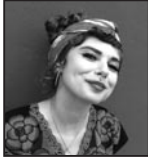


# Migration and work in post-Brexit UK

Manoj Dias-Abey and Katie Bales



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Preview

# **Migration and work in post-Brexit UK**

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Preview

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# preface

We have written this booklet to provide an overview of the new post-Brexit migration system that came into force on 1 January 2021. To gain a proper understanding of the new system, it is not possible to simply set out the rules that govern the various streams of entry. Instead, we must examine how the migration system has developed over time because there is a strong element of path dependency in the area of migration governance. In some cases, our conceptual frames for thinking about migration, the rules that regulate entry and stay, and the regulatory instruments utilised, go back several decades. As well as being aware of the history, our understanding of the present is aided by social science analysis of how the current system is operating. We have tried to marry all of these elements—legal, historiographical and social scientific—in the discussion that follows.

We wish to thank the Institute of Employment Rights for giving us this opportunity to use our research to inform the public discussion. James Harrison, our primary contact within the IER, has been wonderful to work with. We also extend a heartfelt thanks to Professor Bernard Ryan who reviewed an early draft of this publication and made several thoughtful comments, although any remaining errors remain our responsibility. Professor Ryan has been the author/editor of several previous IER publications on the issue of migrant work, so we hope that his input maintains some continuity with the excellent work that the IER has previously done in this area. Thanks also to Professor Alan Bogg for his insightful comments on the evolving and complex law of illegality. The migration rules are dynamic and fast moving, and it is likely that by the time you read this publication some of the information might already be out-of-date. As such, we encourage readers not to rely solely on this publication for the latest information, but rather use it as a launching pad for further investigation.

**Manoj Dias-Abey and Katie Bales**  
*December 2023*

Preview

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# abbreviations

ACRS	Afghan Citizens' Resettlement Scheme
ARAP	Afghan Relocations and Assistance Policy
BME	Black and Minority Ethnic
BN(O)	British Nationality (Overseas)
CEAS	Common European Asylum System
EEA	European Economic Area
EU	European Union
HSMP	Highly Skilled Migration Programme
IER	Institute of Employment Rights
IHS	Immigration Health Surcharge
MAC	Migration Advisory Committee
NHS	National Health Service
RQF	Regulated Qualification Framework
SOL	Shortage Occupation List

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# Preview



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# 1 introduction

In the lead up to the ‘Brexit’ referendum in 2016 and its immediate aftermath, the issue of migration and work took centre stage. Politicians, propagandists and pundits from both ends of the political spectrum argued that migration, particularly from the newer members of the enlarged European Union (EU), was having a deleterious impact on British workers who were mostly imagined as white and working class. Paul Embery, the pugnacious trade unionist and prominent Brexit campaigner put it like this: “...a body of evidence demonstrat[es] that the EU’s free movement laws and wider immigration policy had negatively affected the wage packets of at least some British workers, and in some cases to a potentially significant degree.”<sup>1</sup> The evidence, however, is far from unequivocal. A wealth of economic studies have found that migration has only a minimal impact on wages and employment prospects of citizen workers, although some studies show effects that are slightly more pronounced amongst low-wage workers.<sup>2</sup> In fact, a 140-page report written by the independent Migration Advisory Committee (MAC), which reviewed the economic literature on this question, concluded that “migrants have no or little impact on the overall employment and unemployment outcomes of the UK born workforce” and “[i]n terms of wages the existing evidence and the analysis we present in the report suggests that migration is not a major determinate of the wages of UK born workers.”<sup>3</sup> These findings relate to the aggregate, economy-wide effects of immigration, controlling for other factors such as the present state of UK’s labour-market regulation.<sup>4</sup> Unpersuaded critics of expanded migration might ask: what are the more finely grained impacts of migration in particular workplaces and sectors? Similarly, those who question the baseline assumptions of these studies might be inclined to question what part British labour law and enforcement practices play in exacerbating any ill effects for both migrants and local workers. What is clear is that given the political stakes in this debate, the impact of migration upon the labour market is unlikely to be conclusively decided by economic studies alone.

Although migration has regularly served as a lightning-rod for all sorts of social anxieties around economic change and cultural transformation, we should not see animus towards migrants as being baked into the UK’s

political DNA. Recent polling suggests that attitudes towards migrants might be warming since their nadir during the Brexit debate, with around half the population in 2022 expressing positive views about the economic and cultural impacts of immigration.<sup>5</sup> Some have suggested that the implementation of a more selective migration system that seems to reassert state control over movement may be one reason.<sup>6</sup> Another factor might be the prominence given to the vital role played by migrant workers during the Covid pandemic, particularly in the health and care sectors. Yet another reason might be that right-wing political commentators have momentarily found other issues to excite their audiences. In any case, the softening of public views towards migration presents an opportunity to hold a discussion about how we can improve labour-market outcomes for migrant workers and citizens alike. Often, the public debate has revolved around the merits of expanding or decreasing numbers. This discussion overlooks equally important issues such as the work experiences of the migrant workers themselves, the present state of labour-market regulation, and of course, broader questions about the UK's political economy.

