigration system introduced.

A UK White Paper, *'The UK's future skills-based immigration system'*,¹³ was published in December 2018 setting out UKG's plans to introduce a new single migration system ending free movement. This included considerations on a range of issues such as borders, family and settlement, and the operational aspects of implementing the new system. The White Paper made it clear that the new system would continue to have a strong skills focus. This would provide a single route of access for highly skilled and skilled workers from all countries. UKG took guidance from the Migration Advisory Committee (MAC)¹⁴ *not* to impose a cap on skilled workers coming into the UK so that any business could hire a suitably qualified migrant. This new skilled route would include graduate and post-graduate workers as well as those at RQF 3-5 level (A level or equivalent/ Leaving Cert in Ireland), a departure from the previous system in that it lowered the skills threshold to include medium-skilled workers. The White Paper also advocated the abolition of the resident labour market test which put the onus on the employer to show that there was no 'settled' worker available to fill the role required. MAC advised a minimum salary threshold of £30,000 which was subsequently lowered to £25,600.

No route of access has been specifically set out for low skilled workers, although a transitional measure has been introduced to allow a time-limited route for temporary short-term workers of all skills levels, including seasonal low-skilled workers. The UKG has emphasised the need to work with key sectors to reduce demand for low skilled migrant labour.

After a period of consultation, the UKG introduced a policy statement in February 2020 setting out a new UK 'points based' immigration system that will come into force from 1st January 2021.¹⁵ In effect, this takes different factors into account to decide if a person is eligible to enter the UK. At its core is the fact that the person must show that they have a job offer from an approved sponsor, that the job offer is at the required skill level, and that they speak English. These characteristics are considered 'essential'. After that some factors are 'tradeable'. These include the salary threshold, whether the job is on the Shortage Occupation List (SOL) and whether the person has a PhD (See Appendix A for more detail). A total of 70 points is required to be eligible to apply.

The Shortage Occupation List (SOL) already existed under the old immigration system that applied to non-EU migrants. This listed a set of occupations in short supply in the UK (and specific occupations in Scotland) that could be filled by migrants. Under the new system the SOL will still apply and a total of 20 points will be allocated for a job being in a shortage occupation (see Appendix A). An occupation listed on the SOL will lower the salary threshold employers must meet by 20%. A minimum salary threshold of £20,480 will apply. The new SOL will accommodate occupations skilled to RQF level 3 and above. The MAC has recently been tasked with reviewing the SOL, including whether there is a need for a separate list for Northern Ireland.¹⁶ Northern Ireland does have the ability to influence the SOL for the region but it does not have any formal role in setting the SOL.

There will be an opportunity for some individuals to enter the UK without a sponsor/employer through 1) the Global Talent route where the most highly skilled can enter the UK without a job if endorsed by a relevant body e.g. Tech Nation, The Royal Society for Science and Medicine or 2) a broader unsponsored route within the points-based system to allow a smaller number of the most highly-skilled workers to come to the UK without a job offer (details to be confirmed).

Other aspects of the policy statement include an expansion of the pilot scheme for seasonal workers in agriculture to 10,000 places, and the maintenance of youth mobility arrangements

with eight countries and territories which results in around 20,000 young people coming to the UK each year. Students will be covered by the points-based system. They will achieve the required points if they can demonstrate that they have an offer from an approved educational institution, speak English and are able to support themselves during their studies in the UK.

How do the Critical Skills Occupation List (Ireland) and Shortage Occupation List (UK) compare?

As discussed, both jurisdictions have a list of occupations set out in their immigration policies that are deemed in short supply and are considered important for the proper functioning of the economy. As outlined above these are known as the Critical Skills Occupation List for Ireland and the Shortage Occupation List for the UK/NI. Both lists form one aspect of the entry requirements for migrant workers. Both jurisdictions use the Standard Occupational Classification (SOC)¹⁷ to classify these jobs according to their occupation by skill level and skill content. This means that there is the basis for comparing the current lists for both. A detailed comparison is set out in Appendix B.

What this tells us is that Ireland's list of skills in short supply takes in more occupations, although both largely focus around similar skills sets. Ireland lists 46 occupations in short supply while the UK lists 33 in total. Scotland has an additional 2 occupations listed (and a third related specifically to gaelic teaching in secondary education). Ireland's list takes into account *all* occupations listed within a 4-digit SOC while in some instances the UK list only includes *some* skills within the 4-digit classification. In terms of overlap, 21 occupations are common to the two jurisdictions, both listing professions including Science, Engineering, ICT, Health, Business, Architects/Surveyors, Quality Control/Planning along with Artistic and Design Occupations. Those parts of the list that stand out as different between the two include a focus in Ireland on manager and director roles, accountants and business professionals, specific skills in the health sector and quality and regulatory roles. For the UK, there is a unique focus on different health sector skills, artistic professions and skilled trades including chefs and welders.

