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Migration and Work in the Post-Brexit UK

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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. 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and fast moving, and it is likely that by the time you read this publication some of the information might already be out-of-date.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 to not solely rely on this publication for the latest information, but rather use it as a launching pad for further investigation.

Manoj Dias-Abey and Katie Bales

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Abbreviations

ACRS	Afghan Citizens' Resettlement Scheme
ARAP	Afghan Relocations and Assistance Policy
BME	Black, Minority and 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
HIS	Immigration Health Surcharge
MAC	Migration Advisory Committee
NHS	National Health Service
RQF	Regulated Qualification Framework
SOL	Shortage Occupation List

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 Embry, 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."[1] 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.[2] 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."[3] 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.[4] Unpersuaded critics of

[1] Paul Embery, *Despised: Why the Modern Left Loathes the Working Class* (1st edition, Polity 2020), 75.
[2] Stephen Nickell and Jumana Saleheen, 'The Impact of Immigration on Occupational Wages: Evidence from Britain' (Bank of England 2015) Staff Working Paper No. 574 <https://www.bankofengland.co.uk/-/media/boe/files/working-paper/2015/the-impact-of-immigration-on-occupational-wages-evidence-from-britain.pdf?la=en&hash=16F94BC8B55F06967E1F36249E90ECE9B597BA9C>; Sara Lemos and Jonathan Portes, 'New Labour? The Impact of Migration from Central and Eastern European Countries on the UK Labour Market' (Forschungsinstitut zur Zukunft der Arbeit (Institute for the Study of Labor) 2008) Discussion Paper Series IZA DP No. 3756 <https://www.iza.org/publications/dp/3756/new-labour-the-impact-of-migration-from-central-and-eastern-european-countries-on-the-uk-labour-market>; Christian Dustmann, Francesca Fabbri and Ian Preston, 'The Impact of Immigration on the British Labour Market' (2005) 115 The Economic Journal F324.
[3] 'EEA Migration in the UK: Final Report' (Migration Advisory Committee 2018), 12 <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/741926/Final_EEA_report.PDF>.
[4] A critical review of this literature from a legal institutionalist perspective can be found in Manoj Dias-Abey, 'Determining the Impact of Migration on Labour Markets: The Mediating Role of Legal Institutions' (2021) 50 Industrial Law Journal 532.

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 the recent nadir of Brexit, with around half the population in 2022 expressing positive views about the economic and cultural impacts of immigration.[5] Some have suggested that the implementation of a more selective migration system that seems to reassert state control over movement may be one reason.[6] 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 entrepreneurs 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 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, the IER has sought to look beyond the 'expansionist' or 'restrictionist' binary. In a 2005 publication, the IER argued in favour of the adoption of a

[5] Robert Ford and Marley Morris, 'A New Consensus? How Public Opinion Has Warmed to Immigration' (Institute for Public Policy Research 2022) <https://www.ippr.org/files/2022-11/a-new-consensus-november-22.pdf>.
[6] James Kirup, 'The Good Migration News Ministers Try to Hide' *The Times* (25 April 2022) <https://www.thetimes.co.uk/article/the-good-migration-news-ministers-try-to-hide-8qh88sq9b> accessed 20 May 2022.

'rights-based approach' to the issue of migrant labour.[7] 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 Chinese undocumented 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.[8] 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 flexibilization 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 'point-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

[7] Bernard Ryan, ed., 'Labour Migration and Employment Rights' (Institute of Employment Rights 2005).
[8] Bernard Ryan, 'Labour Migration in Hard Times: Reforming Labour Market Regulation' (Institute of Employment Rights 2013).

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."[9]

Despite some of these similarities, the rules relating to the grant 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 level 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.[10] 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).[11] 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.[12]

[9] Jonathan Thomas, Aveek Bhattacharya and Gideon Salutin, 'The Whole of the Moon: UK Labour Immigration Policy in the Round' (Social Market Foundation 2023), 9 <https://www.smf.co.uk/publications/uk-labour-immigration-policy/>.
[10] J Portes, 'Immigration and the UK Economy After Brexit' (IZA Institute of Labor Economics 2021) Discussion Paper Series.
[11] Home Office, Why do People Come to the UK? To Work, <https://www.gov.uk/government/statistics/immigration-system-statistics-year-ending-december-2022/why-do-people-come-to-the-uk-to-work#worker> accessed p 17 July 2023.
[12] Ibid.

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.[13] 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.[14] 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.[15]

[13] Chris F Wright, 'Immigration Policy and Market Institutions in Liberal Market Economies' (2012) 43 Industrial Relations Journal 110.
[14] Bridget Anderson, 'Deciphering "Skills": Class, Nation, Gender (A Forum on the Politics of Skills)' [2022] ILR Review.
[15] Bridget Anderson and Scott Blinder, 'Who Counts as a Migrant? Definitions and Their Consequences' (Migration Observatory 2019) Briefing <https://migrationobservatory.ox.ac.uk/resources/briefings/who-counts-as-a-migrant-definitions-and-their-consequences/>.

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.[16] This does not include the estimated 800,000 to 1.2 million unauthorised immigrants in the UK, many of whom also engage in work.[17]

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 of 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

[16] Mariña Fernández-Reino, 'Migrants in the UK Labour Market: An Overview' (The Migration Observatory 2021) Briefing <https://migrationobservatory.ox.ac.uk/resources/briefings/migrants-in-the-uk-labour-market-an-overview/>.
[17] Phillip Connor and Jeffrey S Passel, 'Europe's Unauthorized Immigrant Population Peaks in 2016, Then Levels Off' (Pew Research Centre 2019) <https://www.pewresearch.org/global/2019/11/13/europes-unauthorized-immigrant-population-peaks-in-2016-then-levels-off/>.

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.

2 Continuity and Change in British Immigration Law and Policy

State regulation of immigration underwent a fundamental change under the period of New Labour's rule. Described as a 'reluctant immigration state' in the 1990s, between 1997 to 2010, UK's population increased by over 2.2 million people due to immigration.[18] Some of this increase was due to the implementation of new policies to encourage 'high skill' labour migration. For example, Labour introduced the Highly Skilled Migration Programme (HSMP) in 2002 to attract candidates from outside the EU, which it was thought could contribute to the UK's growth and productivity. Low skilled immigration was also revived through a variety of policy measures, including changes to the Working Holiday Makers Scheme and the expansion of existing sector-specific programmes. However, the entirety of the increase in immigration cannot be attributed to deliberate policy choices. The decision to allow unrestricted access to citizens of the eight former 'Eastern Bloc' countries that joined the EU in 2004 added the largest contingent of workers to the UK labour market: an estimated 629,000 'A8' workers were in employed in the UK at the beginning of 2011, the year immediately after New Labour was in office.[19] In this chapter, we review some of the history of the system that preceded the current system to highlight areas of continuity.[20]

In New Labour's first term in office (1997-2001), efforts were made to make the process of applying for a work permit faster and more efficient. The use of the work permit as an instrument to regulate the employment of those who were not subjects of the British Empire ('aliens') dates back to 1920.[21] It re-emerged in the 1960s as a tool to restrict the entry of migrants from the newly independent states which were previously a part of the British Empire as well as British nationals from those parts of the world that were still

[18] Nicholas Watt and Patrick Wintour, 'How Immigration Came to Haunt Labour: The Inside Story' *The Guardian* (24 March 2015) <https://www.theguardian.com/news/2015/mar/24/how-immigration-came-to-haunt-labour-inside-story> accessed 1 September 2022.
[19] Carlos Vargas-Silva, 'Seven Years After the Eastern European Enlargement' (*COMPAS*, 13 September 2011) <https://www.compas.ox.ac.uk/2011/seven-years-after-the-eastern-european-enlargement/>.
[20] Much of the analysis that is contained in this chapter was previously covered in Manoj Dias-Abey, 'Path Dependent Policymaking in the Post-Brexit United Kingdom: What's New about the "Points-Based" Labour Migration System?' (2022) 3 720. We thank the editors for allowing us to adapt and use this content in this publication.
[21] John Salt and Victoria Bauer, 'Managing Foreign Labour Immigration to the UK: Government Policy and Outcomes Since 1945' (UCL Migration Research Unit 2020).

colonies and protectorates.[22] Going forward, work permits were only issued to workers with a job offer with a specific employer and in possession of a skill or qualification that was deemed necessary, and work permits for unskilled jobs were progressively reduced.[23] In the early 1980s only a very limited number of work permits of any sort were issued, but improving labour market conditions by the end of the decade drove an increase in their use. This was further facilitated by changes made in 1991 that introduced a simplified pathway for senior management roles and skills deemed to be in short supply. Once New Labour were in office, they commissioned a review of the work permit system in 2000 and made a several reforms to simplify eligibility criteria, reduce processing times, and increase their duration from 4 to 5 years.[24] As a result of Labour's liberalisation, the total number of work permit holders increased from 62,975 in 1997 to 137,035 in 2005.[25]

In Labour's second term in office (2001-2005), a decision was taken to introduce a points-based system to assess people for suitability to enter as labour migrants.[26] In 2002, the government introduced the HSMP to "enable the most talented migrants to come to the country."[27] Successful candidates were initially required to meet the 75-point requirement, which could be gained through a combination of qualification levels, previous income and professional achievements.[28] Points were tradeable in the sense that a candidate could make use of a variety of combinations of attributes to qualify. Significantly, an applicant did not require a job offer and could work in any role once granted entry. The number of HSMP applications approved gradually rose from about 5,000 in 2003 to 27,500 in 2007.[29]

The requirement that applicants meet a certain number of points was then extended when the five-tiered economic entry system was launched by Labour during their third and final

[22] Colin Holmes, *John Bull's Island: Immigration & British Society, 1871-1971* (MacMillan 1988).
[23] Salt and Bauer (n 21), 6.
[24]'Secure Borders, Safe Havens: Integration with Diversity in Modern Britain' (2002) Presented to Parliament by the Secretary of State for the Home Department CM5387.
[25] Will Sommerville, *Immigration Under New Labour* (Policy Press 2007) 31.
[26] Technically speaking, the short-lived Innovator's Scheme (2000-2002), which allowed entrepreneurs to enter to the UK to set up a business, used a points system for assessment.
[27] 'Secure Borders, Safe Havens: Integration with Diversity in Modern Britain' (n 24), 41.
[28] Joao Carvalho, 'British and French Policies Towards High-Skilled Immigration During the 2000s: Policy Outplays Politics or Politics Trumps Policy?' (2014) 37 Ethnic and Racial Studies 2361.
[29] ibid.

term in office (2005-2010) to consolidate the previous 80 different routes for non-EU nationals to enter the UK.[30] The point-based system had three main tiers for work-related entry. The first was Tier 1 for high skilled workers who could contribute to the overall human capital stock of the labour market. Applicants under this route were not required to have a particular job offer, and so the Tier 1 replaced the HSMP. The next was the Tier 2 for skilled workers who were needed to fill particular gaps in the labour market; it replaced the variety of routes for which a job offer from an employer was necessary. In addition, employers had either to satisfy a labour market test to prove that a migrant worker was not displacing local workers or to show that the occupation for which the migrant was being recruited was on the SOL.[31] Tier 3 was for 'low skilled' workers to meet specific temporary labour shortages, which was never opened due to the large number of workers who arrived from Eastern Europe after the EU's eastward expansion in 2004. We can see that the Tier 2 combined the requirement for a job offer with a points-based assessment structure. However, it was not a true points system in the sense that applicants had to meet certain requirements (e.g., holding a job offer and have English language proficiency) and could not simply trade points in one category for another.

