

A Scottish approach to immigration post-Brexit

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

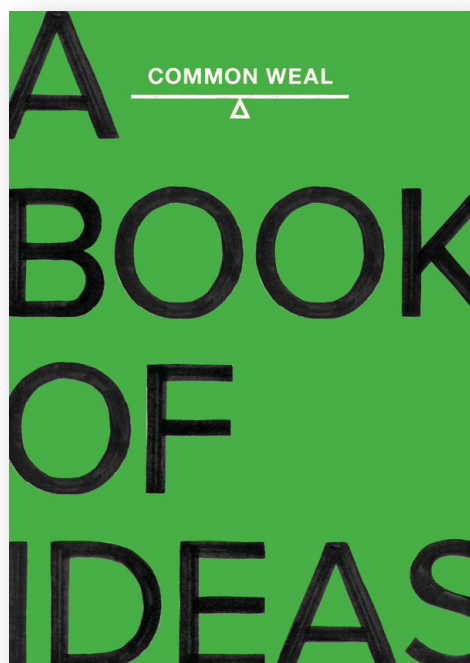
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COMMON WEAL POLICY



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Introduction

A major Home Office paper, leaked to the Guardian newspaper in early September, has finally given shape to what the UK's post-Brexit immigration policy may look like.¹ Amongst numerous overhauls to the current immigration system, Free Movement will end by March 2019.

Immigration remains a deeply divisive political issue in the UK which dominated the Brexit vote and much of the public discourse since. The plans to end Freedom of Movement in 2019 is squarely in line with the politics of being “tough on immigration” that have grown largely unchallenged in the UK for years. Migration has become entrenched in the public imagination as the cause of a raft of social problems ranging from the lack of affordable housing, low pay, to unemployment, associations many politicians have either quietly accepted or actively encouraged. Indeed, immigration was one of the main points on which the Brexit vote was fought in 2016, with notions such as sovereignty, borders and control broadly understood through the lens of immigration. Seeing a fall to net-migration is paramount for a large segment of the British population (especially those who voted Leave), and the success of the Brexit negotiations and deal has been pegged on a decline in net-migration. This is consistent with a January 2017 poll that found 46% of people surveyed felt that control of immigration was more important than the economic health of the UK.²

The prospect of Freedom of Movement ending in 2019 has particularly severe implications for Scotland. Due to a combination of a lower birth rate and slower economic growth, Scotland is more dependent on migration generally than the rest of the UK. Many in Scotland have disagreed with the UK wide consensus on immigration. First Minister Nicola Sturgeon said earlier this year that Scotland should offer “a welcoming hand and an open heart to those seeking a better life or wanting to make a contribution here.”³ Post-Brexit, politicians’ at Holyrood have called for the investigation of a bespoke immigration policy for Scotland.⁴

It is therefore possible that Scotland may have a devolved and separate immigration policy. It is necessary therefore to explore the options that have been put forward to date, and offer analysis of the strengths and weakness of the various proposals. Brexit offers Scotland the opportunity to rethink and reimagine its immigration policy and reflect on the rights that all people living here deserve. Even if Brexit had not taken place there are many areas of immigration and workers’ rights in need of serious reform. The rights of all migrants living in Scotland must be advocated and campaigned for.

It is necessary to challenge the terms on which immigration has been debated for years in the UK. While social attitudes in Scotland are more progressive towards migrants than the rest of Britain, 64% of Scots in 2015 wanted controls on or the halting of immigration. A devolved immigration policy may provide the opportunity to challenge anti migrant rhetoric, and provide an opportunity for some serious analysis about the real cause of social problems in the UK that migrants are often blamed for. A new social consensus needs to be built by challenging the dominant narratives about immigration. Scotland's immigration policy should move beyond the restrictions and worst aspects of existing UK immigration policy – this debate must begin now.

This paper will discuss the following points:

- Shifting the debate on migration
- The grounds for a Scottish immigration policy
- The policy proposals put forward to date - values and limitations
- The quest for a broad and universal rights-based approach to immigration and workers’ rights

The author’s intention is to make a case that migrants are not the cause of numerous social ills in the UK or Scotland, but rather xenophobia towards migrants has been stoked and fed by many as a diversion to dealing with the real causes of the UK’s crisis. The aim is to challenge popular narratives about immigration as a necessary prerequisite to advocating a universal rights-based approach to a devolved Scottish immigration policy; shifting the debate from being one about migrant workers versus ‘native’ workers to one about expanding universal workers’ rights for everyone. This would be beneficial for migrants as well as the country as a whole.

