

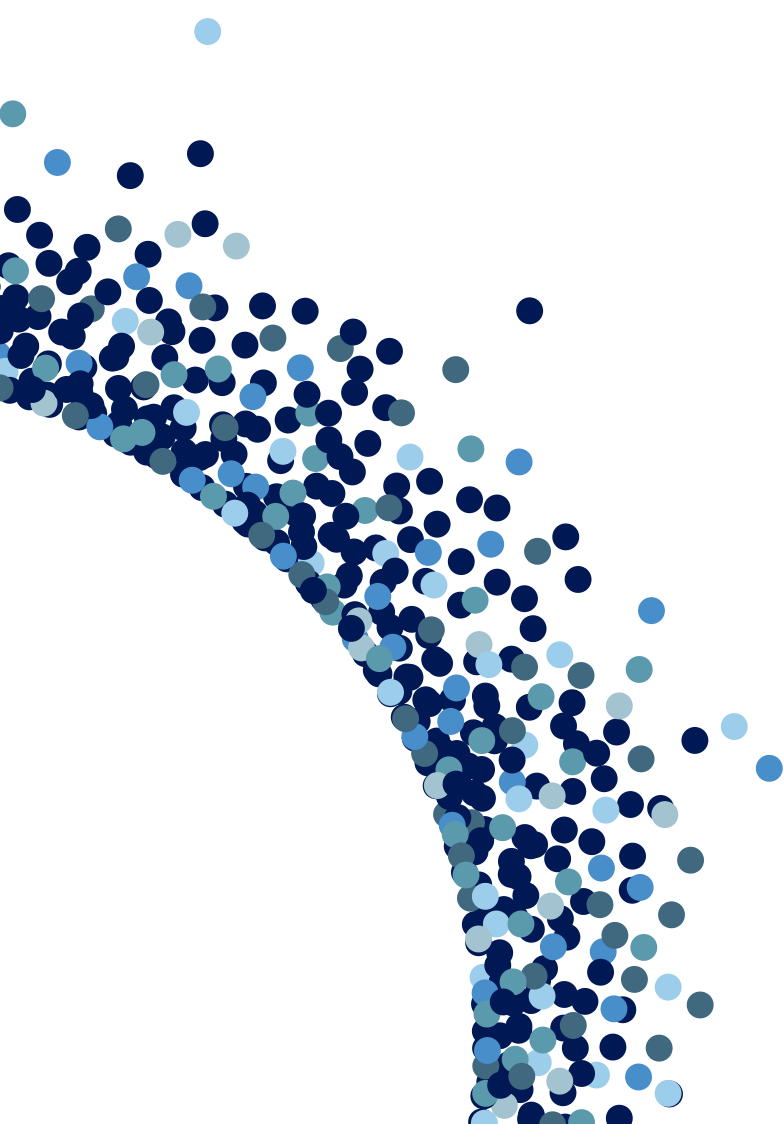


# REPORT

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## Labour Immigration after Brexit: Trade-offs and Questions about Policy Design

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## Executive summary

After several years in which the scale of EU migration has become an increasingly salient question in the migration debate, the June 2016 vote to leave the EU raises the possibility of significant change to UK migration policy.

Because work is the main reason for EU migration to the UK, labour migration policies after Brexit are a particularly important item on the list of possible policy changes. There are several different labour migration models that could potentially be used after Brexit, from modified versions of free movement to work permit systems of different shapes and sizes. Under a work permit system, the Government would need to make a series of decisions about which jobs, workers and employers would be eligible for work permits, as well as the terms and conditions of the permit such as how long workers can stay.

This report lays out some of the policy decisions and trade-offs associated with different options. In particular, it notes that:

- The government has made a clear commitment to reduce migration, and this commitment will presumably be an important organising principle for labour migration policy decisions in the coming years. Low and middle-skilled work is most likely to be the main target of any policies to reduce EU labour migration.
- The government also has other objectives, however, including the desire to improve the employment prospects of existing UK residents, give employers access to skills and labour where doing so is considered most beneficial, support broader policy goals outside of immigration, and negotiate a mutually beneficial economic relationship with the European Union.
- Some of these objectives will conflict, requiring judgments about what to prioritise and how. This process is not a simple statistical exercise but requires important subjective and political judgments about who—and particularly which industries—will win or lose from policy decisions.
- The government faces a choice between the ability to tailor labour migration policy to respond to nuanced policy goals (for example, by introducing different rules for different sectors or businesses) and a creating a simple, transparent system with more uniform rules that can be more easily managed and enforced.

### **Deciding which kinds of low- and middle-skilled migration the government should prioritise is not a simple statistical exercise, making it inevitable that political judgment will play a key role**

Any labour migration system is likely to allow migration into the highest skilled jobs, such as high-paid professional positions in finance or engineering. In these jobs, the key policy question is what the application process looks like—for example, whether it requires employers to pay fees or attempt to recruit UK workers before sponsoring a worker from overseas.

The area where Brexit could potentially see the greatest shift from the status quo, however, is low- and middle-skilled work. These jobs, which range from skilled trades occupations in the construction industry to relatively low-paid work in social care, hospitality or fruit picking, employ the majority of EU citizens currently working in the UK. Employers in some industries have become quite reliant on EU workers over the past 15 years.

The government will need to decide how much—if any—of this demand it will continue to satisfy through EU migration after Brexit. There are few obvious statistical metrics for prioritising different kinds of immigration in the low- and middle-skilled echelons of the labour market, making it inevitable that political judgment will play a strong role in how the overall system should be designed. The case for maintaining vs. restricting labour migration in different industries and occupations will depend on a host of factors, such as whether there are feasible alternatives to EU migration (e.g. labour-saving technology), and what the social or economic consequences would be of allowing the industry and its workforce to shrink. It will involve political considerations that reach well beyond immigration policy, many of which are by no means easy.

