



Labour Campaign for Human Rights

**Brexit and human rights project briefing No. 4:
Variations on free movement**

January 2018

Executive Summary

It is becoming increasingly clear that, under the present government, free movement in its current form will end after Britain leaves the European Union.¹ Theresa May outlined the government's stance in her Lancaster House Speech last year:

“the message from the public before and during the referendum campaign was clear: Brexit must mean control of the number of people who come to Britain from Europe. And that is what we will deliver.”²

Yet amid the many suggested alternatives to free movement, there have been numerous proposals that offer variations on the existing system. These include free movement with a job offer, free movement with an emergency break, and free movement limited by regional or sectoral quotas.

This briefing does not seek to advocate for any of these alternatives, but instead attempts to provide an objective human rights analysis of each proposal. The final section of this briefing considers the recurring human rights risks posed by these three alternatives to free movement, and makes some recommendations for Labour's priorities for a humane, progressive post-Brexit immigration system.

These recommendations include:

- That Labour accompanies any post-Brexit immigration system with legislation that protects and strengthens workers' rights and security.
- That Labour works to reverse the perception that immigrants are valuable only in so far as they benefit the economy.
- That Labour seeks to reverse the government's 'hostile environment' for undocumented migrants.
- That Labour maximises any opportunity to limit the extent of nationality based discrimination after Brexit, particularly by 'levelling up' family rights for non-EU migrants.

Free Movement with a Job Offer

Perhaps the most widely proposed alternative to free movement is a system in which free movement continues for EU migrant workers on the condition that they possess a job offer before arriving in the UK.

The introduction of a job offer requirement may have worrying implications for workers' rights and security, particularly as it could bolster the power of unaccountable recruitment agencies, who might be able to provide job offers to people outside the UK en masse. The Trade Unions Congress has outlined its concern at “any expansion in the number of employment agencies recruiting solely outside of the UK” as this would diminish the ability of residents to apply for local jobs.³ The mandatory possession of a pre-obtained job offer would also strengthen the imbalanced, dependent relationship between migrant workers and their employers. If workers are reliant on their employment to maintain not just their income, but their secure residence in the UK, they are both more vulnerable to exploitation and less likely to challenge unscrupulous employers. As argued by campaigning organisation Another Europe Is Possible:

“allowing an agent to become the sponsor and controller of the migrant labourer ... would further legitimise and encourage employment practices often associated with the erosion of pay and conditions of workers, in particular complex pyramids of outsourcing and the overseas recruitment of international workers deliberately to reduce costs and erode existing labour standards.”⁴

Unless this proposal was accompanied by significant reform to Britain's immigration policy for non-EU citizens, it is sure to maintain the discrepancy in immigration routes for EU and non-EU nationalities. As

¹ <https://lchrblog.files.wordpress.com/2017/12/free-movement-briefing.pdf>.

² <https://www.gov.uk/government/speeches/the-governments-negotiating-objectives-for-exiting-the-eu-pm-speech>

³ <https://publications.parliament.uk/pa/ld201617/ldselect/ldcom/121/121.pdf>

⁴ <https://www.anothereurope.org/wp-content/uploads/2017/09/aeip-free-movement-final-web.pdf>

described by the Joint Council for the Welfare of Immigrants, “whilst EEA nationals have quietly provided flexible, often underpaid labour, the system for non-EEA migration has become increasingly rigid and punitive ... tough rules reserve entry, settlement and family migration for those on professional salaries.”⁵

EU nationals are likely to maintain their highly privileged access to the UK due to their geographic proximity and existing transnational social networks. Jonathan Portes points out that, as EU citizens will not be prevented from visiting the UK, there would be nothing to prevent them from visiting the UK to find a job, returning home and then re-entering with their offer.⁶ Free movement with a job offer has been criticised by Portes and others for not offering a sufficient break from the existing free movement system to satisfy the perceived demands of the referendum, which may make it an electorally challenging system for Labour to support.⁷

Free movement with a job offer also has the potential to make wealth and income an even more powerful determiner of one’s ability to immigrate. If income and skills are the only organising template for an immigration system, the ability to move from one country to another may become the sole preserve of the elite as migrants are reduced to their material contribution rather than their holistic contributions to society.