Several far-reaching changes to the points-based system were made by the Conservative-Liberal Democrat Coalition government between 2010-2015, but the basic architecture remained the same. First, Tier 1 was amended so that it was no longer possible for someone to enter without a job offer although new streams, such as the Tier 1 Exceptional Talent and Tier 1 Investor and Entrepreneur categories were added. Second, eligibility for the Tier 2 stream was tightened in various ways— for example, by mandating job offers to be for 'skilled occupations' requiring a bachelor's degree level and at a higher minimum salary. Third, to achieve their objective to reduce net migration to the 'tens of thousands,' the annual limit on visas was introduced, although various exemptions were created for special categories such as doctors, nurses and intra-corporate transfers. This brief survey does not cover all of the changes made during this period, which also included doing away with the

[30] 'Economic Affairs- First Report' (2008) House of Lords Economic Affairs Committee Publications <https://publications.parliament.uk/pa/ld200708/ldselect/ldeconaf/82/8202.htm> accessed 22 September 2022, Appendix 11.
[31] 'A Points-Based System: Making Migration Work for Britain' (2006) Presented to Parliament by the Secretary of State for the Home Department Cm 6741 25.

post-graduate work visa, changes to the Overseas Domestic Worker visa to prevent vulnerable workers being able to change employers, and increasing the salary thresholds for someone applying for indefinite leave to remain. Furthermore, alongside these changes to the labour migration system, the Coalition government introduced a raft of changes to deter unlawful migration (e.g., the infamous 'hostile environment' policies designed to induce those without authorisation to live and work in the UK to self-deport, which we discuss in Chapter 6), further restrict access to the asylum and refugee system, discourage family reunification, and do away with avenues for international student to work in the UK after graduation.[32]

Public hostility to immigration intensified due to the government's relentless focus on migration, which partially lay the groundwork for the UK's decision to leave the EU.[33] Once it was decided that the UK's departure from the EU would definitively mean the end of free movement, Theresa May's government commissioned the Migration Advisory Committee (MAC) to assess the impact of EEA migrants on the economy and to provide a base of evidence for the design of a new system.[34] The MAC proposed the parity of treatment between EEA migrants and non-EEA migrants, which would mean that the tier system that applied to 'third country nationals' would in future also apply to EU migrants. The MAC also argued that the qualification threshold should be changed to occupations only requiring the possession of A-levels (i.e., Level 3 in the RQF rather than the previous level 6 that required graduate level training), whilst retaining the higher of £30,000 salary threshold or the 'going rate' for the relevant occupation. Most crucially, the MAC argued that the annual quotas for Tier 2 visa grants should be removed, and the labour market testing requirements abolished. The MAC was opposed to the creation of a route for low-skilled immigration, although it endorsed the creation of a specialist route for seasonal agricultural workers. The May government endorsed most of the MAC's recommendations. Concerned about alienating industries that had become habituated to low skilled EEA migration, the government signalled its intention to introduce a 'transitional' low skilled temporary

[32] Colin Yeo, *Welcome to Britain: Fixing Our Broken Immigration System* (Biteback Publishing 2022).
[33] Matthew Goodwin and Caitlin Milazzo, 'Taking Back Control? Investigating the Role of Immigration in the 2016 Vote for Brexit' (2017) 19 The British Journal of Politics and International Relations 450.
[34] 'EEA Migration in the UK: Final Report' (n 3).

migration programme to assist sectors such as construction and social care, which would not allow entrants to be accompanied by family members nor contain rights to access public funds.

The Johnson government's plan for immigration released in February 2020 was consistent with these positions in most respects. However, the new plan varied in one important area. The Johnson plan stated that it would not introduce a transitional low skilled temporary work visa, arguing that "we need to shift the focus of our economy away from a reliance on cheap labour from Europe and instead concentrate on investment in technology and automation."[35] The system that is currently in operation mostly reflects these policy priorities, although some further refinements have been made to the system on the basis of recommendations from the MAC.

In the lead up to the introduction of the new migration system, the government was at pains to emphasise the similarity between the UK's 'new' points-based system and that of Australia. In fact, the two systems are only superficially similar. In summary, Australia has a permanent migration route and a temporary one, and although Australia was once renowned for its permanent migration policy, it has in recent times started to utilise temporary labour migration to a much greater extent. Under the permanent route, any applicant who meets the requisite points is invited to apply for Permanent Residence status (equivalent of the UK's indefinite leave to remain or settled status). Close to 200,000 places are available annually, and the Australian government issues invitations selectively to ensure that applicants work in a balanced range of occupations. The important point to note is that migrants who enter under this route have complete mobility in the labour market since they are not tied to any particular employer. Alongside the permanent migration route, Australia also has a temporary visa which allows businesses to sponsor overseas workers if they cannot find a suitably skilled Australian citizen or permanent resident to fill the position. Those who enter through this stream must usually remain employed with the

[35] 'The UK's Points-Based Immigration System: Policy Statement' (HM Government 2020) Presented to Parliament by the Secretary of State for the Home Department, 3 <https://www.gov.uk/government/publications/the-uks-points-based-immigration-system-policy-statement/the-uks-points-based-immigration-system-policy-statement> accessed 10 May 2022.

sponsoring employer for the duration of their stay (2-4 years). The Australian government plays a central role in regulating both routes—imposing a quota in the case of the permanent route and deciding what skills are in short supply in the case of the temporary avenue. All in all, contrary to the government's spin, the UK's new migration system should be seen as a successor to previous migration routes in operation rather than being seen as the transplantation of a foreign migration system.

3 High skill labour migration

The purpose of this chapter is to review the variety of routes under UK migration law for the entry of high skilled workers. Attracting high skilled migrants—the so called 'best and brightest'—has been a bipartisan objective of UK's migration system for several decades. In this chapter, it will not be possible to review every skilled migration route, but the primary routes will be reviewed in some detail. Whilst most of the visas examined here require an employer sponsor, the Global Talent visa does not, although these visas are difficult to obtain and only account for a very small proportion of total work visas granted. The maximum duration of high skilled work visas varies from two to five years, but all carry with them a right for entrants to apply for indefinite leave to remain (i.e., permanent residence) after a period (usually five years but may be less on some pathways). Indefinite leave to remain enables a person to live in the UK without any restrictions and the full labour market rights with the exception of a few government jobs. It is a necessary step towards naturalisation as a full citizen. In addition, these routes usually allow the primary applicant to obtain accompanying visas for immediate family members. As Martin Ruhs has observed in his review of international labour migration programmes, countries with labour migration schemes for high skilled workers tend to grant migrants a range of rights not afforded to those on low skilled pathways.[36]

3.1 Skilled Worker visa

The main route for skilled workers to enter the UK is through the Skilled Worker visa. The Skilled Worker visa is the successor to the Tier 2 (General) work visa. In the full year ending March 2023, 69,423 Skilled Worker visas were granted, which represents an almost 60% increase since the previous year.[37] The Skilled Worker visa scheme is what is commonly referred to as an 'employer driven' or 'demand driven' scheme since migration decisions are

[36] Martin Ruhs, *The Price of Rights: Regulating International Labor Migration* (2013, Princeton University Press).
[37] Home Office, Why do People Come to the UK? To Work, <https://www.gov.uk/government/statistics/immigration-system-statistics-year-ending-december-2022/why-do-people-come-to-the-uk-to-work#worker> accessed p 17 July 2023.

shaped by employer needs.[38] To obtain a Skilled Worker visa, a migrant worker needs a job offer in an eligible occupation from an employer holding a Certificate of Sponsorship issued by the Home Office. The job offer must pay more than the occupation-specific 'going rate' (higher than £26,200 per annum or £10.75 per hour), which is set to exclude the 25% lowest-paid workers within each occupation.[39] The job offer also needs to be for an occupation requiring at least an equivalent A-levels (RQF Level 3) training. At present, 68% of all UK employees work in such occupations.[40] Although most low skilled labour migrants are now excluded, in setting a minimum skills and salary level at this rate, the definition of skill under the new system is greatly expanded.

It is possible for a candidate to be paid 20% less than the going rate for their occupation if the occupation is on the SOL. The SOL is determined with advice from the MAC, but as one advisory committee member, Madeline Sumption, has recently pointed out: "There are no direct measures of shortage. As a result, efforts to measure them systematically must rely on indirect and relatively crude indicators."[41] Although the SOL has attracted some criticism for providing a 'backdoor' approach for circumventing the minimum wage requirements, there are currently only about 30 occupations listed. They include a variety of types of scientists, engineers, and healthcare workers. Care workers are listed on the SOL despite the fact that they do not require training to RFQ Level 3 level. Deviations of between 10-30% are also possible in other limited circumstances such as when the candidate is under 26, has a PhD qualification relevant to the job, or the job offer relates to a postdoctoral position in science or higher education.

[38] Jonathan Chaloff and Georges Lemaître, 'Managing Highly-Skilled Labour Migration: A Comparative Analysis of Migration Policies and Challenges in OECD Countries' (OECD 2009) 79 <https://www.oecd-ilibrary.org/social-issues-migration-health/managing-highly-skilled-labour-migration_225505346577>.
[39] Denis Kierans and Peter William Walsh, 'Q&A: Migration Advisory Committee Report on Post-Brexit Salary Thresholds and the "Australian-Style" Points-Based System' (The Migration Observatory 2020) <https://migrationobservatory.ox.ac.uk/resources/commentaries/qa-migration-advisory-committee-report-on-post-brexit-salary-thresholds-and-the-australian-style-points-based-system/>.
[40] Jonathan Portes, 'Immigration and the UK Economy After Brexit' (IZA Institute of Labor Economics 2021) Discussion Paper Series.
[41] Madeleine Sumption, 'Shortages, High-Demand Occupations, and the Post-Brexit UK Immigration System' (2022) 38 Oxford Review of Economic Policy 97, 101.

As mentioned above, only employers who hold a sponsorship licence are eligible to sponsor workers. To obtain a Certificate of Sponsorship, an employer must satisfy a number of requirements, including that they have the capacity to comply with immigration rules, and have paid a fee depending on their turnover and size of their workforce. As a number of scholars have pointed out, the fact that a holder of a Skilled Worker visa requires the sponsorship of an employer creates dependence on the employer which can further tip the balance of power in their favour.[42] This dependence has the potential to lead to workers not exercising their labour rights due to the consequences this could have for their right to work and remain in the UK. Some of this dependence can be ameliorated by allowing workers the opportunity to change employers. However, in the case of the Skilled Worker visa, a migrant worker would be required to find another employer who holds a sponsorship licence and apply for a new visa, which can be practically quite difficult. The reason that governments tend to prefer migration systems with sponsorship arrangements is to ensure that workers continue to work at the skill level designated at the point of entry for the full duration of their stay.[43]

A common complaint about the Skilled Worker visa is the costs associated with obtaining a visa for both employers and employees. There are fees associated with obtaining a Certificate of Sponsorship, Worker Sponsor Licence, Immigration Skills Charge, Visa, English language test, as well as the Immigration Health Surcharge (IHS). The All Party Parliamentary Group on Migration estimated that if a skilled worker with a partner and three children were to enter to the UK and work for a large company for a five year period, the total costs would be in the vicinity of £25,000.[44] It is concerning that the government has recently announced a large increase to these fees purportedly to fund a higher pay settlement for

[42] Bridget Anderson, 'Migration, Immigration Controls and the Fashioning of Precarious Workers' (2010) 24 Work, Employment and Society 300; Mimi Zou, 'The Legal Construction of Hyper-Dependence and Hyper-Precarity in Migrant Work Relations' (2015) 31 International Journal of Comparative Lbaour Law and Industrial Relations 141; Judy Fudge, 'The Precarious Migrant Status and Precarious Employment: The Paradox of International Rights for Migrant Workers' (Social Science Research Network 2011) SSRN Scholarly Paper 1958360 <https://papers.ssrn.com/abstract=1958360> accessed 10 May 2022.