For example, should the government prioritise the continued existence of labour-intensive horticulture in the UK, or import more produce from abroad? Should it dedicate significantly more funding to supporting a higher-skilled, higher-wage adult social care workforce, or facilitate migration as a way to meet growing demand for low-cost care? How should considerations such as these be weighted as part of an overarching strategy to reduce migration?

### **The government will face a trade-off between a system tailored to respond to broader policy objectives and a simple model that applies uniform rules across the board**

One of the trade-offs the government faces in deciding on the scope future labour migration from the EU is between the ability to tailor policies to different government objectives vs. create a system that applies a transparent and simple set of rules more uniformly. The benefit of a certain degree of fine-tuning is that it allows the government to put immigration policy at the service of other government objectives—for example, using it to build skills or supply labour to particular industries or reduce costs in the public sector.

However, a more tailored system is also a more complex one, and complexity has drawbacks. In particular, it makes the system more difficult for workers and employers to navigate, and more difficult for the government to manage. An immigration system with complex industry-specific rules and quotas, with different kinds of authorisation required depending on the nature of the work, would require greater government resources in order to police the boundaries between different categories. Complexity may also be the product of organised interests pushing for special exemptions, rather than a systematic consideration of evidence and government policy priorities.

### **There are difficult questions about how much to rely on temporary vs. permanent migration**

Work-permit systems vary widely in the ease with which workers can qualify for permanent settlement. Here, too, the government faces important trade-offs. Strictly temporary work-permit schemes allow the government to meet employer demand for labour in low-skilled industries without adding to the long-term resident population. However, relying on a constantly rotating pool of temporary workers can also bring costs, as employers lose workers they have trained and communities receive new migrants who have not had the time to build language skills, local knowledge or social connections. Enforcing the temporariness of the programmes can also be a challenge.

### **‘Control’ of labour migration takes different forms; there is a tension between controlling the criteria for migration and specifying the number of people who will be admitted**

The desire for ‘control’ over migration has been a prominent theme in public and political debates, both during the referendum campaign and in the years leading up to it. There are different ways of exercising control, however. Eligibility criteria such as skills requirements or employer regulations are the most common way of shaping the nature and scale of migration, and in many countries these criteria are the only tools the government uses.

Another policy tool that shapes migration is numerical targets and caps. Quantitative limits often have political appeal as a mechanism to demonstrate control over the scale of migration more explicitly. They also raise some tricky implementation challenges, including what to do when the numerical limit is met.

If the government chooses a fixed set of criteria reflecting the types of jobs or people it believes should be eligible for work permits, these criteria will not predictably admit the same number of people over time. As a result, it will either have to stop issuing visas to otherwise eligible applicants or vary the criteria when the cap is oversubscribed in order to reduce the number of people who qualify. The government therefore faces a tension between its ability specify fixed eligibility criteria and its ability to specify fixed numbers of people who will be admitted. Both of these could reasonably qualify as ‘control’ but they are difficult to achieve simultaneously.

## 1. Introduction

The June 2016 vote to leave the EU raises the possibility of significant change to UK migration policy. Because the process of leaving the European Union is still in its early days, the future of UK migration policy after Brexit remains highly uncertain. New migration policies will take time to develop and may be shaped part by the negotiations with the rest of the EU.

The scale of migration to the UK was a major theme in the referendum campaign and in public debates in the years preceding it (Allen, 2016). While the government is still considering its options, it has emphasised that controls over the number of people coming from the EU will be a priority in the EU negotiations (Swinford, 2016). Because most EU citizens come to the UK for work—73% of those moving for at least a year in the year ending March 2016 (ONS, 2016)—the rules governing work-related migration will have a significant impact on the future shape and impacts of EU migration.

If free movement comes to an end, the main alternative model for managing labour immigration is a work-permit system. Under this model, EU citizens who wanted to work in the UK would require a job offer that met defined criteria. But deciding on a work permit system would be only a small part of the process of designing a new labour migration policy for admitting EU workers. After all, every country in the OECD has a work permit system of some kind, but many take radically different approaches to labour migration—from the liberal Swedish approach of admitting non-EU citizens with a job offer in almost any occupation to the UK system in which only about one fifth of employee jobs meet the main skill and salary criteria that will apply from April 2017 (Vargas-Silva, 2016).

If the UK implements a new set of labour migration rules for EU citizens, there are many questions it will need to resolve about how this system is designed. This report outlines a selection of the key questions the government would face when making these decisions, drawing on examples from around the world. In particular, it examines:

- Which jobs are eligible for labour migration, particularly in the low- and middle-skilled echelons of the labour market that are currently ineligible for work permits under arrangements in place for non-EU citizens.
- Which employers are eligible to employ EU workers, and what steps they have to go through (such as paying fees or looking for local recruits first).
- Which workers are eligible—that is, what characteristics workers themselves will have to demonstrate.
- Whether there are nationality-specific eligibility criteria—for example, whether EU and non-EU citizens face the same rules, and/or whether there are any bilateral agreements with particular EU countries.
- To what extent labour migration is expected to be temporary vs. lead to permanent settlement, and what other rights labour migrants have, such as the ability to bring family members to the UK.
- How best to exercise ‘control’, including what role caps or quotas might play in the new system and how to prioritise applications if there is a cap that is oversubscribed.

## 2. Policy questions and trade-offs in the future labour migration system

The choices the government faces when deciding on the future of EU labour migration are shaped by diverse objectives, such as the desire to meet political commitments to reduce migration, give UK employers access to skills and labour where doing so is considered most beneficial, improve the employment prospects and conditions of existing workers in the UK, support broader policy goals outside of immigration, encourage compliance with immigration rules, and negotiate a mutually beneficial economic relationship with the European Union, among others. Some of these objectives will conflict, requiring judgments about what to prioritise and how. The following sections lay out some of the trade-offs associated with different models.