¹ Hopkins N, (2017) Leaked document reveals UK Brexit plan to deter EU immigrants <https://www.theguardian.com/uk-news/2017/sep/05/leaked-document-reveals-uk-brexit-plan-to-deter-eu-immigrants> (Accessed 06 September 2017).

² Smout A, (2017) More Britons want greater control of immigration than EU free trade - poll <http://uk.reuters.com/article/uk-britain-eu-immigration-idUKKBN14T1GB> (Accessed 26 August 2017)

³ Dickie M (2017) Nicola Sturgeon pushes for Scottish immigration policy <https://www.ft.com/content/6433b5f4-96ed-11e7-a652-cde3f882dd7b> (accessed November 11th 2017)

⁴ British Broadcasting Corporation, (2017) MSPs call for separate Scottish immigration deal over Brexit <http://www.bbc.co.uk/news/uk-scotland-scotland-politics-38857951> (Accessed 16 August 2017)

The gap between Westminster and Holyrood on matters of immigration is massive, yet public perception of immigration is still largely negative in Scotland, and couched in many of the same poisonous myths that are prevalent across the UK. Fighting for a consensus on pro migrant issues must be done by challenging the grounds that immigration is currently fought over in the UK and shifting the debate about public issues towards their real culprits.

Challenging misconceptions about Freedom of Movement, immigration and asylum seekers

The question of what Freedom of Movement is needs to be discussed first, as much confusion remains about what in fact it constitutes. Freedom of Movement currently gives EU citizens the rights to come to a country for a three-month time period during which they do not automatically have access to social services in that state. At the end of this time period EU citizen's rights' to stay are extended if they are employed, self-employed or studying. If EU citizens become unemployed they have six months to seek further employment and if they haven't secured work after this time period, their access to Job Seekers Allowance and other social benefits can be curtailed.⁵

Despite popular perception, EU migrants do have some restrictions on their access to public support in the UK.⁶ The value of the current Freedom of Movement system is that it gives relatively strong economic and social rights to all EU migrants. These protections are also available for UK workers in the EU. They must be granted equivalent levels of state support and be employed under the same conditions based on the exercising of these treaty rights. As noted by Gardener: "These measures are intended to ensure the impossibility of creating an "underclass" of EU workers – that is, a group who have the right to live in a country but are subject to exploitation due to a lack of protection of their employment and social rights."⁷

Such confusion on what Freedom of Movement is can also be found in polling on public perception on immigration broadly. British people regularly assume that 24% of the UK's population is made up of migrants, and of these that 62% are asylum seekers, the view being that there are up to 15 million migrants in the UK of which over 7.5 million are asylum seekers.⁸ Yet the reality is radically different - only 12% of the UK's population are migrants of which only 0.01% are asylum seekers, so closer to 7.5 million migrants of which roughly 30,000 have ongoing asylum claims. Furthermore, a 12% migrant population is a fairly average percentage for a developed economy - the UK ranks 16 out of 35 in OECD countries on this scale.⁹

It should also be noted that it is a widely held view that the UK is one of the easiest places in Europe to get in to, and that upon arrival the UK gives a raft of benefits and housing that are unavailable to the native population. Yet being granted Asylum in Britain is incredibly difficult, with 64% of all applications rejected in 2015.¹⁰ Furthermore those in the asylum process are forced to live in destitution and poverty. Asylum seekers are denied the right to work and are in a separate benefit system, with Asylum Support worth only 50% of unemployment benefit and are denied access to most state benefits, a provision known as No Recourse to Public Funds.¹¹ The UK also has some of the most draconian border enforcement rules and runs detention and removal centers across the UK on an indefinite detention basis, the only country in the developed world to do this. Considering the refugee crisis on a global scale, Britain's 30,000 applications for asylum in 2014 is one of the lowest rates of application per thousand in the EU, with 0.5 per thousand.¹² These huge disparities in perception matter when considering how often Britain is described as being 'swamped by migrants'.¹³

⁵ Schmid-Drüner M, (2017) Fact Sheets on the European Union http://www.europarl.europa.eu/atyourservice/en/displayFtu.html?ftuid=FTU_3.1.3.html (Accessed 18th October 2017).