[43] Madeleine Sumption, 'Is Employer Sponsorship a Good Way to Manage Labour Migration? Implications for Post-Brexit Migration Policies' (2019) 248 National Institute Economic Review R28.

[44] David Simmonds CBE MP (Chair), 'All Party Parliamentary Group on Migration Inquiry: The Impact of the New Immigration Rules on Employers in the UK' (2022) <http://appgmigration.org.uk/wp-content/uploads/2021/09/Report_APPG-Inquiry-Paper_-1.pdf>.

public sector workers.[45] As of 4 October 2023, the government has increased the costs of most work visas by 15%, whilst the costs of the priority visas and certificate of sponsorships have gone up by 20%. Some of these costs will be borne by the employer if the worker succeeds in convincing the employer to meet these costs during the process of contractual negotiation, but in a significant number of cases, these fees are paid by the migrant worker themselves. The charity Migrant Voice recently conducted a survey of migrant workers and found that some workers were acquiring significant debts to be able to afford these fees.[46]

3.2 Skilled Worker—Health and Care visa

Migrant workers who are qualified health and care professionals can apply for a specialist Health and Care visa which operate much like the general Skilled Worker visa. The only difference between the Skilled Worker-Health and Care visa and the Skilled Worker visa is that workers do not pay the IHS and are subject to lower visa processing fees. In the full year preceding March 2023, 101,570 Health and Care visas were granted, which represents the more than half of all high skilled work visas granted.[47] Only a certain number of occupations entitle someone to apply for this visa, which can include medical practitioners, nurses, occupational therapists, and care workers/home carers. In the most recent immigration statistics released, care workers were granted the highest number of visas (57,666) followed by nurses (21,021) and medical practitioners (9,090).[48] Since many of these jobs are on the SOL, the job must pay more than £20,960 per annum or the going rate, whichever is greater. The employer must be the NHS, an organisation providing services to the NHS, or an organisation providing adult social care via local authority funding. The issue of labour shortages in the NHS has been headline news for several months now, and the government's preferred way of addressing these seems to be through

[45] Colin Yeo, 'Massive Increases to Immigration Fees Announced' (*Free Movement*, 13 July 2023) <https://freemovement.org.uk/massive-increases-to-immigration-fees-announced/> accessed 25 July 2023.
[46] Migrant Voice, 'Destroying Hopes, Dreams and Lives: How the UK Visa Costs and Process Impact Migrants' Voice' (2022) <https://www.migrantvoice.org/img/upload/Visa_fees_report_-_digital_final_to_upload.pdf>.
[47] Home Office, Why do People Come to the UK? To Work, <https://www.gov.uk/government/statistics/immigration-system-statistics-year-ending-december-2022/why-do-people-come-to-the-uk-to-work#worker> accessed p 17 July 2023.
[48] Ibid.

the immigration system and expanded training rather than improving the working conditions in the sector driving high rates of attrition.

3.3 Senior or Specialist Worker visa

The Senior or Specialist Worker visa has replaced the Intra-Company Transfer or Tier 2 (Intra-Company Transfer) Long-term Staff visa. This visa is used by multinational enterprises who are transferring employees from an overseas location to the UK for a temporary period. The rules governing the Senior or Specialist Worker visa are different from those that apply to other high skill work visas, a state of affairs caused partially by the fact that the UK is subject to commitments made under the General Agreement in Trade in Services (Mode 4 specifically).[49] For example, to be eligible to receive this visa, an employee must be paid more than £45,800 per annum or the going rate for the relevant occupation, have worked for their employer for at least 12 months (unless the worker earns over £73,900), and be in a listed occupation which includes in the main management, ICT and professional services roles. Depending on the worker's annual salary, they can remain employed in the UK entity for periods between five to nine years. From 1985 to 2019, workers entering under this route constituted between 30-60% of work permits and certificates of sponsorship, but this proportion has decreased under the new system due to the wider usage of the two routes discussed above.[50]

3.4 Global Talent visa

The Global Talent visa replaced the Tier 1 (Exceptional Talent) route which was subject to a 2,000 annual cap. Other categories of Tier 1 visas, such as the 'Investor' (so-called 'golden visas'), have been discontinued due to several well publicised scandals. There is no limit to the number of Global talent visas that can be issued but they are targeted at 'leaders' in academia, the arts, or digital technology. Applicants do not need a job offer but must either be a recipient of a listed award (e.g., Booker Prize, BAFTA award, or the Fields Medal) or be

[49] Tonia Novitz, 'Evolutionary Trajectories for Transnational Labour Law: Trade in Goods to Trade in Services?' (2014) 67 Current Legal Problems 239.
[50] Salt and Bauer (n 24).

'endorsed' by a nominated body (e.g., UKRI for an academic, Tech Nation for a technical or business applicant). Once in the country, a visa holder can work as an employee, be self-employed, or act as a director of a company. Applicants can remain in the UK for up to five years and apply for ILR after three to five years depending on their circumstances. The Global talent visa also allows applicants to bring across partners and children. Between February 2020 and June 2021, 2,163 Global talent visas have been awarded.[51]

[51] Home Office, 'Immigration Statistics, Year Ending December 2021' (3 March 2022) <https://www.gov.uk/government/statistics/immigration-statistics-year-ending-december-2021/summary-of-latest-statistics> accessed 10 May 2022.

4 Low skill labour migration

Since early 2019, the government has been adamant that the new migration system should restrict avenues for so-called low skilled migrants to enter the UK. A rather muddled set of rationales have been provided for the decision to restrict low skill immigration. One argument that has been advanced is that low skilled migration has contributed to the UK's relatively low productivity growth. A flavour of this argument was evident in former Prime Minister Boris Johnson's address to the Conservative Party Conference in October 2021: "The answer is to control immigration to allow people of talent come to this country, but not to use immigration as an excuse for failure to invest in people, in skills and in the equipment, the facilities, the machinery they need to do their jobs."[52] Of course, in positioning low skilled immigration as the primary reason for the UK's troubling levels of productivity growth, other causes, such as dismal levels of business investment, lack of vocational training opportunities, and weak labour laws, are elided.

In practice, of course, it has not been possible to end all low wage labour migration because the demand for low skilled workers has not disappeared from the British labour market. A very significant exception takes the form of the (re)introduction of the Seasonal Agricultural Workers scheme, originally billed as a 'pilot', to fill severe labour shortages in the horticulture sector. Late in 2021, to deal with supply chain bottlenecks caused by HGV drivers and workers in food processing, the government also introduced a temporary visa scheme to recruit poultry workers, pork butchers and HGV food drivers. These schemes are now closed after having attracted a paltry number of applicants.[53] The government has also decided to let continue a specialist visa to allow wealthy expatriates to be accompanied by their domestic workers. Both the Overseas Domestic Worker visa and Seasonal Worker visa are characterised by extreme forms of migration status precarity (e.g., visas are only valid for a maximum period of 6 months and cannot be renewed), which creates the conditions

[52] Boris Johnson, 'We're Getting on with the Job- Keynote Speech to the Conservative Party Conference' (Birmingham, 6 October 2021) <https://www.conservatives.com/news/2021/boris-johnson-s-keynote-speech---we-re-getting-on-with-the-job>.
[53] Aubrey Allegretti, 'Just 20 UK Visas Issued to Foreign Lorry Drivers, Government Admits' *The Guardian* (13 October 2021) <https://www.theguardian.com/business/2021/oct/13/just-20-uk-visas-issued-to-foreign-lorry-drivers-government-admits> accessed 10 May 2022.

for labour exploitation to flourish. What this means is that rather than restricting all low skill migration, the government's rhetoric devaluing these roles has acted to justify the mistreatment of the migrant workers who continue to come to the UK to perform these roles.

4.1 Seasonal Worker visa

Prior to the UK's departure from the EU, UK farmers were heavily reliant on a seasonal workforce from Eastern Europe for planting and harvesting crops—according to the National Farmers Union, the agricultural sector relied on 60,000 seasonal workers annually, almost all of whom were from Bulgaria and Romania.[54] In the aftermath of the Brexit referendum, British farmers and their lobbies such as the National Farmers' Union raised strong concerns about the loss of EU workers, and the government responded by resuscitating the Seasonal agricultural workers scheme that had been in place from 1945 to 2013 (when it was disbanded due to the fact that it was no longer necessary in an era of free movement). In March 2019, the government announced the commencement of the Seasonal Agricultural Workers pilot to allow British farmers to recruit temporary agricultural workers from a range of countries to help harvest crops. Initially, the number of visas issued was capped at 2,500 per annum, but this number has continued to creep up each year due lobbying by the farm sector. In 2023 and 2024, the government has announced that it will allow 45,000 visas plus 10,000 extra places if it proves necessary.[55]

A worker can obtain a Seasonal Worker visa to work in the British horticulture sector for a period of up to six months in any 12-month period. The main kind of work that workers are entitled to perform is picking fruits, vegetable or flowers. A Seasonal Worker visa can also be obtained for work in the poultry sector (2,000 visas are available for this purpose). Employers are not allowed to directly sponsor a worker, and one of the distinctive features

[54] William Booth and Karla Adam, 'Brits Don't Want to Work on Farms- So Who Will Pick Fruit After Brexit?' *The Independent* (7 November 2018) <https://www.independent.co.uk/climate-change/news/brexit-eu-agriculture-farms-fruit-picking-migrant-workers-labour-shortage-a8469806.html> accessed 10 May 2022.
[55] CJ McKinney, Sarah Coe and Iona Stewart, 'Seasonal Worker Visas and UK Agriculture' (House of Commons Library) Research Briefing CBP-9665 <https://researchbriefings.files.parliament.uk/documents/CBP-9665/CBP-9665.pdf>.

of the Seasonal Worker visa programme is that one of six 'scheme operators' currently approved by the government is responsible for recruiting workers from overseas, organising their transportation and remaining responsible the workers' welfare whilst they are in the UK. In the early days of the programme, workers tended to be recruited from non-EU countries in far east of Europe (e.g., Ukraine and Moldova), but more recently, scheme operators have been looking further afield (e.g., Indonesia and Nepal) for workers. Seasonal workers must be paid the National Living Wage (currently £10.42 per hour), and for the 2023 season, provided with 32 hours of guaranteed work. Theoretically, at least, workers are allowed to change employers if the scheme operator is able to accommodate the request, but in practice, this rarely occurs because of the short duration of the workers' stay (2-4 months) and lack of information provided to workers about their rights.