**Box 1 - How does labour migration work now: A very short overview**

Currently, EU citizens coming to the work in the UK are eligible to take up employment in any job. Employers do not need to apply for permission but can employ them in the same way as they would a UK citizen. The UK operates a work permit system for non-EU citizens, however, which admits most non-EU workers only if they are filling a skilled job vacancy. There are several different ways to qualify for work permits under this system, although in general the criteria have become gradually more selective over the past decade, within increasing thresholds for the skill classification of the job as well as the salary the worker must be paid. The main rules today can be broadly summarised as follows:

- Workers being recruited by a new employer must usually be taking up a 'graduate job' that meets the a minimum salary threshold that applies to all occupations, currently £25,000 and due to rise to £30,000 by April 2017; as well as a higher, occupation-specific minimum salary that applies in many occupations (Home Office, 2016, Appendix J). Exceptions to the higher salary threshold apply to graduate recruits and under-26 year olds, as well as certain public sector occupations. Employers must have advertised the job to UK workers. This route is known as Tier 2 (general).
- Workers already employed by a company abroad can transfer to an office of the same company in the UK if they are in a graduate job and meet occupation-specific salary requirements. There is also a minimum overall salary threshold that is due to rise to £41,500 by April 2017. This route is known as Tier 2 (intra company transfer).
- Some workers in occupations that do not meet these requirements can come as temporary workers under what is known as Tier 5. For example, 18–30 year olds from countries with which the UK has reciprocal agreements (such as Australia, Canada and New Zealand) can work in most jobs for up to 2 years. There are also various temporary visa options for creative workers, sportspeople and participants in government-approved exchange schemes, among others.
- Entrepreneurs and investors can come to work in the UK without an employee contract if they meet a separate set of requirements, including raising sufficient capital for a business venture or investment.

Tier 2 (general) workers—those taking up a job with a new employer—are eligible for indefinite leave to remain in the UK after 5 years if they have a salary of £35,000 or are in a job that is on the shortage occupation list. Tier (2) intracompany transfer and Tier 5 temporary workers cannot apply for settlement.

**2.1. The work permit system**

The main alternative to free movement is a work-permit system, under which employers apply for authorisation to hire a non-UK national for a specific job. Unlike free movement, there can be numerous restrictions on the type of work, its duration, the qualifications of the worker, and the activities of the employer. Designing these restrictions requires a series of key decisions on which jobs, workers and employers are eligible.

**Which jobs are eligible?**

Arguably the key question for the UK government when designing any post-Brexit work permit system is which jobs would be eligible. Potential models for a work permit system for EU citizens include ones in which: (1) all occupations are eligible; (2) only high-skilled occupations are eligible; and (3) both high- and low-skilled occupations are eligible but under different rules.

In theory, the government could make all occupations eligible for work permits. This is the Swedish model of labour migration, although it is quite unusual by international standards (Ruhs, 2013; OECD, 2011). It differs from free

movement primarily in that employers would have to apply for a work permit, making it harder to hire EU workers. For example, there may be occupation-specific salary requirements or ‘prevailing wages’ that employers must agree to pay; sponsorship costs such as legal fees, processing fees and other charges; or a requirement to advertise the job to local workers first. (In Sweden, which has a system of collective bargaining, employers must pay the collectively bargained wage which, in theory, should reduce the risk that employers would rely on migrant workers in order to pay lower wages.)

In fact, work permit systems in high-income countries typically restrict eligibility by occupation, with more liberal policies towards applicants for skilled jobs (Ruhs 2013). A key reason for this is that the evidence on the potential economic benefits of migration is much more clear-cut in the case of skilled migration (see, for example, Ruhs (2015) on the labour market effects of migration and Vargas-Silva (2016) on the fiscal impacts). Low-skilled worker programmes are nonetheless quite common, although they tend to be more restrictive—often limited to specific types of work and often providing no or limited routes to permanent settlement or options for family unification (Ruhs, 2013).

The next sections discuss some of the considerations that arise when deciding which jobs should be eligible for work permit schemes. It assumes that jobs are divided into ‘skilled’ and ‘not skilled’ for the purpose of work permits, although it would in theory be possible to create more than two skill categories with different terms and conditions associated with work permits in each one.

### **How is the scope of skilled migration programmes managed?**

A programme for admitting workers in high-skilled jobs requires an operational definition of ‘skilled’. However, there may be some exceptions to the main skill requirements, for example in the case of occupations that are deemed to be in high demand or to have particular social and economic benefits that make them worth prioritising.

#### ***What counts as ‘skilled’?***

There is no single definition of ‘skilled.’ Two common ways of defining the skill level of a job are the level of education that is required to perform it (for example, whether people doing the job generally require a post-secondary qualification or bachelor’s degree); and the salary (for example, is the salary above a chosen threshold) (for a discussion, see MAC (2012)).

While both methods can be used to compare occupations to each other, the cut-off between ‘skilled’ and ‘not skilled’ may vary. For example, skilled work visas in the United States and the UK must generally be for graduate-level jobs (those normally requiring a bachelor’s degree – such as engineers or doctors), while Australia, New Zealand, Canada, and Norway define ‘skilled’ as including many tradespeople and people with sub-degree vocational qualifications (such as plumbers or paramedics). Occupational restrictions are often combined with minimum salary thresholds. For example, Australia requires skilled work visa holders to have a salary of at least AUD 53,900 (approximately £33,500), while Germany’s skilled work permit requires EUR 47,600 (approximately £42,400) outside of shortage occupations.