This proposal would therefore likely reinforce the perception that immigrants are only valuable due to their economic contribution to society, a narrative which has proven counter-productive to both local integration and national policy-making on migrant rights. As argued by The Institute for Public Policy Research, the logistical difficulties of implementing free movement with a job offer would also risk increasing the number of undocumented workers, which poses a myriad of problems for individual security and social cohesion.⁸

Free Movement with an Emergency Break

Another possible variation on free movement is a system in which free movement is preserved but with the addition of an ‘emergency brake’ to restrict access to the UK when migration flows become excessive. A watered-down version of this system was agreed prior to the Brexit referendum by David Cameron in the EU’s ‘New Settlement for the United Kingdom’, in which the UK would have been granted an “alert and safeguard mechanism” to limit the access of newly arriving EU workers to non-contributory in-work benefits for up to 4 years.⁹ After the referendum, Cameron was reported to blame the failure of the Remain Campaign on the EU’s refusal to grant Britain a more powerful mechanism for halting immigration.¹⁰

There are EU precedents for such substantial ‘safeguard’ clauses, such as in the EEA agreement and in Acts of Accession of New Member states to the European Union. When Bulgaria and Romania joined the EU in 2005, for instance, existing Member states were given the right to re-impose restrictions on labour market access by Bulgarian and Romanian nationals if they underwent “serious labour market disturbances.”¹¹

The intended benefit of this system for workers’ rights is that the break could help to relieve the detrimental impacts of migration in certain communities, particularly in areas that are experiencing a downward pressure on wages. However, any potential economic benefits would be reliant on how the

⁵ https://www.jcwi.org.uk/sites/jcwi/files/2017-04/JCWI%20Post-Brexit%20Immigration%20Briefing%20FINAL%20April%202017_0.pdf

⁶ <http://www.niesr.ac.uk/blog/eea-minus-option-amending-notending-free-movement#.V30eR-srK70>

⁷ <http://www.britishfuture.org/wp-content/uploads/2016/10/Britains-immigration-offer-to-Europe.pdf>

⁸ https://www.ippr.org/files/publications/pdf/beyond-free-movement_Jul2016.pdf

⁹ <https://publications.parliament.uk/pa/ld201617/ldselect/ldecom/121/121.pdf>

¹⁰ <https://www.ft.com/content/3901dd48-3cee-11e6-9f2c-36b487ebd80a> ;

http://www.huffingtonpost.co.uk/entry/iain-duncan-smith-germany-eu-renegotiation_uk_573190e0e4b05c31e5727b44/.

¹¹ http://europa.eu/rapid/press-release_IP11-960_en.htm?locale=enhttp://europa.eu/rapid/press-release_MEMO-11-554_en.htm

brake was designed and applied, and establishing the impact of migration would be complicated, especially given the regional discrepancies in migration flows to the UK.¹²

It is also likely that this system would further entrench the current tendency of free movement to funnel migrants into underpaid and undervalued sectors that are undesirable for UK workers, such as fruit picking or domiciliary care.¹³ The median gross hourly pay of central and eastern European migrants who tend to fill these low-skilled, low-pay positions is £3 less than it is for UK nationals.¹⁴ This underlines the need for Labour to ensure that any alternative to free movement is accompanied by policy mechanisms that strengthen workers' rights, such as labour market regulations or an increased minimum wage.

In a similar way to free movement with a job offer, unless an emergency brake is accompanied by extensive reform to the UK's approach to non-EU citizens, it is likely to prop up the UK's unjustly bifurcated immigration system. Whilst a safeguard clause does not pose the same level of risk for increasing the number of undocumented migrants, it certainly preserves the perception of immigrants as being valuable in a purely economic sense. It is also conceivable that the application of the emergency brake could strengthen anti-migrant sentiment and discourse, as the use of such a safeguard would give credence to the notion that immigrants are separate to or a drain upon British society.