⁶ Schmid-Drüner M, (2017) Fact Sheets on the European Union http://www.europarl.europa.eu/atyourservice/en/displayFtu.html?ftuid=FTU_3.1.3.html (Accessed 18th October 2017)

⁷ Gardner Z, Cooper L, (2017) Brexit and immigration: prioritising the rights of all workers www.anothereurope.org/wp-content/uploads/2017/09/aeip-free-movement-final-web.pdf (Accessed 29th September 2017)

⁸ Centre for Labour and Social Studies (2016) Changing the Debate on Migration http://classonline.org.uk/docs/Changing_the_debate_on_migration_brexit_update.pdf (Accessed 22nd October 2017)

⁹ <https://data.oecd.org/migration/foreign-born-population.htm>

¹⁰ Centre for Labour and Social Studies (2016) Changing the Debate on Migration http://classonline.org.uk/docs/Changing_the_debate_on_migration_brexit_update.pdf (Accessed 22nd October 2017)

¹¹ https://www.refugeecouncil.org.uk/assets/0003/3990/Detention_in_the_Asylum_System_March_2015.pdf

¹² Centre for Labour and Social Studies (2016) Changing the Debate on Migration http://classonline.org.uk/docs/Changing_the_debate_on_migration_brexit_update.pdf (Accessed 22nd October 2017)

¹³ Elgot J (2015) Calais crisis: Cameron condemned for 'dehumanising' description of migrants <https://www.theguardian.com/uk-news/2015/jul/30/david-cameron-migrant-swarm-language-condemned> (Accessed 27th October 2017)

Immigration and the UK's endemic economic crises

Britain is currently in the midst of numerous endemic social and economic crises. Crisis of pay, availability and quality of jobs and the state of public services amongst many others persist. This deterioration is often attributed to immigration and the argument prevails that the country is “full” or no longer able to cope.¹⁴ Much is made by politicians of the impact of low skilled workers on the economy, with Theresa May saying in 2016: “I know a lot of people don't like to admit this - [for] someone who finds themselves out of work or on lower wages because of low-skilled immigration, life simply doesn't seem fair.”¹⁵

This idea was echoed by Jeremy Corbyn in September saying future immigration policies won't have “wholesale importation of underpaid workers from central Europe in order to destroy conditions.”¹⁶ Both statements reinforce the connection between wages and immigration. These sentiments about migration hold so much power in the UK because of the underlying anxieties about deterioration of living standards seen over recent years mixed with prejudices towards migrants. 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.

Jobs and the Economy:

In June of this year, the London School of Economics (LSE) published a paper on the economic impact of immigration. It looked at the reasons why people are worried about immigration and assessed the data based on these popular concerns as previously discussed. Wadsworth's findings showed that immigration had a negligible impact on employment generally but with some minor negative correlation with unemployment in low skilled work. It made the point that flows of migration tend to follow trends of employability, not the other way round, and that areas of higher unemployment had lower levels of migration overall.¹⁷ Such findings are consistent with other reports that show the impact of immigration on jobs is dependent on a host of variables and there are many specificities and nuances to the impact of migration but broadly that migration can cause a short term impact on unemployment but no discernable long term trends.¹⁸ Immigration decreased during the worst years of the recession and has increased in better times. The 2008 crash and its corresponding impact on the UK's economy were found to have a much stronger impact on unemployment in the UK both nationally and regionally.¹⁹

These points are linked to what is called the ‘lump of labour fallacy’ – the idea that there is a fixed number of jobs in the economy, and that for every extra migrant there is a job less for a British worker. Evidently this is not the case – every time a bank issues a loan to a new business start-up it is creating new economic activity from new capital which would not have existed otherwise, thus expanding the total size of the economy. Constraints on the size of the UK economy include austerity, which is a fiscal policy which contracts the size of the public sector and has a knock on effect on demand in the private sector.

Wages:

Unskilled migration is often seen as the causal factor of why wages have stagnated for many across the UK. The notion that Eastern European workers' are willing to settle for wages far below what UK workers would expect is a common assertion across the UK and over the last decade, wages have stagnated in many sectors. There is some evidence that migration did have a small negative impact on wages in some sectors of the economy (between 0.5-2%). This was more pronounced in the service, construction and low to medium skilled industries than others, industries which tend to be poorly regulated with low levels of collective

¹⁴ Politics Home (2016) Read in full: Theresa May's Conservative conference speech on Brexit <https://www.politicshome.com/news/uk/political-parties/conservative-party/news/79517/read-full-theresa-mays-conservative> (Accessed 29th September 2017)

¹⁵ Politics Home (2016) Read in full: Theresa May's Conservative conference speech on Brexit <https://www.politicshome.com/news/uk/political-parties/conservative-party/news/79517/read-full-theresa-mays-conservative> (Accessed 29th September 2017)

¹⁶ L Lewis H, (2017) Jeremy Corbyn: “wholesale” EU immigration has destroyed conditions for British workers <https://www.newstatesman.com/politics/staggers/2017/07/jeremy-corbyn-wholesale-eu-immigration-has-destroyed-conditions-british> (accessed 29th September 2017)