#### ***Exceptions to the mainstream skill definition***

A simple skill cut-off based on ordering occupations from ‘high’ to ‘low’ does not always capture policymakers’ or the public’s perceptions as to what types of skills are most valuable or needed. For various reasons, governments often wish to prioritise particular groups of workers but not others, even if they all have similar education requirements or salaries.

First, many countries including the UK have used ‘shortage’ or ‘high demand’ occupation lists to facilitate immigration into jobs that are considered to be in particularly short supply (OECD, 2014). In some cases, workers

in listed occupations simply face fewer administrative requirements (such as exemption from a labour market test). In other cases they are able to qualify for a work permit despite having lower levels of qualifications or salary than would usually be required (EMN, 2015). While such lists can indicate where particular skills are difficult to recruit, it is important to understand that they cannot provide the ‘last word’ on what skills are and are not needed at a given time. There are several different ways of assessing shortage and different methodologies will naturally produce different outcomes.<sup>1</sup>

The UK’s Migration Advisory Committee has developed a methodology for identifying such occupations, based on a combination of statistical analysis, qualitative evidence from stakeholders and expert judgment. Other countries have simpler formulae for identifying shortages, often based on occupational vacancy statistics (OECD, 2014).

Second, some jobs are perceived to have a social or broader economic value that is not reflected in education or salary levels. For example, creative-sector occupations and research jobs may receive special treatment because they are deemed, in very different ways, to benefit the country even despite relatively low levels of pay. New Zealand identifies ‘future growth areas’ in which it prioritises migration applications; these areas currently include biotechnology, IT and creative industries. The United States and Australia have special immigration provisions for nurses (Siyam and Dal Poz, 2014), while more generous rules for science, technology, engineering and mathematics (STEM) occupations are also common (OECD, 2014).

The challenge for the government is how to make these decisions about special rules for particular types of work. A system with more exemptions for special cases will be more responsive to specific political and policy priorities outside of immigration. However, these special cases add to the complexity of the system will not necessarily be based on hard evidence – a strong element of judgment is required when formulating the policy criteria, as discussed further below.

### How extensive should low-skilled worker programmes be?

Difficulties making an objective determination about where migration is ‘needed’ are particularly marked when looking at low-skilled jobs. This part of the labour market is particularly important when considering EU migration, since EU workers are overrepresented in low-wage jobs (Vargas-Silva, 2016). In 2015, 22% of EU-born workers were in the least-skilled

**Table 1 – Percent of workers who are in each occupational group, by country of birth, 2015**

Skill level	Occupation	EU	Non-EU	UK	All
High	Managers, Directors and Senior Officials	7	10	11	10
	Professional Occupations	17	25	19	20
	Associate Professional and Technical	11	11	14	14
	Total high-skilled	34	46	44	44
Middle	Administrative and Secretarial*	8	8	11	11
	Skilled Trades Occupations	12	8	11	11
	Caring, Leisure and Other Service*	9	11	9	9
	Sales and Customer Service*	4	7	8	8
	Process, Plant and Machine Operatives*	12	7	6	6
	Total middle-skilled	44	41	46	45
Low	Elementary Occupations*	22	13	10	11
	All	100	100	100	100

Source: Vargas-Silva (2016). Note: as noted below, there are different ways to divide occupational categories by skill level. In particular, the ‘middle’ skill categories vary widely in terms of the workers’ qualifications and earnings. MAC (2014) uses a different, binary classification, in which categories marked \* are classified as low-skilled.

occupational category (Table 1), and this percentage rises if broader classifications of low-skill are used (see MAC, 2014).

1. The UK’s Migration Advisory Committee has developed a methodology for identifying such occupations, based on a combination of statistical analysis, qualitative evidence from stakeholders and expert judgment. Other countries have simpler formulae for identifying shortages, often based on occupational vacancy statistics (OECD, 2014).

In low-skilled jobs the potential arguments for labour migration are somewhat different than in high-skilled ones. The arguments fall into two main categories: (1) employers cannot attract sufficient workers from the domestic labour force to get the work done, for example because the job is too low-paid or too undesirable; and (2) without legal options for recruiting migrant workers, there will be more demand for illegal employment.

On the other hand, the main arguments against facilitating migration into low-skilled jobs include: (1) the potential economic benefits of low-skilled migration are less clear than for high-skilled migration, and there may be negative consequences for certain groups of UK workers competing for similar jobs (Ruhs, 2016b), making it sensible to focus any plan to reduce overall migration on the least skilled flows; (2) significant levels of immigration into low-wage jobs may perpetuate low-productivity business models (MAC, 2014); and (3) if low-skilled worker programmes are not well regulated, the workers who participate in them may be vulnerable to exploitation (Ruhs, 2013). The latter is discussed further in the section on temporary vs. permanent work permit programmes.

### ***Filling 'unattractive' jobs***

In low-wage work, the most common argument for facilitating labour migration is that there are certain jobs in which it is difficult to recruit at the wages and conditions on offer. Commonly cited examples include agricultural labour, hospitality and social care (MAC, 2014). In theory, employers without access to migrant labour could attract local workers into the profession with higher wages; restructure the work to rely on a smaller number of more skilled recruits; or reduce the need for staff by relying more on technology (Ruhs, 2010). However, these strategies are likely to increase costs and the time required for recruiting, and if the business is operating in a competitive market the employer may be under pressure to keep prices low relative to domestic or international competitors.

A particularly clear-cut case is the horticultural industry, which in many countries relies heavily on migrant workers, particularly for harvesting crops during peak periods that require much larger worker numbers at a specific place and time (Geddes and Scott, 2010). Without a low-wage labour force, some types of agricultural production would become more difficult to sustain (MAC, 2013). In these cases, the industry may simply shrink without access to migrant workers.