Regional and Sectoral Quotas

A final potential variation on free movement is to restrict the migration of EU workers to certain geographic regions or employment sectors through a system of quotas. IPPR, for instance, have called for an emergency brake to be used "when EU migration is harming wages in particular occupations, sectors or locations. When the brake is triggered, it should result in restrictions only on the number or type of EU migrants permitted to work in the occupation, sector or location affected."¹⁵

The appeal of regional or sectoral quotas is that they have the potential to replace a blanket system with bespoke provisions that are better suited to satisfy contrasting immigration requirements. In theory, quotas could preserve the economic benefits of migration in sectors that are reliant upon foreign workers, and tailor immigration flows to the benefit of different communities.

However, sector-based schemes are likely to pose significant implementation and administrative challenges. Academics have warned that the complexity in designating which sector is awarded preferential access to migration flows creates a space for increased gaming and political lobbying that in turn are likely to undermine workers' rights.¹⁶ It is also highly likely that sectoral quotas would further entrench the self-sustaining intersection between low-skilled migration and insecure work discussed in the previous section.

International precedent also suggests that the same implementation problems extend to geographical quotas. As British Future convincingly argue; "regional immigration systems can be difficult to enforce, which in turn risks increasing illegal working, the exploitation of migrants and damage to public confidence in the management of migration."¹⁷

It is also highly likely that regional quotas would pose perhaps the most serious threat to community cohesion and migrant integration. If an immigration system is orientated around quota systems, it is difficult to conceive of a positive reception for refugees or other non-economic migrants who arrive in areas that have been designated as not needing immigration. Considering how to circumvent detrimental social effects such as these will be crucial if Labour are to lead the way in implementing a progressive Brexit.

¹² <http://www.migrationobservatory.ox.ac.uk/resources/reports/labour-immigration-brexitrade-offs-questions-policy-design/>

¹³ <https://iea.org.uk/wp-content/uploads/2016/11/Free-to-Move-PDF.pdf>

¹⁴ <http://www.ippr.org/publications/free-movement-and-the-eu-referendum>

¹⁵ <http://www.ippr.org/blog/what-new-deal-should-we-strike-with-the-eu>

¹⁶ <http://ukandeu.ac.uk/immigration-who-needs-a-deal/>

¹⁷ <http://www.britishfuture.org/wp-content/uploads/2016/10/Britains-immigration-offer-to-Europe.pdf>

Labour's Priorities

When considering the possible ramifications of the proposed alternatives to free movement, it is clear that Labour must prioritise the following areas if we are to achieve a post-Brexit immigration system that is based around human rights.

An overarching issue across each of the free movement alternatives is the narrative that equates migrants solely with their economic worth, which poses a threat to migrant workers' rights and to their integration into British society. The government's infeasible rhetorical commitment to reducing net migration to the 'tens of thousands' has created the politically useful misperception that economic hardship is the result, not of years of austerity, but of the presence of those who appear to be different.¹⁸ As the race equality think tank Runnymede Trust proposes, we on the left must:

"recognise that there are valid concerns about inequality and neglect in our society that often dovetail with concerns about immigration [yet must also] find lasting solutions to economic and social problems, rather than scapegoating migrants for them. Progressives must not accept division, suspicion and insecurity as guiding principles for the public debate about immigration."¹⁹

Labour must therefore ensure that in supporting any alternative to free movement, they express the need to see migrants from all countries as vital members of our communities rather than simply the inevitable by-products of global capital.

- LCHR recommends that Labour works to reverse the perception that immigrants are valuable only in so far as they benefit the economy.

A concerning likely repercussion for each alternative to free movement is that their understandable focus on controlling numbers means that they have the potential to weaken trade union protection and risk normalising undocumented workers, exploitative practices and the undercutting of the pay and conditions of British workers.²⁰ A diverse range of think tanks and campaigns have called for increased protections for workers after Brexit, with the Resolution Foundation calling for "a more robust approach to labour market enforcement."²¹ The Institute for Government also recommended a vastly improved enforcement of wider labour market regulations and the introduction of the National Living Wage as part of its proposals for implementing a post-Brexit immigration system.²² Open Democracy are amongst the organisations calling for sector-by-sector collective bargaining to protect the wages and conditions of migrant and domestic workers alike.²³

Labour has been right to focus on a 'jobs first Brexit', and to make this a reality we must also make sure that our post-Brexit immigration system is accompanied by strong protections for workers' rights.²⁴

- LCHR recommends that Labour accompanies any post-Brexit immigration system with legislation that protects and strengthens workers' rights and security.

