

# The post-Brexit brain drain

How will Brexit affect the flow of EU students to UK universities?

Matthew Homewood & Simon Boyes share their predictions



With EU leaders agreeing in December to move to the critical second phase of Brexit negotiations, it is notable how few column inches have been devoted to the impact of a Brexit deal on the free movement of students to the UK.

## Student finance

UK universities make a significant contribution to the UK economy. Indeed, a recent study for Universities UK by Oxford Economics reported that, once student expenditure is included, UK universities generate some £95 billion for the country's economy and support more than 940,000 jobs (see p9).

Non-UK EU students are an important contributor to this, with data from the Higher Education Statistics Agency (HESA) showing that such students accounted for some 5.5% (127,440) of the 2.3 million student enrolments at UK institutions in 2015/16. Figures presented in January 2017 to the Commons education select committee showed a 7% fall in applications from EU students, and competitor countries have clearly spotted an opportunity as they increase their recruitment efforts. In light of this, it is all the more surprising that little has been said about how alternative negotiated models will impact EU students.

## The letter of the law

The legal position as it stands is that nationals of member states enjoy EU citizenship status as provided in Art 20 TFEU. Such status provides many rights but includes the right to free movement subject to limitations and conditions (Art 21 TFEU). These rights should be read

alongside Art 18 TFEU, which provides a general right of non-discrimination on grounds of nationality.

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The detailed rights of residence are set out in the Citizenship Directive. This provides that EU citizens have the right to reside in another member state and study at any EU University providing they have comprehensive sickness insurance and can assure the relevant national authority that they have sufficient resources not to become a burden on the social assistance system of the host member state during the period of residence. Further, as *R v London Borough of Ealing and Secretary of State for Education, ex p Bidar* (Case C-209/03) clarified, encouragement and cooperation in education matters is incorporated into EU law meaning that there must be equality with host state nationals. However, as only partially economically active citizens, such equal treatment does not extend to maintenance aid for students, including vocational training and consisting of student grants and loans by virtue of Art 24 of Directive 2004/38 and the derogation from the equality principle in para 2. In practice, this means that access to social benefits is

limited until a sufficient degree of integration is satisfied.

While the position of EU nationals beginning courses at UK universities for the academic year 2018/19 remains as now, the approach to be adopted once the UK leaves the EU in March 2019 is less clear. The most likely scenario appears to be that current arrangements will continue, with the UK government appearing to have agreed to continue to abide by EU law during a transition period.

## Post-Brexit unknowns

Beyond the transition period, the situation is much less predictable. The precise nature of the bespoke arrangement which the UK is seeking is, as yet, unclear. In the instance of a 'no deal' scenario the likely position would be that students previously treated as EU citizens would, instead, be considered 'international' students—a sensitive issue given political pressures on the UK's net migration figures.

Brexit Secretary David Davis has indicated that he would like to negotiate a 'Canada plus plus' deal, based heavily on the EU's CETA agreement with Canada. This would not seem likely to provide any free movement or non-discrimination benefits for students; CETA provides for rights of free movement only for those involved in the facilitation of trade and business between the two. At the other end of the spectrum, were the UK to conclude a 'softer' Brexit and join the single market, the situation would remain as now.

However, given that the UK will continue to participate in Erasmus+ (the EU exchange programme) and Horizon2020 (the research funding programme) until those schemes come to an end, there are perhaps signs that there exists a shared will to maintain close ties in respect of higher education. Indeed, both programmes already involve nations from outside of the EU28.

Given the economic importance of higher education, and the significant slice of that which is due to Non-UK EU students, this remains an important, but unresolved, issue. A broad indicator of the future position may have been given in late 2017 by the erstwhile Universities Minister, Jo Johnson, indicating that the UK would seek to encourage EU nationals to undertake undergraduate study in the UK. The precise nature of the legal framework within which this operates—as with so many aspects of the future relationship between the EU and UK—remains to be seen.

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