Even in its short lifespan, many instances of labour exploitation have become evident. Investigative reporting by the Guardian newspaper has uncovered numerous instances of abuse, including workers being charged exorbitant recruitment fees.[56] Research done by Focus on Labour Exploitation on seasonal workers in Scotland concluded that the three features of the programme—unfree recruitment, work and life duress, and difficulty in leaving an employer—created the conditions for forced labour.[57] Even through the government has not been systematically monitoring employers' compliance with their welfare obligations towards workers, a 2019 review uncovered several breaches by employers, including failure to provide correct equipment and written contracts, cold and unsafe living conditions, and discrimination and harassment at work.[58]

[56] See, e.g., Emily Dugan, 'Revealed: Indonesian Workers on UK Farm "at Risk of Debt Bondage"' *The Guardian* (14 August 2022) <https://www.theguardian.com/uk-news/2022/aug/14/uk-farm-workers-kent-debt-indonesian-brokers> accessed 18 July 2023; Emily Dugan, 'Indonesia to Investigate Claims Fruit Pickers Charged Thousands to Work in Kent' *The Guardian* (29 August 2022) <https://www.theguardian.com/uk-news/2022/aug/29/indonesia-to-investigate-claims-fruit-pickers-charged-thousands-to-work-in-kent> accessed 18 July 2023.

[57] Caroline Robinson, 'Assessment of the Risks of Human Trafficking for Forced Labour on The UK Seasonal Workers Pilot' (Focus on Labour Exploitation and Fife Migrants Forum 2021) <https://labourexploitation.org/app/uploads/2021/03/FLEX_human_trafficking_for_forced_labour_VFINAL.pdf>.

[58] 'Seasonal Workers Pilot Review 2019' (Home Office and DEFRA 2021) Research and Analysis <https://www.gov.uk/government/publications/seasonal-workers-pilot-review/seasonal-workers-pilot-review-2019> accessed 10 May 2022.

Sponsors are responsible for ensuring workers' welfare by monitoring whether employers are complying with health and safety, employment and housing obligations.[59] The Gangmaster Licencing and Labour Abuse Authority is responsible for ensuring that scheme operators comply with their duties. One scheme operator has so far lost their licence to sponsor workers since the scheme began, but this decision does not appear to have been because evidence of worker mistreatment was discovered, but rather because some of the sponsored workers failed to return to their country of origin at the end of their visa.

4.2 Overseas Domestic Worker visa

The Overseas Domestic Worker visa allows wealthy visitors to the UK to be accompanied by their domestic workers (e.g., nannies, cooks, chauffeurs) for a period of up to 6 months. Such a route has been in place for a number of years. Under Labour, in 1998 the rules were changed to allow workers to change employers, renew their visa, and eventually apply for indefinite leave to remain in response to campaigns run by domestic workers.[60] However, when the rebadged Overseas domestic visa was introduced in 2012 under Theresa May as Home Secretary, the new rules reverted to the previous position. Every year, over 20,000 Overseas domestic visas are issued.[61]

The rules currently in place require a domestic worker to apply for a visa prior to their arrival and demonstrate that they have worked for the employer with which they are traveling for at least one year. Domestic workers are entitled to the national minimum wage in the UK, though this can be offset where a worker has accommodation provided for them by an employer (at a maximum of £60.90 per week). A visa only lasts for six months and cannot be extended. Although the rules now allow workers to change employers, advocates

[59] 'Workers and Temporary Workers: Guidance for Sponsors' <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1066713/Sponsor-a-Seasonal-Worker-04-22.pdf>.
[60] Virginia Mantouvalou, '"Am I Free Now?" Overseas Domestic Workers in Slavery' (2015) 42 Journal of Law and Society 329.
[61] Sharpe Andrew, 'Nationality and Borders Bill - Hansard - UK Parliament' (8 March 2022) <https://hansard.parliament.uk//Lords/2022-03-08/debates/20397778-861E-4D27-B358-53B067DE72A3/NationalityAndBordersBill> accessed 10 May 2022.

point out that the lack of an ability to extend their stay renders this right meaningless.[62] It is difficult to find a new employer willing to take on a worker for the limited amount of stay left on their visa (maximum six months) and the intimate nature of domestic work means the employment relationship can take time to build and develop trust.

The extent of dependence on the employer means that domestic workers remain vulnerable to highly exploitative conditions, including forms of 'modern slavery'.[63] Migrant domestic workers recognised as victims of slavery or trafficking can have their leave extended to up to 2.5 years, though this will only take place following a positive conclusive grounds decision via the National Referral Mechanism, which can often take many months.[64] The fact that there is no certainty regarding an extension of stay means that ultimately, domestic workers are more likely to stay with an abusive employer rather than risk disrupting the employment relationship and their remaining time in the UK.

[62] Phoebe Dimacali and Francesca Humi, '10 Years, No Rights: Why the Government Must Reinstate the Pre-2-12 Domestic Wrokers Visa' *gal-dem* (6 April 2022) <https://gal-dem.com/overseas-domestic-worker-visa-rights/> accessed 10 May 2022.
[63] May Bulman, 'Ministers Urged to Change Policy That "Facilitates Exploitation" of Overseas Domestic Workers' *The Independent* (22 November 2020) <https://www.independent.co.uk/news/uk/home-news/domestic-workers-modern-slavery-visa-home-office-b1725073.html> accessed 10 May 2022.
[64] Modern Slavery Act 2015, s 53.

5 Other migrants who work

Although the work visas discussed in the previous two chapters represent the major, formal labour migration routes, it remains the case that those who enter on alternative pathways are also likely to engage in work. Paradoxically, some alternative pathways impose fewer restrictions on migrants than those experienced by those entering on work visas—for example, the 'dependent' partner of someone on a Skilled Worker visa can work for any employer rather than being tied to a particular sponsor, which is the case with the primary visa holder. In other cases, however, the pathway may contain many more restrictions, such as those experienced by asylum seekers who have not had their asylum claim assessed. There is also mounting evidence that employers who denied access to low skilled migrant workers are starting to see these non-work routes as alternative pools of labour.[65] In the sections below, we examine a variety of non-work routes that have labour market implications.

In addition, those who have lived and worked in the UK for five years under an eligible visa—shorter periods of qualification apply for some Tier 1 visa holders—can apply for indefinite leave to remain, which in other jurisdictions is known as 'permanent residence'. Non-citizens with indefinite leave to remain have the right to live, work, study and access benefits and public services much like a citizen. Although it is possible for someone who has held indefinite leave to remain for a period of 12 months to apply to be naturalised as a British citizen under section 6 of the British Nationality Act 1981, quite a few do not do so immediately, and in some cases, not at all because they enjoy most of the same rights as citizens. In the past, citizenship was always viewed as the gold standard due to its irrevocability, however, given the increasing utilisation by the government of the power to deprive people of their citizenship, this distinction is becoming less clear.[66]

[65] Thomas, Bhattacharya and Salutin (n 9).
[66] Devyani Prabhat, *Britishness, Belonging and Citizenship* (Bristol University Press 2018).

5.1 EU Settlement Scheme

It is necessary to say something briefly about how EU citizens already living and working in the UK were treated as a result of the UK's departure from the UK. The government introduced the EU Settlement Scheme to offer EU citizens living in the UK, and their family members, the opportunity to remain in the UK. Under the Settlement Scheme, applicants were required to apply for 'settled status' (if they had been living in the UK for five years or greater) or 'pre-settled status' (if they had been living in the UK for a shorter period of time) by 30 June 2021, unless they had 'reasonable grounds'. As of 30 June 2022, 6.5 million applications had been received, with 51% being granted settled status and 41% granted pre-settled status.[67] Although the primary requirement for getting settled status is residence-based, a large proportion of these people are likely to be in employment—an analysis from 2020 found that EU migrants have higher employment rates than UK-born workers.[68] However, a sizeable group of EU workers left the UK during the pandemic, which may be contributing to labour shortages in sectors such as transportation, retail, and construction.[69]

Whilst the system has generally worked well, advocates argue that some have had trouble navigating the system due to capacity issues or inability to meet the evidentiary requirements to prove residence.[70] Even those who have successfully navigated the process have reported feeling 'othered' by the process.[71] Another challenge on the horizon is the transition process to settled status for those on pre-settled status, which required another application. The Independent Monitoring Authority for Citizens' Rights Agreements lodged a judicial review application against the Home Office to challenge the automatic loss of rights faced by those who fail to apply for settled status prior to the expiry of their pre-settled

[67] Home Office, EU Settlement Scheme Quarterly Statistics, June 2022, <https://www.gov.uk/government/statistics/eu-settlement-scheme-quarterly-statistics-june-2022/eu-settlement-scheme-quarterly-statistics-june-2022> accessed on 18 July 2023.
[68] Fernández-Reino (n 16).
[69] John Springford and Jonathan Portes, 'Early Impacts of the Post-Brexit Immigration System on the Labour Market' (Centre for European Reform 2023) <https://www.cer.eu/sites/default/files/insight_JS_JP_17.1.23.pdf>.
[70] Kuba Jablonowski and Patrycja Pinkowska, 'Vulnerability in the EU Settlement Scheme: Looking Back, Going Forward.' 28.
[71] Catherine Barnard, Sarah Fraser Butlin and Fiona Costello, 'The Changing Status of European Union Nationals in the United Kingdom Following Brexit: The Experience of the European Union Settlement Scheme' (2022) 31 Social & Legal Studies 365.

status. The High Court ruled that this aspect of the EU Settlement Scheme was unlawful and contrary to the Withdrawal Agreement.[72] As a result of the government indicating that it would not appeal this ruling, this now means that settled status should accrue automatically.

5.2 Dependents

The high skilled work visa routes allow the primary visa holder to apply for 'dependent' visas for their partners and children. These secondary visas entitle the partner to work and the children to study in the UK (although children will not ordinarily qualify for 'home fee' status if they participate in higher education). The fact that routes such as the Skilled Worker visa allow the worker to be accompanied by their family distinguishes it from other forms of low wage temporary labour migration, such as the Seasonal Workers visa that does not allow family members to migrate. As mentioned above, the costs of sponsoring family members can be prohibitively expensive—the total estimated costs of a Skilled Worker visa holder entering the UK with a partner and three children could be upwards of £25,000 for a five year period.[73] In 2022, there were 147,656 visas granted to dependents of those entering under the Skilled Worker and Skilled Worker—Health & Care visa, which represent the overwhelming majority of all dependent visas granted.[74] From the official statistics, it is not possible to say what proportion of these visas were issued to partners as opposed to children, or what proportion of adult dependents engage in work. It is estimated that 65% of those who enter the UK primarily for family reasons (which also includes those who come to the UK to join British citizens or settled residents) were in work at the end of 2022, with a significant number working in lower-wage occupations including social care and hospitality.[75]

[72] *The Independent Monitoring Authority for Citizens' Rights Agreements v Secretary of State for the Home Department* [2022] EWHC 3274 (Admin).
[73] Simmonds CBE MP (Chair) (n 44).
[74] Home Office, Why do People Come to the UK? To Work, <https://www.gov.uk/government/statistics/immigration-system-statistics-year-ending-december-2022/why-do-people-come-to-the-uk-to-work#worker> accessed p 17 July 2023.
[75] Peter William Walsh, 'Family Migration to the UK' (The Migration Observatory 2021) Briefing <https://migrationobservatory.ox.ac.uk/resources/briefings/family-migration-to-the-uk/>.