A crucial way in which Labour can strengthen the rights and security of migrant workers is by reversing Theresa May's 'hostile environment.' In 2012, the then Home Secretary spoke proudly of creating a 'hostile environment' for asylum seekers, and a series of conservative governments have subsequently developed a surveillance apparatus that encourages suspicion and division within local communities.²⁵ Most undocumented workers do not sneak past border control, but arrive legitimately and lose their status. Once this status is lost, the hostile environment criminalises an individual's entire existence, as undocumented migrants cannot drive, work, access healthcare or send children to school, and are

¹⁸ <http://www.bbc.co.uk/news/uk-politics-39840503>

¹⁹ <https://www.runnymedetrust.org/projects-and-publications/equality-and-integration/immigration-after-brexit.html>

²⁰ <https://www.anothereurope.org/wp-content/uploads/2017/09/aeip-free-movement-final-web.pdf>

²¹ www.resolutionfoundation.org/app/uploads/2016/08/A-brave-new-world.pdf

²² https://www.instituteforgovernment.org.uk/sites/default/files/publications/Brexit_immigration_WEB.pdf.

²³ <https://www.opendemocracy.net/can-europe-make-it/luke-cooper/free-movement-plus-third-way-on-brexitmigration-debate>

²⁴ <http://www.independent.co.uk/news/uk/politics/brexit-latest-labour-queens-speech-second-vote-theresa-may-jobs-eu-single-market-customs-union-a7813721.html>

²⁵ <https://www.theguardian.com/politics/2013/oct/10/immigration-bill-theresa-may-hostile-environment>

therefore trapped in exploitative situations.²⁶ The threat of the hostile environment also hangs over migrant workers, and serves to suppress working and housing rights as individuals are less likely to legitimately challenge their employer or landlord due to fear of losing their right to remain in the UK.

- LCHR recommends that Labour seeks to reverse the government's 'hostile environment' for undocumented migrants.

Despite the many human rights challenges posed by Brexit, it also offers an opportunity to address the way in which the UK's dual immigration system inherently discriminates on the basis of nationality. Since 2016 skilled non-EU workers with Tier 2 visas are only eligible to stay in the UK permanently if they are earning at least £35,000 per year, which has been widely criticised for hinging immigration on an individual's income and wealth.²⁷ Non-EU migrants are also subject to extortionate spousal visa fees of £1,465 (an increase from £885 in 2014), as well as a £600 health surcharge per applicant.²⁸

Non-EU citizens are also subjected to Theresa May's notoriously harsh spousal minimum income requirement, which mandates that any British citizen with a spouse from outside the EU must earn an annual income of £18,600 or above (or £22,400 when including a child) before their partner can come to live with them.²⁹ This threshold contributes to Britain being ranked as the worst of 38 developed countries for family migration, and places a financial barrier on the right to a family life, excluding 41% of the British working population whilst disproportionately penalising women and children.³⁰

None of the alternatives to free movement offer a solution to this discrepancy, and Labour may wish to use Brexit as an opportunity to rectify the severe imbalances between how Britain welcomes EU citizens and those from the rest of the world.

- LCHR recommends that Labour maximises any opportunity to limit the extent of nationality based discrimination after Brexit, particularly by 'levelling up' family rights for non-EU migrants.

²⁶ <https://www.runnymedetrust.org/uploads/Race%20and%20Immigration%20Report%20v2.pdf>

²⁷: <http://researchbriefings.parliament.uk/ResearchBriefing/Summary/CBP-7264>

²⁸ <http://britcits.blogspot.co.uk/2016/07/british-citizens-forced-to-pay-719829.html>;

<http://britcits.blogspot.co.uk/2014/05/britishcitizens-forced-to-pay-338110.html>.

²⁹ <https://qz.com/917688/countries-are-cracking-down-on-immigration-by-making-it-hard-for-citizens-to-live-with-foreign-spouses/>.

³⁰ <http://www.mipex.eu/family-reunion>; http://www.migrationobservatory.ox.ac.uk/wp-content/uploads/2016/04/Report-Minimum_Family_Income.pdf.