¹⁷ Wadsworth J, (2017) Brexit and the Impact of Immigration on the UK <http://cep.lse.ac.uk/pubs/download/brexit05.pdf> (Accessed 16 September 2017)

¹⁸ Ruhs M, (2016) The Labour Market Effects of Immigration http://www.migrationobservatory.ox.ac.uk/wp-content/uploads/2016/04/Briefing-Labour_Market_Effects_of_Immigration.pdf (accessed 23rd October 2017)

¹⁹ Wadsworth J, (2017) Brexit and the Impact of Immigration on the UK <http://cep.lse.ac.uk/pubs/download/brexit05.pdf> (Accessed 16 September 2017)

bargaining coverage. The impact of migration is small compared to flat-lining productivity and increased labour exploitation, and the broader impact of the 2008 recession over the same period which explains a 4.7-9.7% decrease in wages across the aforementioned industry sectors.²⁰

Public Services:

Migrants have been blamed in some quarters as the reason for deteriorating public services, whether it be an overwhelmed NHS, overcrowded schools or insufficient social housing. In reality, migrants are net contributors to public services. A UCL report from earlier this year found EU migrants contributed 12% more to government finances than they took out of it and that this net contribution was worth about £5 billion per year.²¹ It also found that EU migrants are 43% less likely to receive benefits than the native-born population,²² with only 1% of migrants to the UK on Job Seekers Allowance compared to 4% of the UK's population.²³ As noted by Wadsworth in the LSE paper: "Because EU immigrants are more likely to be in work and are younger and better educated than the British born, they pay more in tax than they take out in welfare. So immigrants have helped subsidise the NHS and other public services for British people."²⁴

Conclusion:

A large body of research paints the same picture: that immigration has had little impact on jobs, inequality or pay and that the aftermath of the 2008 financial crisis, austerity and deep-seated structural problems in the UK economy were primarily to blame for why living standards have fallen.²⁵ It was telling in September that Vince Cable, leader of the Liberal Democrats, revealed that during his time in the Coalition Government, reports detailing the real impact migrants had on wages and employment were forcefully withheld by their Conservative partners.²⁶ Being tough on immigration, and migrants being the cause of social ills was and remains too powerful of a political tool to question.

One of the most disingenuous sides of the Brexit referendum was the vision of what a post-Freedom of Movement UK would look like: free of its migrant population, wages, jobs and an improved standard of living were on their way, the argument went. Yet the reality is that these social ills weren't caused by immigration and the disappearance of migrants will not solve them either. Indeed, immigration controls would be likely to massively exacerbate these problems by putting a large strain on the tax revenue of the UK and creating skills shortages. As noted by a report by the Office for Budgetary Responsibility, a fall of net migration to 200,000 is likely to cost the state upwards of £16 billion annually in revenue, and the effect of "the tens of thousands" net migration target, and the accumulated negative knock on effects, would be severe.²⁷ Ultimately the point is clear, migrants are vilified and scapegoated by many politicians and much of the press in the UK, as a cover for addressing real social problems and to feed prejudices towards foreigners that have been stoked and encouraged for too long. The distance between the realities of migrants in the UK, and their impact on the economy and social services is so far from the poisonous debate that has been allowed to flourish.

The point should be made, and remembered, that when talking about migrants and migration we're speak of millions of people with complex lives, who live in a multitude of ways across the UK. Challenging anti migrant rhetoric is necessary, but a transformation of the entire debate should be sought. As Maya Goodfellow stated: "One of the arguments made in defense of immigration is that migrants are net contributors to the economy. On one level this makes sense - migrants are demonised as a drain on society, and we want to counter that mistruth. But relying solely on this argument risks reducing people to pound signs, implying that they only count if they're contributing."²⁸ Migrants' worth should not be exclusively calculated by their value to the state.

²⁰ Labour Representation Committee (2017) Wages, Migrants and Protecting Workers Rights. www.l-r-c.org.uk/policy/discussion/wages-migrants-and-protecting-workers-rights (Accessed 28th September 2017)

²¹ Dustmann C, & Frattini T (2014) The Fiscal Effects of Immigration to the UK www.ucl.ac.uk/economics/about/dustmann-immigration (accessed 29th September 2017)

²² Dustmann C, & Frattini T (2014) The Fiscal Effects of Immigration to the UK www.ucl.ac.uk/economics/about/dustmann-immigration (accessed 29th September 2017)

²³ Centre for Labour and Social Studies (2016) Changing the Debate on Migration http://classonline.org.uk/docs/Changing_the_debate_on_migration_brexit_update.pdf (Accessed 29th October 2017)