5.3 Graduate visa

There have also been important changes made to the post-graduation working rights of international students. Prior to January 2021, international students who had completed their studies could only remain in the UK if they were successful in qualifying for a different visa because the post-study work visa was scrapped by the UK government in 2011. The two-year post-study Graduate visa has been reinstated since 1 July 2021. Under this route, an international student who completes a recognised course of study—usually an undergraduate, Masters or PhD degree, but also including other courses such a law conversion course—can apply to remain in the country for a maximum of 2 years (or 3 years in the case of a PhD degree). This 2-year visa is completely unrestricted, entitling the holder to work in any role, including in a self-employed capacity or engage in voluntary work. In the year ending September 2022, about 70,000 Graduate Visas were granted.[76]

The number of international students entering the UK is likely to continue to grow as universities look to cover funding shortfalls caused by falling government investment and decreasing real value of domestic tuition fees with increasing international student enrolments. For better or worse, it appears that the Graduate visa is itself what is attracting some international students to the UK, especially those studying a Masters. In the year ending March 2023, there were about 480,000 student visas issued to main applicants, a rise of 22% compared to the previous year. Based on previous experience of the post-graduate visa route, about 20% elect to stay on after completing their degrees.[77] As international student numbers continue to increase, we can expect to see the number of Graduate visas issued to commensurately increase.

5.4 Youth Mobility Scheme visa

The Youth Mobility Scheme visa allows people aged 18-30 (a higher upper limit of 35 years of age applies to those from Australia and Canada) from a list of 11 countries to live and

[76] Alan Manning, 'Striking a Balance on Student Migration to the UK' (*LSE Blog*, 24 January 2023) <https://blogs.lse.ac.uk/politicsandpolicy/striking-a-balance-on-student-migration-to-the-uk/>.
[77] Ibid.

work in the UK for a maximum period of two years (three years in the case of those from New Zealand, and from 1 January 2024, those from Australia and Canada). Some version of this pathway has existed since the middle of the 20th century (previously known as the Working Holiday Maker visa or Tier 5 visa). Originally designed to further tourism and cultural exchange for young Commonwealth citizens, the programme has in recent times grown to incorporate a broader range of countries. Current arrangements allow citizens of Australia, New Zealand, Canada, Japan, Monaco, Taiwan, Hong Kong, South Korea, San Marino, and most recently Iceland and India, to participate. The rules for Indian participants remain more restrictive than for other countries—for example, to participate in the Indian Young Professionals Scheme, Indian nationals must have a minimum of 3 years' work experience in a professional role and hold a qualification equal to RFQ6 or above.[78]

Quotas are negotiated with countries on a reciprocal basis. At present, the greatest number of places are reserved for Australians and New Zealanders (30,000 and 13,000 respectively), many of whom come to work primarily in London in a range of occupations and industries. There are no restrictions on the types of work that those who enter under this pathway can perform (and in fact, there is no requirement to work at all), and this has led some to speculate that the Youth Mobility Scheme could be used to plug labour gaps in the low-wage economy created by the end of EU free movement.[79]

5.5 Asylum Seekers

In contrast to some of the stream described here, labour market access for asylum seekers is intentionally limited by policymakers due to the unsubstantiated assumption that the right to work acts as a 'pull factor' for asylum seekers coming to the UK. Despite a wealth of

[78] 'Youth Mobility Scheme (Ver. 18.0)' (Home Office 2022) Guidance <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1067079/Youth_Mobility_Scheme.pdf>.
[79] Erica Consterdine, 'Youth Mobility Scheme: The Panacea for Ending Free Movement?' (2019) 248 National Institute Economic Review R40.

research and evidence refuting the pull factor thesis,[80] asylum seekers are prevented from working within the first 12 months of lodging their application for refugee status.[81] Their dependants are also excluded from working throughout the entire determination process, which in some cases can span decades.

After 12 months from the commencement of their application for refugee status, asylum seekers can seek permission to work from the Secretary of State.[82] This also extends to those who have been refused asylum but who submitted further submissions for their asylum claim over 12 months ago. Those granted permission to work are restricted to jobs listed in the SOL, which now includes care work – a welcome addition, giving access to those who have not pursued higher education. Asylum seekers are also excluded from work in a self-employed capacity or from setting up a company. If an asylum application is refused and the individual has exhausted all rights of appeal, they are prohibited from engaging in employment in the UK.[83] This gives rise to an underground labour market where both asylum seekers and refused asylum seekers are vulnerable to exploitation as we outline in Chapter 6.

Despite these rules, work can be permitted in 'exceptional circumstances',[84] however the rarity of this provision renders it largely null and void in practice. Perhaps unsurprisingly, volunteer work is permitted at any stage of an individual's asylum claim, including those who are appeal rights exhausted, as long as this does not amount to 'paid work'. Here then

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[80] Vaughan Robinson and Jeremy Segrott, Understanding the decision-making of asylum seekers (Home Office 2002); Heaven Crawley, Chance or Choice? Understanding why asylum seekers come to the UK (Refugee Council, 2010); Lucy Mayblin, 'Complexity reduction and policy consensus: Asylum seekers, the right to work, and the 'pull factor' thesis in the UK context' (2016) 18(4) The British Journal of Politics and International Relations 812.

[81] Schedule 10 of the Immigration Act 2016 governs immigration bail and the conditions attached to this status, including exclusion from work. However, paragraph 360 of the Immigration Rules allows for asylum seekers to apply for permission to work until the final decision on their claim has been made.

[82] Immigration Rules, para. 360.

[83] Immigration Act 2016, Schedule 10, see also Home Office, 'Immigration Bail – version 11'(January 2022) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1051204/immigration_bail.pdf> accessed 25 May 2022, p.13.

[84] UK Visas and Immigration, 'Permission to work and volunteering for asylum seekers -version 12.0' (October 2022) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1114501/Permission_to_work_and_volunteer.pdf > accessed 19 June 2023, p.16.

we see a paradox in that asylum seekers are pushed to work voluntarily to give back to the community, yet there is no promise of reciprocal return for their actions.

Since the UK's departure from the EU, the rules on asylum seekers' work remain the same. The only significant change is that the UK is no longer part of the Common European Asylum System (CEAS), which means that any work based protections afforded under the EU's Reception Conditions Directive have been lost, amongst a host of other standards.[85] The Directives' minimum standards were not transposed on grounds that the government wanted the "freedom to determine its own standards" in the asylum sphere.[86] The Directive also extended labour market access to those making a second application for refugee status after the rejection of their first claim.[87] There is concern that severance from the CEAS removes a basic safety net of protection for forced migrants, including removal of the right to work which is otherwise not enforceable under UK law.[88] Given the rapidly changing political landscape in which asylum seekers and irregular migrants are scapegoated by right wing populist parties, the removal of overarching protective legislation is worrying.

Arguably, no longer being bound by the standards of the CEAS has also allowed the government to pass the Nationality and Borders Act 2022—described as the 'Anti-Refugee' Bill by NGOs during its passage through Parliament—and the Illegal Migration Act 2023. Both pieces of legislation seek to limit the ability of asylum seekers to lodge an application for asylum in the UK. In the case of the Nationalities and Borders Act, individuals who have made their way through a 'safe third country' could have their applications not considered by the Home Office. The Illegal Migration Act goes even further, obliging the Home Secretary to remove a range of asylum seekers from the UK, including those who have arrived by boat. The government plans to send some of these asylum seekers to Rwanda for

[85] The Reception Conditions Directive came into force in the UK on the 5th February 2005 through the Asylum Support (Amendment) Regulations 2005, SI 2005/11; Asylum Seekers (Reception Conditions) Regulations 2005, SI 2005/7; and amendments to paras 357-361 of the Immigration Rules, as inserted by Statement of Changes HC 194, 4 February 2005.
[86] Melanie Gower, 'Brexit: the end of the Dublin III Regulation in the UK' (*House of Commons Library,* 2020) <https://researchbriefings.files.parliament.uk/documents/CBP-9031/CBP-9031.pdf> accessed 25 May 2022.
[87] *ZO (Somalia) and others): (Respondents) v Secretary of State for the Home Department* (2010) UKSC 36.
[88] *R (on the application of Negassi) v Secretary of State for the Home Department* [2013] EWCA Civ 151.

processing and protection, although at the time of writing, a majority of the Court of Appeal had found that the plan was unlawful.[89]

5.6 Refugees

Once an individual is granted refugee status, they are given permission to work in any profession and at any level, including being in self-employment, which remains the same as the situation prior to Brexit. This is in conformity with Article 17 of the 1951 Refugee Convention which provides a right to work for refugees, free from labour market restrictions. Although the Nationality and Borders Act 2022 provided for a differentiated system whereby certain categories of refugees would be granted inferior rights and only entitled to stay temporarily based on their original method of entry, Immigration Minister Robert Jenrick recently announced that the differentiation system would be paused, meaning all refugees will be entitled to the same length of stay and socio-economic rights.[90]

Despite having the right to work in the UK, evidence suggests that refugees have difficulties integrating into the labour market. For example, a study by Oxford University's COMPAS reveals that only 50% of refugees are in employment, with only 24% in a high skilled profession.[91] Refugees' average annual earnings were found to be £16,000, approximately £10,000 lower than the average annual earnings of other foreign-born workers.[92] In another study, Heaven Crawley found that 90% of asylum seeker respondents were employed within their countries of origin before coming to the UK, which indicates that employment levels decrease once individuals reach the UK.[93] There are multiple factors to consider when analysing these statistics because of the huge variety of countries from which refugees come, the diversity of their educational background compared to other foreign born-

[89] *R (AAA) v SSHD* [2023] EWCA Civ 745.
[90] UK Parliament, 'Illegal Migration Update: Statement made on 8 June 2023 HLWS824' (June 2023) <Written statements - Written questions, answers and statements - UK Parliament> accessed 19 July 2023.
[91] Carlos Vargas-Silva, 'The Economic Outcomes of Refugees and Other Migrants in the UK' (COMPAS, 2016) <https://www.compas.ox.ac.uk/2016/the-economic-outcomes-of-refugees-and-other-migrants-in-the-uk/> accessed 24 May 2022.
[92] Ibid.
[93] Heaven Crawley, *Chance or Choice? Understanding why asylum seekers come to the UK* (Refugee Council, 2010).

workers, their physical and mental health condition, and the structural implications of the government's asylum policies (which seek to exclude asylum seekers from mainstream society and the labour market, leading to a process of deskilling for many).[94] Given the House of Commons' recent rejection of the amendment to the Nationality and Borders Bill 2022 which would have allowed asylum seekers to engage in work free of restriction at an earlier stage, the process of deskilling looks set to continue.

5.7 Resettlement Schemes and other forms of protection

Departing from the approach to asylum seekers and refugees more generally, the government have created two routes of entry for Ukrainian nationals outside of the UK: the Ukraine Family Scheme Visa and the Ukraine Sponsorship Scheme (Homes for Ukraine). Both allow for access to work, study and public funds. Since their introduction in March 2022, 225,278 have been granted and 169,300 arrivals have been identified to the year ending March 2023.[95] The government also introduced a route for Ukrainians in the UK known as the Ukrainian Extension Scheme. A further 24,593 extensions have also been granted under the Ukraine Family Scheme and Ukraine Extension Scheme.[96] This scheme allows all Ukrainian nationals currently in the UK with visas to extend to extend their stay or move to other migration routes.