What could all of this mean in attracting skilled workers to both jurisdictions?

On the 31st December 2020 free movement of people between the UK and the EU will end. While the Common Travel Area will still exist, ensuring free movement between Ireland and the UK, what this effectively means is that while Ireland will have open access to 240,000 people actively working or seeking work from across Ireland's 26 EU partners and the UK, Northern Ireland will have open access to an active population of just over 34,000 people between Ireland and Great Britain. After this, Ireland and Northern Ireland's separate immigration policies will come into play to select and attract top talent from the rest of the world.

Both jurisdictions will have an essentially employer-driven approach to attracting migrants based on the existence of a job offer with a firm focus on skilled migrants. For the most part workers will have to be employed in an occupation listed to be in short supply in each jurisdiction, based on a very detailed 4-digit Standard Occupational Classification. However, as it currently stands, Ireland lists significantly more occupations compared to the UK/NI, although the salary thresholds for migrants will be higher in Ireland than Northern Ireland at a minimum of €30,000 for Ireland and £20,400 (around €23,000¹⁸) for the UK/Northern Ireland. The lower UK minimum salary threshold reflects the fact that the UK system will accept workers with 'medium skills' (A level or equivalent/ Leaving Cert in Ireland). Ireland's system will be largely focused on those with a degree/equivalent or higher. To put those thresholds in context,

the average annual full-time wage in Northern Ireland is €30,000 (£27,000) compared to €49,000 in Ireland.

Highly skilled migrants from other EU member states will continue to travel freely to work in Ireland while those wanting to work in Northern Ireland will have to enter using the new points based system. Northern Ireland will also have to compete with the rest of the UK to attract top talent to the region, against the backdrop of one of the lowest average salaries across the UK regions. The physical barrier of the Irish Sea will continue to add greater complexity to any decision to come to live and work in Northern Ireland.

It is going to take time to see the out-workings of the UK’s new immigration policy. However, as with most things Brexit-related, Northern Ireland is different and the implications of the new UK immigration policy in the region should be monitored carefully as a result. It is undoubtedly narrowing the playing field to attract people including top talent to come to work in Northern Ireland and issues including the implications of the minimum salary threshold and occupations listed on the Shortage Occupation List (SOL) need careful consideration. There should be a ‘real time’ assessment of this as the new rules kick into play so that immigration can be used as the effective tool it can be to support skills development across the island of Ireland.

Appendix A

The UK Points-Based Immigration System

Characteristics	Tradeable	Points
Offer of job by approved sponsor	No	20
Job at appropriate skill level	No	20
Speaks English at required level	No	10
Salary of £20,480 (minimum) – £23,039	Yes	0
Salary of £23,040 – £25,599	Yes	10
Salary of £25,600 or above	Yes	20
Job in a shortage occupation (as designated by the MAC)	Yes	20
Education qualification: PhD in subject relevant to the job	Yes	10
Education qualification: PhD in a STEM subject relevant to the job	Yes	20

A total of 70 points is required to be eligible to apply; some characteristics are tradeable.

Appendix B

Skills in Short Supply: Comparison of Irish and UK Immigration Lists¹⁹

		Ireland	UK/NI	Scotland
4-Digit SOC	Occupation	Critical Skills Occupation List	Shortage Occupation List (SOL) List (UK)	All UK Occupations PLUS
1122	Site Manager	√√		
1136	Information Technology and	√√		
	Telecoms Directors			
1181	Senior Health Services/Public	√√		
	Health Managers			
2111	Chemical Scientists	√√		√
2112	Medical Laboratory Scientists	√√	√√	
2113	Physical Scientists	√√	√	
2114	Social & Humanities Scientists		√	
2121	Civil Engineers	√√	√√	
2122	Mechanical Engineers	√√	√√	
2123	Electrical Engineers	√√	√√	
2124	Specialist Electronics Engineers	√√		
2126	Design & Development Engineers	√√	√√	
2127	Production & Process Engineers	√√	√√	
2129	Material Scientists	√√	√√	
2133	IT Specialist Managers	√√		
2134	IT project and programme managers	√√		
2135	IT business analysts	√√	√√	
2136	Programme & Software Development	√√	√√	
2137	Web design & development professionals	√√	√√	
2139	All Other ICT professionals	√√	√	