Whether or not this is a desirable outcome is a matter of judgment and will depend on the specific case. In agriculture, for example, the government could decide that the country should simply import more food, particularly the most labour-intensive produce. On the other hand, it may decide that it is important to have a strong 'home-grown' food supply for political or geopolitical reasons (such as 'food security'). Low-skilled worker programmes are in some respects a recognition of the notion that—at least in certain cases—it may be desirable to use migration to support a low-wage industry despite its reliance on migrant workers. These considerations reach well beyond the traditional domain of immigration policymakers.

Another example of an activity that is often considered socially important is nursing and adult social care. EU workers have played an increasing role in social care in recent years, as policies towards care workers from non-EU countries have become more restrictive (Franklin and Brancati, 2015). If migrant workers willing to do difficult work at relatively low rates of pay enable care providers to keep prices low, this may increase the availability of a service on which vulnerable people rely. It may also reduce costs to taxpayers, since a substantial share of social care is local-authority funded (LaingBuisson, 2015). Alternatively, the government could choose to spend much more on social care and attempt to transform it into a higher-wage, higher-productivity occupation—another decision that stretches well beyond the remit of immigration policymakers. Similar arguments could be made in other sectors such as construction, which the Communities and Local Government Secretary Sajid Javid recently suggested would continue to require migrant labour after Brexit (Parker and Allen, 2016); this is another sector that has seen a rapidly growing EU workforce over the past 15 years.



Finally, facilitating temporary or seasonal migration in industries that see large fluctuations in the demand for labour over the course of the year may allow the industry to support a larger domestic, permanent workforce. This is the rationale behind the United States' H-2B temporary worker programme, which allows employers to sponsor workers in most occupations so long as the work itself is considered inherently temporary.

### ***Reducing pressure for illegal working?***

A different rationale for low-skilled worker programmes is to reduce incentives for illegal working. The argument is that if employers have access to a legal workforce they will be less willing to employ people without authorisation (Hanson, 2009; Duvell, 2011). Preventing illegal employment has been a large part of the discussion about low-skilled workers in the United States, for example (American Immigration Council, 2013), and was also a rationale behind the worker schemes in food processing and hospitality in the UK during the early 2000s (Clarke and Salt, 2003).

In the post-Brexit environment, unauthorised employment could become a particular concern, since the combination of some industries reliance on EU workers, well-established recruiting channels and social networks, and the ease of travel to the UK could facilitate recruitment into low-wage jobs that are not eligible for work permits. Non-compliance with work regulations before EU enlargement in 2004 has been documented elsewhere (Ruhs, 2006).

However, it is very difficult to know to what extent providing legal routes for low-skilled migration is an effective a tool to discourage illegal working (or whether it simply adds to the low-wage migrant workforce), since data on unauthorised employment is elusive.

### **Which workers are eligible?**

In addition to conditions attached to the job, many work permit systems require the workers themselves to meet eligibility criteria. Common requirements include language proficiency, qualifications, age restrictions or nationality restrictions. There are various reasons governments might wish to impose additional criteria. These include:

- To select people who are likely to integrate successfully, particularly if they will become eligible to settle permanently. This is the most obvious rationale for language requirements, for example. Many countries including Canada, Australia and the United States have special rules that make it easier for graduating international students to enter the labour market (OECD, 2014), on the basis that having national qualifications facilitates labour market integration.
- To ensure compliance—specifically, to ensure that the job title the employer is requesting is an accurate reflection of the actual duties (for example, if a person is to be employed as an accountant, it would be reasonable to expect accountancy qualifications). This approach has limits, however, since many occupations will not have specific formal qualifications requirements and imposing them 'top-down' reduces employers' discretion to identify the most qualified candidates.
- To attract particular applicants by reducing the administrative barriers to work. For example, Austria provides dedicated job-search visas to applicants with particularly high qualifications; Denmark has special policies for researchers that involve fewer administrative requirements; and Australia explicitly uses post-study work for international students as a mechanism to help universities market their courses (DIAC, 2011).<sup>2</sup>

2. For example, researchers employed in Denmark for less than 3 months do not require a work permit at all, while on longer work permits are exempt from rules that require the work permit to lapse if the individual spends more than 6 months outside of the country.

***Nationality-specific policies***

Many countries vary their labour migration rules by nationality, or limit certain parts of their work-permit system to nationals of particular countries. Free movement in the European Union is, of course, a major example of rules that depend on nationality (specifically, EEA vs. non-EEA), although there are many other, more limited cases of nationality-specific migration policy elsewhere (EMN, 2011). There are various reasons a government might want to do this:

- **Reciprocity:** offering preferential access to nationals of certain countries may be an opportunity to secure opportunities for one's own nationals abroad. For example, the UK's Youth Mobility Scheme visa involves a series of reciprocal agreements that allow 18–30 year olds from Australia, Canada, Japan, Monaco, New Zealand, Hong Kong, Korea and Taiwan to work in the UK for up to 2 years, with similar privileges for Brits in those countries. Australia has similar arrangements with 18 other countries.
- **Economic or political cooperation:** migration-related provisions are sometimes included in economic cooperation or free trade agreements even if only one negotiating party has a strong interest in including them, in exchange for non-migration related concessions. For example, the United States created a special work permit for Australian nationals allowing them to bypass numerical limits on work permits, following negotiations on a free trade agreement in the early 2000s (Sumption, Papademetriou and Flamm, 2013). Other country-specific programmes, such as New Zealand's seasonal worker scheme for people from the Pacific Islands, have development objectives—to encourage the transfer of skills and (particularly) remittances to poorer neighbouring countries.

Bilateral agreements with countries of origin may also be seen as a way to enable cooperation on the regulation of recruitment agencies or initiatives to enforce return migration in strictly temporary migration schemes.