²⁴ Wadsworth J, (2017) Brexit and the Impact of Immigration on the UK <http://cep.lse.ac.uk/pubs/download/brexit05.pdf> (Accessed 16 September 2017)

²⁵ Financial Times (2016) The policy failures masked by scapegoating migrants <https://www.ft.com/content/044b85ec-9dd7-11e5-8ce1-f6219b685d74?mhq5j=e6> (accessed 29 September 2017)

²⁶ Stewart H, & Mason R, Vince Cable urges PM to lift lid on EU immigration reports <https://www.theguardian.com/politics/2017/sep/08/vince-cable-urges-pm-to-lift-lid-on-eu-immigration-reports> (Accessed 27th September 2017)

²⁷ Gardner Z, Cooper L, (2017) Brexit and immigration: prioritising the rights of all workers www.anothereurope.org/wp-content/uploads/2017/09/aeip-free-movement-final-web.pdf (Accessed 29th September 2017)

²⁸ Goodfellow M (2017) The Stakes: Immigration classonline.org.uk/blog/item/the-stakes-immigration (accessed 21st November 2017)

Grounds for a Scottish Immigration Policy

Calls for a bespoke immigration policy are founded on the specific demographic and economic issues faced by Scotland. In the early 2000s there was a growing worry about the projected decline of Scotland's population – due to a mix of emigration, an ageing population, health issues and low birth rates, Scotland's population was declining at one of the fastest rates in the EU.²⁹

Yet, in the ensuing 15 years there has been a marked reversal of this trend, and Scotland's population is at its highest in almost 40 years - growing by 283,000 so far this century. While there was a modest increase in the birth rate, 86% of this population growth came from immigration, with over 50% coming from EU migration.³⁰

The economic benefits of EU migration were noted in a Scottish Government report from earlier this year: EU migrants tend to have higher levels of employment, a higher proportion are of working age (80% as opposed to 65%) and EU migrants are a highly important section of Scotland's services economy. The report also noted that EU migrants are employed at all levels across the Scottish economy.³¹ Migrants in Scotland tend to be younger, well educated, fill gaps in the Scottish labour market and are net contributors to public finances.

The Scottish Government has a long-term strategy for encouraging migrants to not simply fill labour shortages but to also settle long-term in Scotland, recognizing the serious issues of Scotland's ageing population and that growth in Scotland's population in the 21st Century has largely come from positive net migration. Long term population growth will depend on migrants, with 90% of population growth projected to come from inward migration.³² The reality of Scotland's ageing population is stark, noted by the NRS 2017 report: "Over the next 25 years, there is a projected increase of 28% in the number of pensioners in Scotland, compared to an increase of just 1% in the number of people of working age"³³ and migrants are projected to play an increasingly important role both demographically and across the economy.

The limitations of current options for a devolved immigration policy

Considering the specifics of Scotland's long-term objectives for population growth and economic sustainability, ideas of how a devolved or separate immigration policy might function are vitally important. Several suggestions have been put forward by government bodies and researchers across Scotland. Below is an outline of the three options most commonly advocated and some analysis on their limitations and viability.

A working immigration policy - Canada and Australia devolved point based system:

MSP's from a variety of parties have called for investigation into a bespoke immigration policy, and explorations of a Canadian or Australian devolved style point based immigration policy has been looked at.

In both Canada and Australia individual regions set their own migration targets based on the specific economic, political or cultural demands of their regions.³⁴ In this system provinces have a high degree of autonomy in both searching for and determining areas of need within their economy, or cultural and linguistic demands – as is the case with Quebec and the desire for French speaking migrants. Research has shown that demographically this immigration system results in long term settlement in Canadian provinces consistent with different provincial

²⁹ Graham E, & Boyce P, (2002) Scotland's Population 2002: The Registrar General's Annual Review of Demographic Trends <https://www.nrscotland.gov.uk/files/statistics/scotlands-population-2002-the-register-generals-annual-review-148stedition/j9085b06.htm> (Accessed 17 August 2017)

³⁰ Hudson N, & Aiton A, (2016) Financial Scrutiny Unit Briefing EU nationals living in Scotland http://www.parliament.scot/ResearchBriefingsAndFactsheets/S5/SB_16-86_EU_nationals_living_in_Scotland.pdf (Accessed 19 August 2017)

³¹ Hudson N & Aiton A, (2016) Financial Scrutiny Unit Briefing EU nationals living in Scotland http://www.parliament.scot/ResearchBriefingsAndFactsheets/S5/SB_16-86_EU_nationals_living_in_Scotland.pdf (Accessed 19 August 2017)

³² Allan A, (2017) Home Affairs Committee Inquiry into Immigration: Scottish Government written submission <http://www.gov.scot/Publications/2017/02/9947/1> (Accessed 19 August 2017)