A similar arrangement was created for Afghanis fleeing the Taliban. Three programmes were launched to assist with Afghan refugees: the Afghan Citizens' Resettlement Scheme (ACRS), the ex-gratia redundancy and resettlement scheme, and the Afghan Relocations and Assistance Policy (ARAP). All of these schemes apply only to those with links to the UK, which must be demonstrated through former employment for the UK government or being a family member of those who were evacuated as part of 'Operation Pitting' (the military evacuation carried out in August 2021). People in receipt of these statuses are eligible to

[94] Alice Bloch, 'Refugees in the UK Labour Market: The Conflict between Economic Integration and Policy-led Labour Market Restriction' (2007) 37 Journal of Social Policy 21.
[95] Home Office, 'National Statistics: Summary of Latest Statistics' (25 May 2023) <https://www.gov.uk/government/statistics/immigration-system-statistics-year-ending-march-2023/summary-of-latest-statistics#why-do-people-come-to-the-uk> accessed 20 July 2023.
[96] Ibid.

work, study and receive financial support, accommodation and healthcare. The Immigration System Statistics, year ending March 2023, reveal that a total of 21,004 people are currently in the UK under the Afghan ACRS and ARAP schemes,[97] however according to written evidence submitted to the Foreign Affairs Committee, there are between 75,000 and 150,000 additional people who applied for evacuation in 2021 awaiting a decision.[98]

The Government also categorise the British National (Overseas) visa (BN(O) visa) as a protective route which has been in operation since 31 January 2021 to accommodate people from Hong Kong who were registered as a British National (Overseas) before 1 July 1997, which also applies to their family members. This visa differs from those above however on grounds that applicants must demonstrate that have enough money to support and house themselves and their families for the first six months of their stay. Applicants must also pay a visa application fee and the health surcharge which renders this system more akin to a post-colonial route than that of protection. Eligible candidates can apply for a 2.5 year or five-year visa, to work, study, and live in the UK. The visa can be indefinitely extended, and after five years, BN(O) visa holders are eligible to apply for indefinite leave to remain. According to the government, this particular route was launched in recognition of the "UK's historic and moral commitments to those people of Hong Kong," a former British colony that was handed over to China in 1997.[99] Equally persuasive might have been economic modelling that suggested a net benefit for the UK between £2.4 and £2.9 billion over five years.[100] So far, there have been a total of 129,415 grants of out of country BN(O) visas granted between 31 January 2021 and 31 December 2022.[101]

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[97] Home Office, 'Transparency Data: Afghan Resettlement Programme: operational data' (25 May 2023) <https://www.gov.uk/government/publications/afghan-resettlement-programme-operational-data/afghan-resettlement-programme-operational-data> accessed 20 July 2023.

[98] Written evidence submitted by Raphael Marshall (AFG0038), Evidence for the House of Commons Foreign Affairs Select Committee's Inquiry on Government Policy on Afghanistan <https://committees.parliament.uk/writtenevidence/41257/html/> accessed 25 May 2022.

[99] 'Media Factsheet: Hong Kong BN(O) Visa Route' (*Home Office in the Media*, 24 February 2022) <https://homeofficemedia.blog.gov.uk/2022/02/24/media-factsheet-hong-kong-bnos/>.

[100] Ibid.

[101] Home Office, 'National Statistics: Summary of Latest Statistics' (23 February 2023) <https://www.gov.uk/government/statistics/immigration-system-statistics-year-ending-december-2022/summary-of-latest-statistics> accessed 20 July 2023.

6 Irregular migrants

There is no accepted legal definition of an 'irregular migrant' in UK law, although broadly people become irregular by one of four routes: entering the UK irregularly or through means of deception; breaching the conditions upon which entry or stay was granted; failing to leave after an asylum application has been rejected and all rights of appeal exhausted; or being born to parents who are irregular migrants.[102] Section 24 of the Immigration Act 1971 creates the criminal offence of 'illegal immigration' which is punishable by a fine or up to 6 months' imprisonment. Section 24A of the same act makes it an offence to secure the right to enter or stay by deception, punishable by imprisonment for a term not exceeding two years or a fine, or both. The legislative and policy landscape for those considered 'irregular' is unforgiving, designed to deter future migration by making life within the UK intolerable. This is in spite of evidence revealing that treating persons with hostility does little to deter future migration and instead creates misery, exploitation and destitution for those subject to the restrictions.[103] The exact number of undocumented migrants in the UK is unknown, and the Home Office do not publish statistical data. However, recent estimates suggest that the numbers are between 594,000 to 745,000[104] or 800,000 to 1.2 million, [105] although it is unclear how many of these individuals engage in paid employment.

6.1 The Hostile Environment

Coined by Theresa May in 2012, the term 'hostile environment' refers to a set of deliberate policies that aim to make life in the UK unbearable for irregular migrants as well as asylum applicants seeking sanctuary. It consists of a web of legislation and rules that excludes

[102] The Migration Observatory at the University of Oxford, 'Irregular migration in the UK' (11 September 2020) <https://migrationobservatory.ox.ac.uk/resources/briefings/irregular-migration-in-the-uk/> accessed 25 April 2022.
[103] Lucy Mayblin, 'Complexity reduction and policy consensus: Asylum seekers, the right to work, and the 'pull factor' thesis in the UK context' (2016) 18(4) The British Journal of Politics and International Relations 812.
[104] Written evidence by Dr Andrew Jolly and Dr Bozena Sojka Institute for Community Research and Development (ICRD), University of Wolverhampton <https://committees.parliament.uk/writtenevidence/8548/html/> accessed 25 April 2022.
[105] Philip Connor and Jeffrey S Passel, 'Europe's Unauthorised Immigrant Population Peaks in 2016, Then Levels Off' (November 13 2019) <https://www.pewresearch.org/global/2019/11/13/europes-unauthorized-immigrant-population-peaks-in-2016-then-levels-off/> accessed 25 April 2022.

irregular migrants from basic entitlements such as work, housing, study, benefits and medical care, and enrols public and private actors (e.g., public sector workers and landlords) in performing immigration control checks. Another aspect of the hostile environment is that within England and Wales, any person 'subject to immigration control' is considered to have 'no recourse to public funds'. These rules were layered on top of other policies that pre-date 2012, such as restrictions on the right to work for asylum seekers, access to welfare entitlements and the threat of immigration detention and deportation. As of 2017, the government has taken to referring to these policies as the 'compliant environment'.

6.2 Enforcing labour rights: The doctrine of illegality

In the event that irregular migrants engaged in work seek to enforce their employment rights via a civil claim in an Employment Tribunal or Court, such as a claim for unpaid wages or unfair dismissal, the doctrine of illegality is likely to present a significant obstacle. This doctrine rests on the premise that "no court will lend its aid to a man who founds his cause of action upon an immoral or illegal act."[106] Since 2016, it has been a criminal offence for those subject to immigration control to work where they know, or have reasonable cause to believe, that they are disqualified from working on grounds of immigration status, creating a specific criminal offense under British law of working without immigration permission.[107] Prior to the Immigration Act 2016, the work was prohibited via general immigration offences such as breach of a condition attached to leave, enter or remain (such as no access to employment),[108] as well as offences relating to the use of fraudulent documents.[109] Illegality is now more directly engaged as a result of the criminal offence imposed under section 34 of the Immigration Act 2016. As the criminality arises out of statute, the question arises whether the contract is impliedly prohibited by the statutory offence. If there is implied statutory prohibition, then claims arising from the employment contract will

[106] Holman v Johnson (1775) 1 Cowp 341.
[107] Immigration Act 2016, s.34 which inserted s24B into the Immigration Act 1971
[108] S 24 Immigration Act 1971.
[109] See sections 16 & 30 of the Theft Act 1968, and sections 3 & 5 of the Forgery and Counterfeiting Act 1981, as amended by the Asylum and Immigration (Treatment of Claimants etc.) Act 2004.

invariably be barred as the statute takes precedence. [110] Illegality may thereby provide an employer with a defence to contractual claims where a worker has been working without proper authorisation and makes a claim against them. This has yet to be resolved by the courts, although after *Okedina v Chikale*[111] the courts are likely to take a strict necessity approach to implied statutory prohibition. The continuing uncertainty around the scope of implied statutory prohibition is itself a form of precarity. Where an irregular worker has been subjected to exploitation (including victims of trafficking, slavery, servitude or forced labour) a defence against illegality may arise under s 45 of the Modern Slavery Act 2015. This leaves open the possibility of bringing a contractual claim as the doctrine of illegality would not apply, however an individual must first be identified or recognised as a victim of exploitation.

The law is slightly more lenient in relation to 'tortious claims' (such as discrimination) where a balancing methodology is applied by the Tribunal or Court. [112] This balances the public policy of illegality against competing public policies that favour upholding the claim, whilst also considering proportionality where it is appropriate to do so on the facts. However, individuals should be aware that 'migration status' is not a recognised protected characteristic under the Equality Act 2010, meaning any employees targeted on grounds of their insecure immigration status will not be protected unless they can make a claim on another protected ground, such as race. The balancing methodology concerning the common law defence of illegality would also apply to unjust enrichment claims, where workers make restitutionary claims against their employers for benefits acquired unjustly at the worker's expense but where the contract is not otherwise enforceable.[113]

[110] *Patel v Mirza* [2016] UKSC 42; *Okedina v Chikale* [2019] EWCA Civ 1393; *Henderson v Dorset Healthcare University NHS Foundation Trust* [2020] UKSC 43; see also Alan Bogg, 'Okedina v Chikale and Contract Illegality: New Dawn or False Dawn?' (2020) 49(2) Industrial Law Journal (ILJ) 258.
[111] [2019] EWCA Civ 1393.
[112] *Hounga v Allen* [2014] ICR 847; Patel v Mirza [2016] UKSC 42 [109]; *Henderson v Dorset Healthcare University NHS Foundation Trust* [2020] UKSC 43.
[113] *Patel v Mirza* [2016] UKSC 42.

6.3 Labour within immigration detention

Ironically, the state and the private corporations running Britain's immigration detention centres are the single biggest employer of those with 'no right to work'. This is because millions of hours of work are taking place within immigration detention centres throughout the country. In the UK, for example, between January 2014 and July 2016, over 1,955,000 hours-worth of work occurred, increasing year after year.[114] Implementation of the Nationality and Borders Act 2022 paired with the Illegal Migration Act 2023 will likely increase the number of persons entering the detention estate in the UK.

Immigration detention does not attract the same judicial and legal protections afforded to those detained within the criminal justice system; for example, in most instances, there is no time limit on detainees' period of incarceration. In 2021, the average cost of holding one person in immigration detention was £98.78 per day, or £36,054.70 per year.[115] The overarching context within which this takes place is the 'immigration industrial complex' which seeks to restrict and commodify migrants' mobility and labour power. From this perspective, the redesign of labour law, social welfare, trade regulations, the criminal law and migration controls are a necessary part of facilitating the practice of labour within immigration detention as they impact upon migrants' mobility and ensure the precarity of a foreign-born workforce who are more easily exploited.

Work within immigration detention, also known as 'paid activities' was introduced by the Blair government in 2006 to prevent "instances of boredom and frustration amongst detainees."[116] Despite evidence which suggests that detainee labour sustains the running of the detention estate,[117] detained persons are excluded from protection under the National Minimum Wage

[114] Katie Bales and Lucy Mayblin, "Unfree labor in UK detention centers: Exploitation and coercion of a captive immigrant workforce," *Economy and Society* 47, no.2 (2018).
[115] The Migration Observatory at the University of Oxford, 'Immigration Detention in the UK' (September 2021) < https://migrationobservatory.ox.ac.uk/resources/briefings/immigration-detention-in-the-uk/> accessed 25 May 2022.
[116] Tony McNulty, Hansard, 16 Nov 2005: column 1016
[117] Phil Miller, 'True scale of captive labour revealed' (Corporate Watch, August 2 2014) <https://corporatewatch.org/news/2014/aug/22/scale-captive-migrant-labour-revealed> accessed 25 May 2022.

