A Scottish approach to immigration post-Brexit

How devolving immigration could lead to a better system for all workers

Executive Summary

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Introduction

A Home Office paper leaked to The Guardian in September 2017 shows the UK Government’s plan to end Freedom of Movement by March 2019. This has reinvigorated a debate about devolving immigration policy to Holyrood, with the Scottish Government and many civic organisations in Scotland seeking to maintain Freedom of Movement between Scotland and the EU post-Brexit.

This paper explores the options for a devolved immigration policy, the necessity to challenge anti migrant rhetoric and change views on social issues facing the UK, looks at the policy proposals put forward so far and finally outline a proposal for a progressive and universal-rights based approach to migration which puts the rights of all workers at its heart.

Challenging misconceptions about Freedom of Movement, immigration and asylum seekers

There is widespread misunderstanding over the nature of Freedom of Movement in Britain, its make-up and migration to the UK generally, with public opinion polling showing views on how many migrants there are in the UK and the amount of those migrants who are asylum seekers and refugees is totally out of kilter with official figures. Views on the ease with which asylum seekers can enter the UK and access social services also do not match up with reality – the UK has one of the most restrictive and draconian Asylum systems in the whole of Europe, and relative to the size of the country has contributed least to helping those on the front line of the global refugee crisis.

Immigration and the UK’s endemic economic crises

Britain is suffering from stagnant wages, poor quality jobs and run-down public services, which most UK political leaders have to one extent or another linked to immigration. Unemployment, wage stagnation and the quality of public services are significant issues that many are rightly worried about but the causal link between this deterioration and migration has less to do with reality and far more to do with perception and public attitudes.

Research on the relationship between immigration and employment shows at most a minor short-term impact of immigration on employment in low-skilled sectors. The trend is for immigration flows to follow the economic health of a country, not visa-versa. The recession coincided with a fall in immigration, while immigration rose when the economy was performing better.

The link between stagnant wages and low-skilled immigration shows some downward pressure in poorly regulated sectors like construction and hospitality (about 0.5-2%) but this is massively outweighed by the effects of the financial crisis and the subsequent flat-lining productivity and increased labour exploitation by business owners, with wages decreasing 4.7-9.7% in the respective industry sectors.

Finally, the blame for declining public services has been put on immigrants in some quarters, but nothing could be further from the truth. EU migrants contribute 12% more in revenue than they take out in expenditure. Migrants are 43% less likely to receive benefits that the UK-born population. Migrants tend to be of working age and are more highly educated, meaning they subsidise public services for the UK-born population.

Grounds for a Scottish Immigration Policy

Scotland faces particularly acute demographic challenges which makes the need for a bespoke immigration policy urgent. Scotland’s population was declining in the 2000’s at the fastest rate of any EU country. That decline has been reversed primarily due to immigration, with over 50% of that coming from EU immigration. An ageing population means it is anticipated the pensioner age group will grow 28 times as fast as those of working age over the next 25 years. The economic imperative for more immigration to address this huge demographic challenge, which is common to the whole of the UK but particularly stark in Scotland, should therefore be evident. Combined with the political will at the Scottish Parliament for a different approach to immigration from Westminster, and the case for devolving immigration powers is clear.
The limitations of current options for a devolved immigration policy

The options for a devolved immigration policy most commonly advocated for are the following:

- **Canadian/Australian devolved points based system:** In both Canada and Australia, individual regions set their own migration targets based on the specific economic, political, or cultural demands of their regions. Research on the Canadian system shows it is consistent with different provincial objectives and planning for migration. However, it is not clear that such a system would be applicable in the context of the EU’s Freedom of Movement system, both in terms of whether the EU would accept negotiating a separate deal in different parts of the UK and whether the rest of the UK would accept what could be castigated as a potential ‘back-door’ for higher immigration (although the arguments for this are spurious). There is also question marks over the desirability of a points-based system for ranking prospective immigrants, and whether this clashes with the Scottish Government’s stated commitment to the principles of universalism.

- **Post-study work schemes:** Graduates from abroad were previously given a two-year extension on their right-to-work visas, but this was withdrawn in 2012 by the UK Government. The return of this scheme to Scotland could be both politically manageable and attractive for keeping more of Scotland’s student population in Scotland after graduation, but in and of itself is unlikely to rise to the challenge of Scotland’s demographic challenge.