³³ National Records of Scotland (2017) Scotland's Population - Registrar General publishes annual review of demographic trends <https://www.nrscotland.gov.uk/news/2017/scotlands-population> (Accessed 28th October 2017)

³⁴ Boswell C, Kyambi S & Smellie, S (2017) Scottish Immigration Policy After Brexit: Evaluating Options for a Differentiated Approach <http://www.research.ed.ac.uk/portal/files/38000389/SIPafterBrexit0617.pdf> (Accessed 19 August 2017)

objectives and long-term plans. Such a system has the benefit of creating the means of filling Scotland's long-term needs as well as addressing various economic shortcomings.³⁵ The UK currently runs a version of a points system for non EEA migrants - the 5 tiered point based immigration system. Nonetheless recent statements from the government indicate the existence of the current point based system for non EEA migrants may be replaced upon Brexit.³⁶

There are some serious doubts over the political feasibility of such a devolved system in the UK's current political climate and its viability as an option in the EU moving forward to replace Freedom of Movement. There are fears often put forward that this would create a "backdoor" into the UK, and keeping people in Scotland once they get a residency permit would be difficult to police effectively, or would require stringent policies regarding honoring the details of an employment contract. The prospect of Scotland deporting or requiring ID cards for migrants in this way has its limitations as well. Furthermore on an EU level there are questions if the EU would allow these devolved rules or what the political objections to its implementation would be in Brussels.³⁷ It should be noted there are doubts as to whether or not the "back door" idea is credible, with the existence of a distinct workers register in the form of PAYE acting as an obvious citizenship demarcation between north and south of the border. The challenge, then, would be similar to today - policing black market employment activity.

It is questionable as to whether a Points-based system in Scotland would match the Scottish Government's stated progressive intentions for a devolved immigration policy. The Scottish Government advocates universalism in its approach to governance and should realize that such a system, which grades people according to a strict set of economic criteria, is inconsistent with this aspiration.

Post Study Work Schemes:

Until 2012, when it was scrapped by the Home Office, Scotland had a separate post-study work scheme, whereby graduates from Scottish universities were given a two-year extension on their visas to work. The goal would be for graduates to assist in developing Scotland's economy. Support for the scheme was recently reiterated by SNP Westminster leader Ian Blackford MP.³⁸

Arguably, the resurrection of such a scheme would be politically manageable and compromise may be more easily achieved. Yet it is questionable if such a scheme would in itself be a viable long term solution to Scottish economic and demographic issues.³⁹

Occupational Shortages:

The occupational shortages approach would place the incentive of filling labour market shortages on employers by creating occupational shortfall lists that high skilled migrants could fill. Such a scheme has some precedent in the current tier 2 work scheme in the UK. A reworked scheme that had less oversight from Westminster and recognized special exemptions or specific new skills lists could be created to recognise the demographic and labour requirements of the post Brexit Scottish economy.⁴⁰

These policies are seen as controversial as larger companies and corporations with the means and capabilities to sort through complex immigration law would be able to navigate this system far more easily, as opposed to much smaller firms who would struggle to meet their labour shortages in the same way. There are also some arguments against the long-term viability of a scheme for solving demographic issues in Scotland, as noted by SNP MSP Joan McAlpine: "In Scotland we need skilled workers and sectoral workers, but we also have this demographic challenge that you don't see in other parts of the UK."⁴¹

³⁵ Boswell C, Kyambi S & Smellie, S (2017) Scottish Immigration Policy After Brexit: Evaluating Options for a Differentiated Approach <http://www.research.ed.ac.uk/portal/files/38000389/SIPafterBrexit0617.pdf> (Accessed 19 August 2017)

³⁶ Bennett O, (2016) UK Immigration System To Be More Rigorous Than Australia's, Reveals Brexit Secretary David Davis www.huffingtonpost.co.uk/entry/uk-immigration-system-australia_uk_57cda444e4b085cf1ecf3237 (accessed 22nd October 2017)

³⁷ Write R, (2013) Sub-National Immigration Policy: Can it Work in the UK? <http://www.migrationobservatory.ox.ac.uk/resources/primers/sub-national-immigration-policy-can-it-work-in-the-uk/> (Accessed 9 September 2017)

³⁸ Blackford I, (2017) The government is dangerously close to deterring students and taxpayers <http://www.newstatesman.com/politics/staggers/2017/09/government-dangerously-close-detering-students-and-taxpayers> (Accessed 06 September 2017)