Since the Institute of Employment Rights (IER) turned its attention to this issue of migration and work almost two decades ago, it has sought to look beyond the 'expansionist' or 'restrictionist' binary. In a 2005 publication, the IER argued in favour of the adoption of a 'rights-based approach' to the issue of migrant labour.<sup>7</sup> According to this perspective, reform of migration law and employment law could improve the lives of migrant workers in the labour market and prevent instances of exploitation whilst also protecting the position of local workers. This issue was fresh in the minds of the authors because the Morecambe Bay tragedy in 2004, in which 21 undocumented Chinese workers died whilst picking cockles in northwest England, had highlighted the tragic consequences of failing to act. Some of the concrete proposals advanced by the IER included a regularisation programme for residents without work authorisation, giving migrant workers an enforceable right to equal conditions in discrimination legislation, and a series of employment-law changes to promote rights consciousness amongst migrant workers. In a later publication in 2013, the IER concluded that the plight of migrant workers revealed deeper pathologies in the UK's labour market.<sup>8</sup> Accordingly, many of the authors who contributed chapters to this publication argued that in addition to some specific measures targeted at the migrant workforce, stronger labour laws that applied across the economy would have the welcome effect of supporting migrant workers who often bore the brunt of labour-market flexibilisation strategies.

As the UK adjusts to the post-Brexit labour migration system, the IER returns to the issue of labour migration in this publication. After years of discussion around what shape the UK's departure from the EU would take, the new immigration system came into effect on 1 January 2021. Although the government has sought to present the new labour immigration arrangements as novel—the so-called 'points-based' immigration system—the new regime contains many elements of the one that previously applied to 'third-country nationals'; that is, those seeking entry to the UK from countries other than the EU. Although citizens of EU countries enjoyed free movement, those from outside the EU could only migrate if they held a job offer from an employer holding a sponsor licence. Only certain types of skilled jobs were eligible, and the employer had to satisfy a labour-market test that demonstrated that no local worker could be found for the role. Annually, there were only 20,700 'Tier 2 (General)' visas (as the Skilled Worker visa was then known) granted. There were few avenues for those deemed 'low skilled' to enter the UK from a non-EU country. The new labour-migration arrangements now create parity of treatment between EU migrants and non-EU migrants, which means that the EU migrants wishing to enter the UK to work must now first receive a job offer from a UK employer. However, as the Social Market Foundation has recently pointed out, "[f]or those employers that had relied on freedom of movement, the shift to sponsorship came with material additional cost, administrative complexity, and legal responsibilities and obligations."<sup>9</sup>

Despite some of these similarities, the rules relating to the granting of a Skilled Worker visa have been significantly liberalised. Previously, someone seeking to enter the UK on a Tier 2 visa was required to hold a job offer requiring training at Regulated Qualification Framework (RQF) Level 6 or above (roughly undergraduate degree) and earn above £30,000 per annum. Now, the meaning of 'skilled' has been redefined as someone possessing a job offer requiring high-school equivalent level of education (RQF 3) and earning above £26,200 per year (with the possibility of a minimum salary of £20,960 for occupations on the Shortage Occupation List (SOL)). This means that about half of all full-time jobs in the UK now qualify someone for a work visa.<sup>10</sup> Furthermore, many of the regulatory restrictions that previously applied, such as annual quotas and resident labour market testing requirements, have been abolished. Unsurprisingly, after two full years of operation, we have seen that the number of long-term, Skilled Worker visas granted has increased. In the recently released migration statistics for 2022, there has been a 161% increase in visas granted from 2019, which was the year

before the new system came into force (and not affected by the pandemic).<sup>11</sup> The countries from which labour migrants are coming has also changed. In 2022, migrants from India, Nigeria and Zimbabwe represented the top three nationalities granted Skilled Worker visas.<sup>12</sup>

Before proceeding further, it is necessary to make two preliminary remarks. The first relates to the language that we use to describe various streams of migration, which has significant implications for the way we value certain types of migrants and regulate their entry. This report adopts the language of ‘high skill’ and ‘low skill’ because this is the way that policymakers and legislators conceptualise and talk about migration. In the minds of these actors, skilled migrant workers are seen to promote labour productivity, address labour shortages in desirable industries such as ICT and healthcare, and increase the human capital of the population more generally.<sup>13</sup> It should be noted that skill is notoriously difficult to measure, is operationalised in often deeply racialised and gendered ways, and can function to deny agency and personhood to those deemed unskilled.<sup>14</sup> Low skill in this context does not mean that some degree of competence is not necessary to perform the role, but simply that the job pays a low wage and requires a lower level of formal qualification. Both these dimensions speak to the social valuing of particular types of work rather than any objective characteristic of the work involved.