Act 1998 on grounds that it "would not be viable financially," "nor reflect the true economic value" of their work.[118] This claim should be contextualised against the profit margins of the private corporations running the detention estate, which are able to save millions in costs by using detainee labour. The proposition that detainees are replacing paid workers in detention centres has been refuted by the Home Office which maintains that paid work practices are "not intended to substitute the work of trained staff."[119] Yet this conflicts with the data which reveal that thousands of hours of work are performed each year and the perspective of detainees themselves. As noted by John, a former detainee, "if I had not cleaned that detention center [sic] wing every day, it would have been in an absolutely disgusting state. My role was critical in keeping the detention center [sic] hygienic and safe."[120] Accordingly, immigration detainees engage in paid work activities such as cleaning, cooking, hairdressing, and decorating for £1.00 or £1.25 an hour.[121] Evidence suggests that detainees are able to put themselves forwards for whichever role they desire, meaning the work is considered to be 'voluntary' and outside the construction of forced labour practices.

[118] Tony McNulty, Hansard, 16 Nov 2005: column 1016; see also s153A Immigration and Asylum Act 1999 as inserted by s59 Immigration, Asylum and Nationality Act 2006

[119] Phil Miller, 'True scale of captive labour revealed' (Corporate Watch, August 2 2014) <https://corporatewatch.org/news/2014/aug/22/scale-captive-migrant-labour-revealed> accessed 25 May 2022.

[120] John, "Working for a Pound an Hour: An immigration detainee's perspective," *Futures of Work,* 30 September 2019, https://futuresofwork.co.uk/2019/09/30/working-for-a-pound-an-hour-an-immigration-detainees-perspective/.

[121] s 4-6 Detention Services Order 01/2013

7 Understanding migrant worker exploitation

7.1 Labour market experiences of migrant workers

Before delving too deeply into the reasons why migrant workers tend to be vulnerable to exploitation in the workplace, it is necessary to paint a picture of their experiences in the UK labour market. Migrant workers tend to be clustered in particular industries and occupations. For example, foreign-born migrant workers constitute 28% of workers in hospitality, 26% in transport and storage, 25% in ICT (Information, Communication and IT) and 21% in health and social care.[122] The reasons why this clustering occurs is complicated and can include a combination of factors, including levels of educational attainment, native workers' job expectations, employer preferences, and network effects whereby migrant workers hear about opportunities from compatriots.[123] Not all migrant workers fare the same in the labour market. Notably, foreign-born workers born in EU-14 countries tend to be concentrated in high skilled jobs (45%) and medium-high skilled jobs (27%), whilst migrants from EU-8 and EU-2 countries tend to be concentrated in medium-high skilled (26% and 24% respectively), medium-low skilled (36% and 38%) and low skilled jobs (22% and 19%).[124] Even amongst foreign-born non-EU workers, there is wide divergence of experiences. Those from North America and Australasia work in high skilled or medium-high skilled jobs (77%), whilst for those from Pakistan and other South Asian countries, the comparable figures are 23% and 24%. As a result, employees born in North America, Australasia and India have the highest annualised median earnings (£36,200) compared with £28,600 for the UK-born.[125] The diverse experiences of groups of migrant workers are explained by factors such as weaker language proficiency, lower levels of social and cultural capital, and inferior possession of recognised qualifications. Over time, the operation of the

[122] Fernández-Reino (n 16).
[123] Louise Ryan, 'The Direct and Indirect Role of Migrants' Networks in Accessing Diverse Labour Market Sectors: An Analysis of the Weak/Strong Ties Continuum' in Elif Keskiner, Michael Eve and Louise Ryan (eds), *Revisiting Migrant Networks: Migrants and their Descendants in Labour Markets* (Springer 2022).
[124] Fernández-Reino (n 16). The skill-levels referred to in this paragraph relates to the Standard Occupational Classification 2010, which mainly indicates the duration of education and training required.
[125] Ibid.

new migration system, which has seen the inflow of skilled workers primarily from Asia and Africa, will undoubtedly affect these patterns.

Moving from sectoral and occupational employment patterns to the working conditions of migrant workers, there is evidence that foreign-born workers may be over-represented in asocial working arrangements, such as night shifts (23% of foreign-born workers vs. 18% of UK born) and non-permanent work (7% of foreign-born workers vs. 5% of UK born).[126] This has also been confirmed by research from the Trade Union Congress that has found that 14.1% of Black, Minority and Ethnic (BME) workers (some of whom are UK citizens) are engaged in precarious working arrangements, whilst only 10.7% of the 'white' population is similarly engaged.[127] Although there are limited routs for migrants to enter the UK as self-employed, migrants who enter under another route will sometimes end up working on their own account. It is estimated that there are over 5 million self-employed people in the UK, and a component of these people will be mischaracterised as such even though their working arrangements more plainly resemble employment.[128] We do not have reliable statistics about the number of foreign-born self-employed workers, although some research shows that migrants are heavily represented in the so-called gig economy, where workers tend to be treated as self-employed.[129]

Migrants, particularly those who work in low skilled jobs, are also at a greater risk of suffering exploitation in the workplace. There is a lively academic debate about whether *exploitation* should be restricted to those incidents involving forced labour or modern slavery, or whether violation of legal standards contained in employment and labour law constitute labour exploitation. In practice, few scholars see the issue in such stark terms. Klara Skrivankova, for example, sees labour exploitation as existing on a continuum—on one end sits forms of extreme exploitation, such as forced labour, and the other end is

[126] Ibid.
[127] 'Insecure Work, Special Edition of the TUC's Jobs and Recovery Monitor' (Trade Union Congress 2021) <https://www.tuc.org.uk/research-analysis/reports/jobs-and-recovery-monitor-insecure-work>.
[128] 'Coronavirus and Self-Employment in the UK' (*Office for National Statistics*, 17 April 2020) <https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/articles/coronavirusandselfemploymentintheuk/2020-04-24>.
[129] Niels van Doorn, Fabian Ferrari and Mark Graham, 'Migration and Migrant Labour in the Gig Economy: An Intervention' (Social Science Research Network 2020) SSRN Scholarly Paper 3622589 <https://papers.ssrn.com/abstract=3622589> accessed 10 May 2022.

characterised by decent work. [130] Somewhere in between these poles sit the experience of many workers who are subject to various forms of legal violations, such as wage theft. An academic, Anna Boucher, has recently found after analysing court cases involving migrant workers in several Anglophone jurisdictions (UK, Australia, California, Ontario and Alberta) that migrants tend to suffer rights violations in the following five areas: (a) criminal infringements; (b) 'economic violations' such as wage theft; (c) health and safety violations; (d) leave and other employment standards violations; and (e) discrimination and harassment.[131] In our analysis below, we adopt this broader conception of labour exploitation as labour rights violations, which include, but are not limited to, extreme forms of mistreatment.

Another way to think about the vulnerability of migrant workers is through the prism of equality. In fact, many of the international labour law conventions dealing with the working conditions of migrant workers—such as the UN Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families 1990, Migration for Employment Convention (Revised) 1949 (No. 97), and Migrant Workers (Supplementary Provisions) Convention 1975 (No. 143)—mandate the norms of equality and non-discrimination. Not being able to exercise collective labour rights, such as being able to join a union, engage in collective bargaining and take industrial action, in the same way as local workers represents an important dimension of vulnerability for migrant workers. However, as Judy Fudge has pointed out, the norms of equality and non-discrimination do not help migrant workers who are employed in sectors where local workers also suffer from these sorts of exclusions.[132]

[130] Klara Skrivankova, 'Between Decent Work and Forced Labour: Examining the Continuum of Exploitation' (Joseph Rowntree Foundation 2010) <http://www.prostitutionresearch.info/pdfs_all/trafficking%20all/forced-labour-exploitation-full.pdf>.
[131] Anna K Boucher, *Patterns of Exploitation: Understanding Migrant Worker Rights in Advanced Democracies* (Oxford University Press 2023).
[132] Fudge (n 42).

7.2 Precarious migration status as the primary cause of migrant worker precarity in work

At this point we need to try and understand why migrant workers are at a greater risk of these types of rights violations. A number of factors help explain migrant worker outcomes in the labour market. Individual characteristics, such as level of English language proficiency, reticent attitudes towards state institutions that might be able to provide assistance, lack of qualification recognition and different cultural frames of reference, certainly contribute to some of the poor outcomes that we see. Further, racism and the negative stereotypes arising from racialisation play a contributory role, since recruitment and migrants' experiences at work are affected by these things. Studies that control for socio-economic differences have shown that ethnic minority workers (which includes both non-citizens and citizens) suffer discrimination at the point of recruitment and an 'ethnic penalty' once in employment.[133] However, as Boucher has systematically demonstrated using her quantitative study of legal cases, personal characteristics alone have insufficient explanatory force.[134] As such, we also need to look elsewhere.

The socio-legal literature on migration and work has drawn attention to the range of rules in migration law that heighten migrant worker precarity and, consequently, make it more difficult to claim employment rights. Scholars argue that lacking any of the features usually associated with citizenship—e.g., restricted work authorisation, right to reside only temporarily in the country, and limited political and social citizenship rights—can result in precarity because the lack of these features can generate insecurity and make it more difficult for workers to advocate for themselves.[135] One of the conditions that has received the most attention is the visa requirement that mandates workers to take up employment with a particular employer. Such requirements are found in several of the visa routes outlined above in both the high-skill and low-skill categories. Scholars have condemned such

[133] Wouter Zwysen, Valentina Di Stasio and Anthony Heath, 'Ethnic Penalties and Hiring Discrimination: Comparing Results from Observational Studies with Field Experiments in the UK' (2021) 55 Sociology 263.
[134] Boucher (n 131).
[135] See, e.g., Luin Goldring, Carolina Berinstein and Judith K Bernhard, 'Institutionalizing Precarious Migratory Status in Canada' (2009) 13 Citizenship Studies 239; Anderson, 'Migration, Immigration Controls and the Fashioning of Precarious Workers' (n 42).

conditionality on the basis that it creates 'hyper-dependence'[136] and reduces workers' bargaining power.[137] Clearly, the impact of employer sponsorship in workers' ability to self-advocate and claim their rights is heightened for those on low-skilled migration pathways due to the characteristics of workers involved. Another visa condition that has attracted critical comment relates to migrants' living arrangements. It has long been recognised that workplace residence requirements allow employers to exercise arbitrary forms of control and domination over workers. For this reason, labour law scholars have identified live-in requirements, such as those found in the Overseas Domestic Worker visa, as deeply harmful.[138] These features of migration law can 'fashion precarity' for migrant workers.[139]

How precisely do these rules affect workers claiming their employment rights? The most common mechanism discussed in the literature applies in respect of temporary labour migrants who are tied to a particular employer, and therefore, fear claiming employment rights because doing so could lead the employer terminating their employment, which would lead to the loss of their right to work and live in the UK.[140] Even in circumstances where it is technically possible to change employers after raising a grievance, practical impediments, such the need to find a new sponsor, make claiming employment rights extremely difficult. Being tied to the employer in this manner also makes the exercise of freedom of association more difficult since employers can threaten deportation to head off any effort to collective organise. Migrant workers may also experience difficulties in accessing employment law because ostensibly universal employment protections are structured in such a way that makes them inaccessible. For example, unfair dismissal protections, one of the most important guarantors of job security, may contain qualifying