³⁹ Hudson N & Aiton A, (2016) Financial Scrutiny Unit Briefing EU nationals living in Scotland http://www.parliament.scot/ResearchBriefingsAndFactsheets/S5/SB_16-86_EU_nationals_living_in_Scotland.pdf (Accessed 19 August 2017)

⁴⁰ Boswell C, Kyambi S & Smellie, S (2017) Scottish Immigration Policy After Brexit: Evaluating Options for a Differentiated Approach <http://www.research.ed.ac.uk/portal/files/38000389/SIPafterBrexit0617.pdf> (Accessed 19 August 2017)

⁴¹ British Broadcasting Corporation, (2017) MPs call for immigration devolution <http://www.bbc.co.uk/news/uk-scotland-scotland-politics-38518107> (Accessed 25 August 2017)

Such a policy would be politically feasible as it is already similar to the Tiered immigration policy in place presently. However, the space for exploitation of season or low skilled workers is also a serious danger with such a system. Evidence shows that if workers' rights are exclusively determined by their employer's conditions, particularly in low paid season work (e.g. agriculture), exploitation can blossom.⁴²

Advocating a strengthened rights and worker orientated immigration policy

The policies explored above for a devolved immigration policy have merits but in their totality are a limited set of proposals. A far bolder devolved immigration policy based on the following principals can be fought for and won.

1. Universal Rights
2. Retaining Freedom of Movement
3. Expansion of workers' rights and protections under Freedom of Movement
4. Devolution of Employment Law alongside immigration policy
5. Expanding universal rights to non-EEA migrants
6. An overhaul of the asylum system

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. In practice, this would necessitate that access to health, worker's rights, social security and rights of residency would be equal to the rights enjoyed by those with full citizenship status in Scotland.

2. Retaining Freedom of Movement:

As noted by a 2016 government report on EU nationals living in Scotland,⁴³ despite flaws to how the current system functions, Freedom of Movement is largely a positive development for Scotland and its economy. It would be consistent with Scotland's civic views and long term economic goals to advocate for an adjusted continuation of Freedom of Movement. Indeed, despite what the British Government says publicly, this is a more likely outcome than people tend to believe. If Norway or Switzerland are to be examples of EEA partnership, then some version of Freedom of Movement will be mandatory.

The rights currently guaranteed under Freedom of Movement give strong protections to EU workers and the eroding of these rights would have serious negative knock on effects for domestic workers as well as EEA workers in Scotland and should be avoided. The charter rights held within Freedom of Movement give fairly strong legal and economic protections to EEA workers.⁴⁴ It would also be significantly cheaper and logistically easier to retain the current system as the rules and legal procedures for how EU workers already live in the UK are long established.

3. Expanded Workers' Rights within Freedom of Movement:

This argument is not to say that the current system of Freedom of Movement for those within EEA is not without flaws. There are serious cases of exploitation of European workers across the UK, and evidence of undercutting of wages does have some truth to it.⁴⁵ Yet the point should be made clearly that migrant workers are also the victims of such a system. 'Another Europe is Possible' recently published a report advocating for a system they dubbed, Freedom of Movement+. Freedom of Movement+ being the reinforcing of the existing Freedom of Movement rights, updated with certain extra rights for EEA workers coupled with reforms to domestic labour relations and law in the UK. Another Europe Is Possible is arguing that to make Freedom of Movement viable as

⁴² Labour Representation Committee (2017) Wages, Migrants and Protecting Workers Rights. www.l-r-c.org.uk/policy/discussion/wages-migrants-and-protecting-workers-rights (Accessed 28th September 2017)

⁴³ Hudson N & Aiton A, (2016) Financial Scrutiny Unit Briefing EU nationals living in Scotland http://www.parliament.scot/ResearchBriefingsAndFactsheets/S5/SB_16-86_EU_nationals_living_in_Scotland.pdf (Accessed 19 August 2017)

⁴⁴ Gardner Z, Cooper L, (2017) Brexit and immigration: prioritising the rights of all workers www.anothereurope.org/wp-content/uploads/2017/09/aeip-free-movement-final-web.pdf (Accessed 29th September 2017)

⁴⁵ Labour Representation Committee (2017) Wages, Migrants and Protecting Workers Rights. www.l-r-c.org.uk/policy/discussion/wages-migrants-and-protecting-workers-rights (Accessed 28th September 2017)

a long-term project, the underlying grievance of British workers must be engaged with directly. The persistence of highly exploitative working conditions for UK workers, ranging from weak unionisation rules to zero hour contracts, means better working conditions must be achieved for all workers in Scotland.⁴⁶

The following direct reforms to labour practices should be implemented:

- Establishing sector by sector bargaining powers, whereby negotiations in sectors with large numbers of migrant workers take place to create powers for migrants' workers.
- A new scheme for sector inspection with large numbers of low skilled migrant workers to ensure regulations are being complied with.
- Heavier fines and penalties for employers and companies found to be exploiting migrant workers.