In the context of Brexit, a key reason for EU-specific rules would be to facilitate negotiations on the UK's future trading relationship with the EU. There could also be a role for bilateral agreements with specific EU countries where there are particularly significant bilateral migration flows, such as Poland or Spain. The European Commission may oppose bilateral deal-making, especially while overall UK-EU negotiations are still ongoing, although other EU countries do have a range of bilateral arrangements with non-EU countries, so such a move would not be unprecedented in principle (EMN, 2011).

On the other hand, a drawback of country-specific rules is that they add complexity to the immigration system, making it more difficult for the Home Office and employers to implement. From the employer perspective, the candidate's nationality is likely to be less important than their skills, which means that nationality-specific rules may create arbitrary restrictions on which qualified candidates can be hired. In addition, visa rules that vary by nationality may require employers to offer different employment conditions to staff members doing the same job (for example, different contract durations or rights to bring dependants), and may therefore be unpopular in the workplace.

**Which employers are eligible?**

Work permit systems generally impose a range of criteria on employers and also require them to go through various administrative steps before they can hire a worker. For example, employers may need to advertise a job in the local labour market first (the 'labour market test'), pay a fee, or demonstrate a track-record of compliance with immigration rules. A primary goal of these rules is to reduce employers' reliance on sponsored workers and encourage them to hire people from the domestic labour market where possible. The criteria may also be used to distinguish between 'high-risk' and 'low-risk' employers, so that the government can impose a lighter administrative burden on employers that are considered most likely to comply with the letter or spirit of the visa rules, while focusing enforcement resources on higher-risk participants.

For example, Singaporean employers with higher shares of work-permit holders on their payroll are penalised with higher fees in order to discourage over-reliance on foreign workers, while US employers with higher shares of work-permit holding employees are required to attempt to recruit local workers, a requirement from which most employers are exempt.

### ***Labour market tests***

Labour market tests require employers to search for local workers—usually by publicly advertising the job for a given amount of time—before they can hire a work permit holder. Some work permit programmes require employers simply to attest that they have conducted the search and did not find suitable local workers, while others require them to justify in more detail why specific candidates were rejected (OECD, 2014). The UK, for example, follows an attestation model, while in Canada’s temporary foreign worker programme the government scrutinises recruitment efforts before the work visa application can be made. In the United States’ H-2B programme for low-skilled jobs, employers deemed to be at high risk of non-compliance may be required to provide detailed recruitment reports, including the name and contact details for every US worker who was not hired and why they were rejected.

There is very little empirical evidence on the effectiveness of labour market tests. While local recruitment requirements may encourage some employers to consider local candidates, they are an inherently limited tool in manipulating employers’ behaviour. This is because it will often be possible for employers simply to go through the motions of a local recruitment exercise in order to meet administrative requirements (Ruhs, 2013). Government officials, meanwhile, may not have sufficient knowledge of the industry to be able to show definitively that a rejected candidate was, in fact, qualified—particularly in skilled jobs.

### ***Fees and charges***

Work permit systems typically require employers to pay processing fees, although some countries have introduced additional charges that are specifically designed to discourage employers from hiring work-permit holders (e.g. Singapore) and/or to create government revenues for skills training initiatives (e.g. United States and the UK Tier 2 visa) (MAC, 2015).

Again, there is very little evidence on how immigration fees affect employers’ behaviour, although in theory we should expect the impacts to vary widely depending on the employer’s circumstances. In principle, large businesses hiring high-paid workers in professional jobs may be better able to absorb the additional cost without changing their recruiting behaviour than smaller businesses or those hiring low-wage workers in industries with low profit margins.

### **How long can workers stay?**

Work permit systems around the world vary widely in the ease with which workers can gain permanent status and citizenship. Some countries, such as Canada and some of the Australian visa routes, offer permanent residence immediately, at least to skilled workers. Others offer temporary visas that can be renewed and lead to permanent residence a few years later; there may be separate, more demanding, criteria for permanent residence than for initial entry. For example, all EU countries except for the UK, Ireland and Denmark, participate in the 2003 European Directive that requires them to grant long-term status to non-EU citizens after five years of residence. However, some work permit programmes are strictly time-limited; workers are expected to return home after the permitted period expires and are not allowed to apply for permanent settlement (though this may be possible if they first switch onto another visa type).

Strictly temporary work permits are most common in programmes for low-skilled workers (Ruhs, 2013; OECD, 2014). These programmes often also restrict other rights, such as the ability to bring family members.

Governments face important trade-offs when deciding on the respective roles of temporary and permanent migration. On one hand, policymakers often favour strictly temporary programmes when there is uncertainty about the long-term demand for particular groups of workers or about their potential to integrate successfully in the long run—including after they are no longer employed in the specific job for which they were recruited. Temporary migration may also be seen as a way to reduce the fiscal costs of low-skilled migration (such as the cost of schooling for children), by preventing family unification. In some cases, the demand for labour is itself inherently temporary due to seasonal variations in demand in industries such as hospitality or horticulture, making a short-term visa a natural choice.

However, temporary migration programmes also have drawbacks. By design, they discourage social and economic integration, processes that take place over time as migrants improve their language skills or develop social connections and local knowledge. They make it harder for employers to retain workers who have built up skills over time (from specialised knowledge of the firm's products to an understanding of health and safety procedures), instead relying on a constantly rotating pool of new recruits who will take some time to settle in. Temporary workers often have more limited rights (Ruhs, 2013), including the right to switch between employers, making them more vulnerable to exploitation. Finally, it may be difficult to enforce return, especially if the job itself is not inherently temporary.

While EU citizens currently have the right to stay permanently in the UK, there is already significant temporary migration from EU countries: an estimated 125,000 EU citizens came to work in the UK for between 1 and 12 months in 2014 (ONS, 2016).