The second also relates to a terminological issue. However, folded within this seemingly small quibble about language is a more fundamental conceptual matter. Although the term ‘migrant’ is frequently used in discussions, it may surprise readers to know that there is no widely accepted definition of a migrant. As Bridget Anderson and Scott Blinder point out:

*Migrants might be defined by foreign birth, by foreign citizenship, or by their movement into a new country to stay temporarily (sometimes for as little as one month) or to settle for the long-term. In some instances, children who are UK-born or UK nationals, but whose parents are foreign-born or foreign nationals, are included in the migrant population.<sup>15</sup>*

Many of the government’s datasets, for example the Labour Force Survey and Annual Population Survey, use the ‘foreign born’ definition. On this basis, as of 2021, it is estimated that 5.9 million foreign-born migrant workers were employed in the UK, which makes up 18% of the employed population.<sup>16</sup> This does not include the estimated 800,000 to 1.2 million unauthorised immigrants in the UK, many of whom also engage in work.<sup>17</sup>

Perhaps the best approach is to recognise that the various definitions can serve different aims. For example, a status-based definition—that is, defining a migrant as someone who does not hold the status of citizenship—can be useful because it allows us to clearly delineate a group subject to immigration controls in migration law, which as we elaborate in Chapter 7, lies at the heart of migrant workers' vulnerability in the labour market. But even here, we should note that not all those who hold non-citizen status are equally vulnerable—for example, those who have indefinite leave to remain, EU settled status and Irish citizens, form a privileged group within the non-citizen category because they are not subject to migration controls. In other instances, there might be merit in defining someone as a migrant on the basis that they are foreign-born, because factors such as lack of social and cultural capital and weaker language proficiency, can help explain their labour-market outcomes.

The main aim of this publication is to provide a broad overview of the various facets of the new immigration system and provide some critical commentary about how it has been operating in practice. In **Chapter 2**, we begin with a historical survey of the various attempts, dating back several decades now, to encourage high-skilled migration. We argue that historical contextualisation of the 'new' points-based system helps us understand its contemporary form as well as its future direction. It also allows us to see that the progenitor of the current system is not the 'Australian' points-based system as it was commonly asserted during the lead-up to the implementation of the current set of rules. One of the main purposes of this publication is also to provide an outline of the main labour-migration routes available for migrant workers. We begin to do this in **Chapter 3**, where we consider the three main high-skilled routes—Skilled Worker; Skilled Worker—Health & Care, and Senior or Specialist Worker visas. Although the government has not sought to encourage so called low-skilled migration, there are still some avenues available for some sectors such as horticulture and domestic work, and we outline these pathways in **Chapter 4**. In both chapters, whilst it is not possible to cover every single work-visa route available, we provide details of all the major avenues. One of the challenges we faced in writing this publication is determining where to draw the boundaries of labour migration, since migrants arriving under ostensibly non-work routes, such as international students, dependents accompanying primary work visa holders, those entering under specialist pathways such as those designed for Ukrainians affected by the war and Hong Kong British Nationality (Overseas) holders, and asylum seekers and refugees, are also likely to engage in work. In **Chapter 5**, we cover issues related to

their participation the labour market. In **Chapter 6** we consider the plight of irregular workers who form a significant and growing segment of the labour market and review the legal rules that make the enforcement of their rights very difficult. In **Chapter 7**, we provide a conceptual model for understanding how migration status and precarious work intersect, which then serves as a lodestar for determining a legal-reform programme to serve both migrant and citizen workers. We conclude in **Chapter 8** with some urgent reforms that would help reduce some of the problems so far identified with the current system.

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The Institute of Employment Rights seeks to develop an alternative approach to labour law and industrial relations and makes a constructive contribution to the debate on the future of trade union freedoms.

We provide the research, ideas and detailed legal arguments to support working people and their unions by calling upon the wealth of experience and knowledge of our unique network of academics, lawyers and trade unionists.

The Institute is not a campaigning organisation, nor do we simply respond to the policies of the government. Our aim is to provide and promote ideas. We seek not to produce a 'consensus' view but to develop new thoughts, new ideas and a new approach to meet the demands of our times.

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Migration has long been a political hot potato, and no more so than during the fractious debate over Britain's exit from the EU. Since then, as Dr Manoj Dias-Abey and Dr Katie Bales point out in this closely argued paper, there have been signs that opinion is warming to the reality that migration is not just necessary but a positive benefit to Britain's economy. Looking beyond the noise and analysing the post-Brexit migration system, the authors make the case for a regulatory regime that reflects that reality, respects the humanity and contribution of workers who come to our shores, as well as those already here, and that takes its place within a framework of labour law that delivers equal rights and prosperity for all workers. They conclude with a series of recommendations aimed at ending the immediate precarity faced by migrant workers and pointing the way to a just reform.

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