2211	Medical Practitioners	√√	√√	
2212	Psychologists		√√	
2213	Industrial Pharmacists	√√		
2216	Veterinarians		√√	
2217	Radiographers/Radiation Therapists/Vascular technologists/physiologists	√√	√√	
2219	Audiologists/Perfusionists	√√		
2222	Occupational Therapists		√√	
2223	Speech & Language Therapists		√√	
2229	Orthoptists	√√		
2231	Registered Nurses/ Specialist Practitioners	√√	√√	
2232	Registered Midwives/ Specialist Practitioners	√√		
2311	Academics with Level 10+ NFQ	√√		
2314	Secondary Education Teaching Professionals		√	√
2315	Primary & Nursery Education Teaching Professionals			√
2421	Chartered/Certified Accountants/Tax Consultants	√√		
2423	Management Consultants/Business Analysts	√√		
2424	Business & Financial Project Management Professionals	√√		
2425	Actuaries, Economists, Statisticians	√√	√	
2431	Architects	√√	√√	
2433	Quantity Surveyors	√√	√√	
2435	Architectural Technologists	√√		

2436	Construction Project Managers	√√		
2442	Social Workers		√√	
2461	Quality Control and Planning Engineers	√√	√√	
2462	Quality Assurance and regulatory professionals	√√		
2463	Environmental Health Professionals	√√		
2473	Art Direct in 2D/3D animation	√√		
3213	PHECC Registered	√√		
	Paramedics/Advanced			
3218	Prosthetics/Orthotists	√√		
3411	Animation/Design Artist	√√	√√	
3414	Dancers & Choreographers		√	
3415	Musicians		√	
3416	Arts Officers, producers and directors		√√	
3421	Location/Character/Prop/ Animation Designer/Artist	√√	√√	
3442	High Performance	√√		
	Coaches/Directors for sports			
3542	International Business Sales	√√		
	Executives			
3543	International Marketing Executives	√√		
5215	Welding Trades		√	
5434	Chefs		√	

Note:

√√ Includes *all* occupations within the 4-digit SOC

√ Includes *some* occupations within the 4-digit SOC

Notes

- ¹ Matthew Goodwin and Caitlin Milazzo, 'Taking back control? Investigating the role of immigration in the 2016 vote for Brexit' (2017).
- ² OECD, 'Is Migration Good for the Economy' (2014).
- ³ Department for the Economy, 'Migrant Workers – February 2019' (2019).
- ⁴ Source: Labour Force Survey CSO.
- ⁵ The European Economic Area includes EU member states and three countries of the European Free Trade Association (EFTA) – Iceland, Liechtenstein and Norway.
- ⁶ 'Memorandum of Understanding between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Ireland concerning the Common Travel Area and associated reciprocal rights and privileges', https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/800280/CTA-MoU-UK.pdf.
- ⁷ Although this is not legally binding.
- ⁸ <https://www.gov.uk/government/publications/new-protocol-on-irelandnorthern-ireland-and-political-declaration>.
- ⁹ See Department of Business, Enterprise and Innovation, "Types of Employment Permits", <https://dbe.gov.ie/en/What-We-Do/Workplace-and-Skills/Employment-Permits/Permit-Types/>.
- ¹⁰ Although there are some exceptions e.g. newly graduated students, people with specified languages.
- ¹¹ See Department of Business, Enterprise and Innovation, "Ineligible List of Occupations for Employment Permits", <https://dbe.gov.ie/en/What-We-Do/Workplace-and-Skills/Employment-Permits/Employment-Permit-Eligibility/Ineligible-Categories-of-Employment/>.
- ¹² See Cabinet Office and Northern Ireland Office, "Guidance. Devolution Settlement: Northern Ireland", <https://www.gov.uk/guidance/devolution-settlement-northern-ireland>.
- ¹³ HM Government, "The UK's future skills-based immigration system" (December 2018).
- ¹⁴ Set up by UKG in 2007 to offer advice on immigration policy. See Migration Advisory Committee, "About Us", <https://www.gov.uk/government/organisations/migration-advisory-committee/about>.
- ¹⁵ Home Office and UK Visas and Immigration, "The UK's points-based immigration system: policy statement" (19 February 2020), <https://www.gov.uk/government/publications/the-uks-points-based-immigration-system-policy-statement/the-uks-points-based-immigration-system-policy-statement>.
- ¹⁶ The consultation period ended on the 24th June 2020 and the findings are pending.
- ¹⁷ The Standard Occupational Classification (SOC) is a common classification of occupational information for the UK.
- ¹⁸ Based on exchange rate on 28th August 2020.
- ¹⁹ As at August 2020.

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- HM Government (2018), "The UK's future skills-based immigration system", https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/766672/The-UKs-future-skills-based-immigration-system-accessible-version.pdf.
- OECD (2014), "Is migration good for the economy?", *Migration Policy Debates* (May), <https://www.oecd.org/migration/OECD%20Migration%20Policy%20Debates%20Numero%202.pdf>