## **2.2. Exercising 'control': Caps and criteria**

Control has been a major theme in the public debates on both migration and EU membership. The main way that governments control migration is through eligibility criteria of the kind described so far in this report. These criteria directly affect the number of people who qualify for work permits and thus the overall scale of labour migration.

With a given set of criteria, the total number of people coming under the programme will fluctuate over time depending on demand. This often leads to higher numbers at times of strong economic growth and lower numbers when the economy is weak. (EU migration under free movement rules has to some extent already followed this pattern, with decreasing net migration following the economic crisis that started in 2008.) Under this system, the numbers are controlled by making the criteria more or less restrictive.

### **Numerical limits and targets**

In addition to eligibility criteria, there may also be numerical limits on particular programmes. While numerical ceilings on work permit numbers are relatively common for low-skilled migration, it is more unusual to impose binding ceilings on skilled employer-sponsored migration (OECD, 2014).

There is no evidence-based way to specify an 'optimal' number of participants in a work permit programme, because the impacts of migration are complex and existing evidence is not precise enough to identify the impacts of small to moderate changes in the numbers of people admitted in specific policy categories (Migration Observatory, 2011). As a result, the choice of a number will always be somewhat arbitrary. Limits might be set with reference to current levels of migration in a particular route (see, for example, Migration Watch 2016, with reference to skilled EU migration after Brexit); or at a higher or lower level to accommodate desired growth or reduction over time.

## Prioritising applications under a cap

The key challenge when implementing a cap is how to deal with oversubscription. There are different ways to prioritise applications when the number of applicants exceeds the available number of places. The two main options are ‘first come first served’ and ranking applications.

- *First come, first served*: this is the mechanism used in the United States and Italy, with outcomes that can reasonably be described as chaotic. Because demand is much higher than supply, it is not unusual for the entire allocation to be used up in a matter of days, leaving no visas available for the rest of the year. In recent years, work permits in the United States have been allocated by lottery due to high demand. This approach has the drawback of providing no mechanism to select the ‘best’ applications.
- *Ranking applications*: the current UK policy for prioritising applications under the Tier 2 (general) cap is a points system. This prioritises applications with higher salaries, jobs on the shortage occupation list or PhD-level researchers (UKVI, 2016). In the United States, some applications are prioritised by being exempt from caps entirely (e.g. university researchers). The ranking approach has the advantage of selecting applications that are perceived to have greater economic value (because the highest-ranked applications will always be successful), although it comes at the expense of predictability, since employers do not know in advance where the eligibility cut-off will be when they apply.

## Ranking applications: a choice between controlling numbers and controlling criteria?

A given set of criteria in any work permit system will not predictably admit the same number of people over time. This is because employer demand and the number of people who want to move vary depending on labour market conditions, among other factors. As a result, it is not possible to specify both the criteria under which people will qualify for work permits and the number of applicants who will meet those criteria.

If a policy is designed to admit a certain number of people under a ranking system, the threshold for success have to be adjusted over time to counteract changes in the underlying numbers of people who qualify to move. This can lead to a situation in which the government does not have full control the criteria themselves. A good example of this dynamic in practice was the system for prioritising Tier 2 worker applications in the event that applications exceeded the 20,700 cap (divided into monthly allocations) introduced in the last parliament. This system was designed to automatically change the criteria—particularly the pay required for most employer-sponsored non-EU workers—in order to keep numbers at or below a given level. When the monthly cap was first met in June 2015 and the prioritisation mechanism kicked in, the required pay unexpectedly (and, it turned out, temporarily) increased to £46,000. This quickly prompted a review of salary criteria. The Migration Advisory Committee was consulted and ultimately recommended that a threshold of £30,000 (with exceptions for certain workers and a new employer fee to raise the costs of employing non-EU workers) would make more economic sense (MAC, 2015).

In other words, while the ranking system enables the government to avoid backlogs and visa shortages associated with ‘first come first served’ systems, they require the government to choose between being able to specify the criteria and being able to specify the numbers. Both of these could reasonably qualify as ‘control’ but they cannot be achieved simultaneously.

More generally, any system with numerical limits entails a trade-off is between the ability to specify the number of work permits issued and the predictability of the system for the employers and workers who use it. A system in which criteria automatically adjust (as in the current Tier 2 (general) mechanism) makes it difficult to predict which criteria will apply in the future, and thus whether a particular candidate in a recruitment process will be eligible to work in the UK.

### 2.3. Modified versions of free movement

Some post-Brexit policy proposals involve retaining the basic principle of free movement—that EU citizens can settle freely in the UK for work and their employer does not have to apply for a work permit—albeit with some restrictions (see, for example, IPPR 2016).

#### ***Variants of ‘full’ free movement: all jobs eligible***

For example, EU workers could be required to have a definite job lined up rather than come to the UK as a jobseeker. In practice, it is not clear whether this requirement would have a significant impact. It is widely assumed that EU citizens will retain the right to visit the UK without a visa for short-term trips (e.g. as tourists) in the same way that non-EU citizens from high-income countries like the United States or Canada can. If this is the case, EU citizens without a job lined up could simply visit the UK to look for one, then make a second trip if required to meet the administrative requirements after securing employment.

Second, there could be some form of numerical limit on the number of people who could work in the UK under free movement, either permanently or as an ‘emergency brake’ during times of particularly high migration flows. A numerical limit on free movement would need to be implemented either by restricting National Insurance Number (NiNo) allocations to EU nationals working in the UK for the first time, or by requiring residence permits.<sup>3</sup> Once the numerical limit was reached, the government would either need to operate a waiting list or require applicants to reapply when a new allocation of NiNos or residence permits became available. In either case, the question arises whether people would simply work without authorisation while waiting for authorisation to come through.