- **Employer-led approach and Occupational Shortages:** The final two approaches considered here are both employer-led where occupational shortfall lists are created by employers with high-skilled migrants attracted to fill those roles. This approach is controversial because it puts considerable power in the hands of big corporate employers who can design such lists and is extremely labour market driven.

Advocating a strengthened rights and worker orientated immigration policy

The policies explored above for a devolved immigration policy have merits but also have numerous deep underlying flaws. A far bolder devolved immigration policy based on the following principals can be fought for and won. Reforms that advocate expanded and universal rights for all migrants living in Scotland.

1. **Universal Rights**
   The guiding principal of a devolved Scottish immigration policy can and should be universal rights for all - that all people in Scotland are entitled to protections and rights irrespective of birth or immigration status.

2. **Retaining Freedom of Movement**
   Freedom of movement has been a largely positive development for Scotland and its economy, and an adjusted continuation of Freedom of Movement in Scotland is not unfeasible. The rights currently guaranteed under Freedom of Movement give strong protections to workers and any attempt to erode those rights would negatively impact EU and UK-born workers in Scotland.

3. **Expansion of workers’ rights and protections under Freedom of Movement**
   The grievance of UK-born workers about the undercutting of labour and wage depression must be confronted directly by combining a devolved Freedom of Movement policy with an expansion of workers’ rights, for EU and UK-born workers in Scotland. Reforms to labour practices should include establishing sector by sector trade union bargaining powers, a new scheme for sector inspection for firms with large numbers of low-skilled migrant workers to ensure regulations are being complied with, and heavier fines and penalties for employers found to be exploiting migrant workers.

4. **Devolution of employment law alongside immigration policy**
   The proposals above would only be possible with broad reforms to employment law, therefore we propose that employment law is devolved in combination with the devolution of immigration policy, so that both issues can be tackled legislatively together by the Scottish Parliament.

5. **Expanding universal rights to non-EEA migrants**
   Little attention has so far been paid to the role of non-EEA migrants in a devolved immigration policy, despite the fact this is a major portion of immigrants to Scotland, making up 2.8% of the Scottish population. There is an opportunity to extend the rights inherent in Freedom of Movement to all migrants in Scotland. Fear of
deportation and a lack of serious legal protection or knowledge of the rights non-EEA migrants are entitled to means they can more easily be the subject of exploitation. This is especially the case for undocumented migrants. Measures to address this should include amnesties and routes to legalising work, the ending of practices associated with the Home Office’ Hostile Environment approach and anonymous procedures for working conditions complaints.

6. An overhaul of the asylum system
Human Rights organisations and the Scottish Government have criticised the UK asylum system, including Detention and Removal Centres in Scotland, as inhumane and causing widespread misery. Devolution should push Scotland to ensure those seeking asylum have the same rights and accesses as those who have received refugee status, including mainstreaming into the benefits system and providing the right-to-work.

Making the case for a progressive immigration policy
To make a serious and well-argued argument for a devolved immigration policy it must be made in a nuanced way by challenging the widespread anti migrant rhetoric and myths while also engaging with the concerns and anxieties faced by many people in Scotland. Because ultimately people do have many legitimate concerns about what the future holds and concerns about their standard of living. Advocating a progressive devolved immigration policy needs to accord a seriousness to these fears and concerns from an evidence base; that the changes and deterioration in peoples’ working conditions and living standards were not caused by migration, rather migrants have been used as a scapegoat.

Reforms to the current immigration system should be advocated for in a multi-layered way, one that radically reforms domestic workers’ rights, while simultaneously recasting and refocusing rights for all migrants irrespective of birth place, all workers in Scotland are strengthened by stronger universal rights. The point of a separate or devolved immigration policy for Scotland should not be to recreate a New Labour-style approach which treats all criticism of globalisation as naïve and backwards. Rather, what is needed is a fundamental remodelling of rights for all people live in Scotland, irrespective of where they were born. Low pay, overly flexible jobs and underperforming social services affect everyone in Scotland, irrespective of if they are national or not. Anti-migrant rhetoric has clouded out the social and economic reality of the UK for too long, changing this debate presents the opportunity to truly remodel the social and economic makeup of Scotland to work universally for all people living here.