[136] Zou (n 42).
[137] Chris F Wright and Stephen Clibborn, 'A Guest-Worker State? The Declining Power and Agency of Migrant Labour in Australia' (2020) 31 The Economic and Labour Relations Review 34.
[138] See, e.g., Vera Pavlou, *Migrant Domestic Workers in Europe: Law and the Construction of Vulnerability* (Bloomsbury Publishing 2021).
[139] Anderson, 'Migration, Immigration Controls and the Fashioning of Precarious Workers' (n 42).
[140] See, e.g., Joo-Cheong Tham, Iain Campbell and Martina Boese, 'Why Is Labour Protection for Temporary Migrant Workers so Fraught? A Perspective from Australia' in Joanna Howe and Rosemary Owens (eds), *Temporary Labour Migration in the Global Era: The Regulatory Challenges* (Hart Publishing 2016); Kati L Griffith and Shannon Gleeson, 'The Precarity of Temporality: How Law Inhibits Immigrant Worker Claims' (2017) 39 Comparative Labor Law and Policy Journal 111; Anna Boucher, 'Measuring Migrant Worker Rights Violations in Practice: The Example of Temporary Skilled Visas in Australia' (2019) 61 Journal of Industrial Relations 277.

periods that temporary migrant workers struggle to meet.[141] The difficulty in claiming rights, when considered alongside other features of migrant workers' typical employment, such as low wages, lack of control over the labour process, and limited duration contracts, mean that their employment bears all the hallmarks of precarious employment.[142]

However, the fact remains that migrant workers who are present in the UK with non-precarious migration statuses—e.g., those with settled status, indefinite leave to remain, refugees, or family members—also experience significant amounts of rights violations. This means that the reasons for migrant worker exploitation in the labour market are the result of a complex interaction of legal and non-legal factors.

7.3 Reforms to address the labour exploitation of migration workers

Since legal rules and institutional arrangements are amongst the chief causes of migrant worker exploitation in the labour process, we advocate for three different categories of legal reforms to improve the situation. Our intention here is to demonstrate in broad brushstrokes the types of changes that will make a meaningful difference. The first set of interventions suggested are those that address precarious migration status. Insecurity of status severely reduces workers' bargaining power in the workplace and affects their ability to challenge exploitative behaviour. Precarious migration status also makes it less likely that workers will claim the employment rights to which they are entitled. The second set of reforms we deem necessary are those that relate to the enforcement of employment rights. In the UK, workers are expected to enforce their own rights by bringing claims in the Employment Tribunals in circumstances where there has been an infringement. Whilst there are several measures that could be taken that would better assist migrant workers to enforce their own rights, we also see a widened role for government agencies charged with ensuring that employers comply with their legal obligations. These agencies will have to

[141] See, e.g., Zou (n 42); Joanna Howe, Laurie Berg and Bassina Farbenblum, 'Unfair Dismissal Law and Temporary Migrant Labour in Australia' (2018) 46 Federal Law Review 19.
[142] Gerry Rodgers, 'Precarious Work in Western Europe: The State of the Debate' in Gerry Rodgers and Janine Rodgers (eds), *Precarious Jobs in Labour Market Regulation: The Growth of Atypical Employment in Western Europe* (International Institute of Labour Studies 1989).

devise strategic methods to target industries, workplaces, and occupations that employ large numbers of migrant workers. The third set of proposed interventions fall into the 'general' category. Here we should regard non-citizen workers as "one of many overlapping groups in the labour force that are part of a continual process of labour market re-structuring."[143] Therefore, the range of measures commonly proposed to address employment precarity—such as ending bogus self-employment, better regulation of agency work, and improved access to collective bargaining—would go a long way towards advancing the interests of migrant workers in the labour market.

Turning to the first set of interventions, the most urgent reforms relate to the visa conditions that create dependency on the employer. The most obvious of these are requirements that tie workers to a named employer in the visa. Policymakers often have legitimate interests in ensuring that overseas workers plug particular gaps in the labour market, but it is possible to achieve a similar outcome by allowing workers to more easily change to another employer with sponsorship rights or maintain labour market mobility within a particular industry. In the case of the low-skilled pathways—the Seasonal Worker visa and the Overseas Worker visa—two further necessary reforms arise. First, the length of the visa should be increased to one year and, second, workers should have the option of renewing their visa (with the possibility of applying for ILR once they have been in the country for the requisite number of years). Another vector of dependency on the employer occurs in circumstances where workers have incurred large debts during the migration process, and therefore, must remain employed even in exploitative conditions to pay their debts. Debts may arise because workers have to meet the exorbitant visa processing fees and NHS surcharges imposed by the government. Debts can also arise as a result of illegal 'recruitment fees' levied by unscrupulous labour intermediaries. We suggest that the government reviews its visa charges with the objective of making them more reasonable. Governments can also take several steps to eradicate the charging of recruitment fees by imposing accessorial liability on employers who utilise labour recruiters that engage in these practices. Finally, since those working without authorisation suffer from the greatest levels

[143] Bridget Anderson, *Us and Them?: The Dangerous Politics of Immigration Control* (Oxford University Press 2013), 72.

of precarity, we propose that the government repeals s 34 of the immigration Act 2016, which creates the criminal offence of working without the correct immigration status, and explore the possibility of implementing a programme to regularise workers' migration status where they have been working in the country for two or more years.

The next set of reforms we propose will help migrants overcome the significant obstacles they face when they seek to enforce their labour rights. There is no compelling reason that those working without authorisation should be barred from claiming their employment rights—in fact, such a prohibition may encourage employers to continue to employ and exploit irregular workers because employers know that workers may be reluctant to come forward.[144] As such, as well as the repeal of s 24B of the Immigration Act 1971 discussed above, we suggest clarifying in statute that the illegality doctrine does not apply in relation to all types of employment-related claims. Similarly, we challenge the restrictions on asylum seekers working because there is no sound evidentiary basis for the pull factor thesis, and in contrast, argue that it would be of economic benefit to the UK to lift the ban and alleviate the significant poverty and suffering currently experienced by this group. Providing asylum seekers with unlimited access to work after six months of lodging their claims for refugee protection would also bring the UK into line with numerous other EU countries. Another important barrier to claiming rights is the fact that those on short term visas are unlikely to see the conclusion of their case before their visa expires. Accordingly, we propose the enactment of a 'bridging visa' to allow migrant workers to remain in the country to pursue any outstanding legal claims. Whilst these measures will help, we recognise the immense barriers that workers face in bringing employment claims. The only way to ensure widespread compliance is to properly resource a single enforcement body to devise and pursue strategies to target employers who are violating workers' rights. Such a body must respond to any complaints lodged by a worker or their authorised agents, as well as proactively act without waiting for workers to come forward with a complaint. A variety of strategies will be necessary, such as regularly auditing employers in industries that have low levels of compliance and working in partnership with third parties such as trade unions and

[144] Katie Bales, 'Immigration Raids, Employer Collusion and the Immigration Act 2016' (2017) 46 Industrial Law Journal 279.

civil society actors to devise enforcement strategies. Finally, there are several areas where statutory rights could be strengthened to assist migrant workers. Two obvious reforms are providing workers with unfair dismissal rights from the first day of employment and expressly prohibiting discrimination on the basis of visa status in the Equality Act 2010.

The final category of reform we advocate relates to the general state of labour market regulation. The UK's labour laws are in desperate need of reform. Working people are increasingly engaged in work that pays poorly, creates insecurity, and contains few avenues of redress if they are treated unfairly by their employers. The current government boasts about record low unemployment figures whilst at the same time failing to protect workers from poverty pay and insecurity. The IER has developed a comprehensive agenda for labour law reform in its 2016 'Manifesto for Labour Law' and 2018 'Rolling Out the Manifesto for Labour Law', which we enthusiastically endorse. A number of the reforms advocated by the IER were contained in a recent Green Paper drafted by the Labour Party setting out its employment law agenda if elected.[145] Many of the changes contained within the Manifesto and Green Paper, particularly those that address precarious work, introduce sectoral Fair Pay Agreements and that reinvigorate collective bargaining, will benefit migrant workers who are over-represented in industries in which precarious work arrangements proliferate and union reach is limited.

8 Recommendations

The British Labour Party has so far been discreet about its labour migration policy other than indicating support for the continuation of a 'points-based system' but without the provision for employers to pay 20% below the 'going rate' in circumstances where the occupation is on the SOL.[146] In our view, in order to ensure that labour migration works in the interests of both local workers and those migrating, there is a need to reorient the migration system away from temporary labour migration with employer sponsorship

[145] 'Employment Rights Green Paper: A New Deal for Working People' (Labour Party) <https://labour.org.uk/wp-content/uploads/2021/09/Employment-Rights-Green-Paper.pdf>.
[146] Peter Walker, 'Keir Starmer Attacks PM on Immigration as Labour Launches Its Own Plan' *The Guardian* (24 May 2023) <https://www.theguardian.com/uk-news/2023/may/24/keir-starmer-attacks-pm-on-immigration-as-labour-launches-its-own-plan> accessed 27 July 2023.

toward a regime of permanent migration as is the case with Australia's recent direction of travel. [147] In the interim period, where temporary labour migration continues to be a feature of migration system, it should operate in accordance with rules determined through a tripartite process involving employers, unions and government.

We acknowledge that such a reorientation will require careful consideration. Whilst such a process is underway, we propose the following recommendations to immediately reduce migrant precarity and steps to ensure that workers can claim their employment rights.

Proposed reforms to reduce precarious migration status:

- Increase the length of the Seasonal Worker visa and Overseas Domestic Work visa to one year, provide the opportunity to renew the visa, and apply for indefinite leave to remain after five consecutive years or seasons in the UK
- Ensure that these routes allow workers to change employers both as a matter of law and in practice
- Review all visa charges and ensure that they reflect the true cost of processing a visa
- Abolish the IHS since migrant workers pay taxes in the UK to subsidise the NHS
- Impose accessorial liability on employers and UK-based recruiters for illegal recruitment fees charged from workers
- Explore the possibility of a regularisation programme to provide legal status for those unlawfully resident in the UK for longer than five years
- Provide asylum seekers with the right to work after six months of lodging their claims for refugee protection. That this permission to work include the ability to be self-employed
- End the Hostile/Compliant Environment policies
- Amend the Equality Act 2010 to make 'migration status' a protected ground

Proposed reforms to ensure that migrant workers can claim their employment rights:

[147] Martin Parkinson (Chair), 'Review of the Migration System: Final Report' (Commonwealth of Australia 2023) <https://www.homeaffairs.gov.au/reports-and-pubs/files/review-migration-system-final-report.pdf>.

- Repeal s 24B of the Immigration Act 1971 to abolish the offence of ‘illegal working’ and clarify in statute that the illegality doctrine does not apply in employment-related claims
- Enact bridging visa’ to allow migrant workers to remain in the country to pursue any outstanding legal claims
- Establish the Single Enforcement Body and create a specialist division to address the situation of migrant workers in the labour market. Ensure such division receives adequate resourced to tackle the scale of non-compliance in the labour market
- Create a ‘firewall’ between the Single Enforcement Body and the Home Office to ensure that information about a worker status is not shared through the course labour enforcement proceedings