Analysing the mechanics of such options is difficult because they are mostly without relevant precedents. Liechtenstein has implemented a variant of the emergency brake but it applies only to physical residence and not to work; moreover, its small size and specific geographic location within Europe—with high levels of cross-border commuting—make it difficult to compare to the UK. Norway has the option to apply a brake in theory, but in practice has not invoked it.

These options are the closest options to the status quo. The main rationale for relying on such a model would be to gain concessions in negotiations with the EU on other issues, particularly UK-EU trade. Whether such concessions can be negotiated in practice is difficult to predict at this point, given the complexity of the EU negotiation process.

#### ***Partial free movement?***

Some proposals for post-Brexit labour migration involve retaining open access to the labour market for some types of work but not others (e.g. Katwala et al, 2016; University of Oxford, 2016). The rationale of these proposals is to reduce the administrative burden of applying for work permits in certain jobs, such as researchers or high-earning positions, while introducing more restrictive rules for migration into less skilled jobs. It is also possible that such an approach could provide a bargaining tool in UK-EU negotiations, although it departs significantly from the principle of free movement which involves almost no restrictions on the type of work performed.

In practice, a system like this would still require new paperwork for the people who continued to benefit from open access to the labour market. If some EU citizens required permits in order to work legally in the UK while others did not, then employers would need to be able to demonstrate that the people they were employing without a work permit were genuinely entitled to this status. EU workers in eligible jobs would need documentation to demonstrate their status, for example to facilitate entries and exits at the border.

3. The NiNo approach is administratively more straightforward than a permit approach, since EEA citizens already living and working in the UK (who would not be subject to the limit) are expected to have a NiNo already and thus could distinguish themselves from ‘new’ EEA arrivals to whom the emergency brake applies. Using NiNos would also mean that anyone not currently in the UK who had already obtained a NiNo on a previous visit would also be eligible to return.

As a result, this hybrid model of ‘partial free movement’ might in practice require some kind of application or registration, albeit a much simpler one than under a normal work permit system. For example, employers might still need to become a registered sponsor (or rely on a third party sponsoring body), and be subject to compliance checks. Compliance difficulties might arise if eligibility for permit-free work was based not on salary (which is at least in principle relatively easy to verify) but on occupation or sector (which is easier to misrepresent). Not all types of work will be easily classified into sectors or occupations.

In other words, this model would not be free movement in its present form, even for eligible workers and employers; but the process would presumably involve many fewer eligibility requirements than an ordinary work-permit system.

### 3. Conclusion: How complex should the immigration system be?

One of the trade-offs the government faces in deciding on the scope of work permit programmes is between the ability to tailor policies to different government objectives vs. create a system that applies a transparent and simple set of rules more uniformly. The argument for a certain degree of fine-tuning is that the government can usefully put immigration policy at the service of other government objectives—for example, using it to build skills or supply labour to particular industries or reduce costs in the public sector.

The argument against such tailoring is that it makes the immigration system more complex and thus more difficult for the government to manage and enforce. An immigration system with complex industry-specific rules and quotas, with different kinds of authorisation required depending on the nature of the work would require greater resources in order to police the boundaries between different categories.

An accompanying challenge with complex, industry-specific rules is how to determine where to facilitate migration and where to restrict it. Because of the complexity of the different arguments for different types of ‘need’ for workers below the ranks of the highest skilled, there is no single, objective way to do this.

Deciding whether it makes sense to facilitate migration into a given industry will mean balancing many different considerations. These include, for example, whether alternatives to migration such as labour-saving technology are realistic; whether there are circumstances under which more British workers could be encouraged to do the work; or whether the industry is considered ‘strategically important’—a concept that is difficult to define in practice.<sup>4</sup> Other important considerations include government objectives other than immigration, such as how it plans to meet demand for adult social care or staff the NHS, what role it envisages for an agricultural industry in the UK and, more broadly, whether it wants to use immigration as part of a broader industrial strategy to support particular parts of the economy.

It is possible to assess these qualitative factors systematically, as the Migration Advisory Committee has done in the past when examining questions such as whether there are shortages in particular occupations or what would be the impact of closing the Seasonal Agricultural Workers Scheme in 2013. If the policy objectives are sufficiently clear, the same approach could be taken to a wider range of occupations and industries. Nonetheless, the lack of obvious statistical metrics for prioritising different kinds of immigration in the low- and middle-skilled echelons of the labour market makes it inevitable that political judgment will also play a strong role. Indeed, there is a risk that when developing a system with widely varying industry-specific rules, the government will come under pressure from organised interests to add further exemptions for political reasons, rather than relying on ‘hard evidence’ or making decisions based on systematic consideration of the government’s overall policy priorities.

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4. These are the main criteria the Migration Advisory Committee uses to assess whether it is ‘sensible’ to add an occupation to the UK’s shortage occupation list; the criteria are evaluated primarily using qualitative rather than statistical evidence (MAC 2011).

**Timing and transitions**

In addition to these policy design questions, there are complex operational questions about the timing of policy changes. In particular, the government will need to ensure that before any new work permit system is introduced, the necessary policy guidance and visa-processing staff are in place. If migration policies end up playing a significant role in EU negotiations, it may be difficult to develop and consult on the relevant rules and processes long in advance of the conclusion of a post-Brexit UK-EU cooperation agreement, raising the question whether transitional rules will be required in the immediate aftermath of a UK-EU deal. (There could also be a role for transitional migration rules for other reasons, such as to allow employers to adjust more gradually to the significant change that ending free movement would bring.) The operational complexity of introducing an entirely new work permit system could be compounded by the large-scale challenge of processing residence applications for EU citizens already living in the UK before Brexit who are expected to retain their residence rights and will need documentation to prove it, if free movement comes to an end (Migration Observatory, 2016).

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