4. Devolution of Employment Law

These reforms would only be feasible in the context of broad reforms to domestic employment law. Thus, the devolution to the Scottish Parliament of employment law should accompany the devolution of immigration powers. The overhauling of practices such as Zero Hour contracts, dubious self-employment contracts, the strengthening of rights to unionizing and industrial action would benefit domestic workers as well as migrant workers. Weak domestic labour regulations and rights affect all workers in Scotland - these reforms would be of immediate necessity upon the devolution of immigration policy to reshape the underlying conditions that all workers in Scotland face.

5. Non EEA Migrants and expanded universal rights

An area that is often absent from discussions of reform of a devolved immigration policy is the place of non EU migrants. Freedom of Movement is of course specific to the EU and would not necessarily change with Brexit. Nonetheless devolution of immigration policy would give Holyrood the opportunity to restructure broader areas of Scotland's immigration policy. Non-EU migrants make up 2.8% of Scotland's population - roughly half of the EU national population in Scotland - and tend to have more established roots, but have also had a large new intake since the turn of the century.

The need for reforms to this area of immigration policy is founded in the reality that non-EEA migrants in many cases lack many of the essential protections currently held by EU migrants. This is due in large part to the limited rights that non EEA migrants, irrespective of legal status, hold. Non EEA migrants come to the UK in a complex myriad of different visa schemes, yet most of the schemes have limitations on their ability to challenge employers, and a high degree of conditionality to being granted papers coupled with limited or conditional access to social security. If non EEA migrant status is blurred or they become undocumented, the recourse to challenging employers is severely restricted.⁴⁷ Fear of deportation and a lack of serious legal protection or knowledge of the rights non-EEA migrants are entitled to, means that many undocumented migrants in Scotland are easy prey for exploitation and discriminatory working conditions.

As noted by Bradley: "What is known as the doctrine of illegality prevents undocumented workers from taking their employers to court, and fear of deportation prevents them from going to the authorities to seek remedy for abuses in other areas of life. State power creates a paradigm of juridified dispossession: far from slipping under the radar or through the cracks, migrant workers, particularly undocumented ones, find themselves trapped in a cycle of discrimination, abuse and exploitation that is tacitly sanctioned by government immigration law and policy."⁴⁸

The precariousness of undocumented migrants across the UK has only been made worse since the adoption of the Hostile Environment, whereby the ability of undocumented migrants to have bank accounts, driving licenses, access to doctors, or rent privately are severely restricted. The Hostile Environment was enacted in 2012 with the goal of making life so difficult for migrants that they would voluntarily leave the UK.⁴⁹ Nonetheless

⁴⁶ Gardner Z, Cooper L, (2017) Brexit and immigration: prioritising the rights of all workers www.anothereurope.org/wp-content/uploads/2017/09/aeip-free-movement-final-web.pdf (Accessed 29th September 2017)

⁴⁷ Bradley G, (2016) Juridified Dispossession: Brexit, Migrant Workers and the Law www.versobooks.com/blogs/2988-juridified-dispossession-brexit-migrant-workers-and-the-law (Accessed 28th September 2017)

⁴⁸ Bradley G, (2016) Juridified Dispossession: Brexit, Migrant Workers and the Law www.versobooks.com/blogs/2988-juridified-dispossession-brexit-migrant-workers-and-the-law (Accessed 28th September 2017)

⁴⁹ Yeo C, (2017) The hostile environment: what is it and who does it affect? www.freemovement.org.uk/hostile-environment-affect/ (Accessed 19th August 2017)

there is next-to-no evidence that the hostile environment makes undocumented migrants leave the UK, but rather places them in increasingly exploitative and precarious positions.⁵⁰ There are numerous practices and laws that have negative impacts on non-EEA migrants in the UK, and very few that have the intended impact of reducing net migration.⁵¹

The creation of broad reforms and legal protections for migrants, irrespective of nationality, should be advocated for. Such reforms would include:

- The ending of practices associated with the Hostile Environment.
- The creation of anonymous procedures for working condition complaints that have no bearing on a person's immigration status.
- The creation of amnesties for undocumented migrants and routes to legalising work.
- The mainstreaming and expansion of workers' rights advocated above under the Freedom of Movement+ system to non-EEA workers.

The hope is that this would end the exploitative treatment of undocumented migrants, by contributing to better regulated labour practices and diminishing the perception of migrants' undercutting wages. If the entire workforce was regulated and conditions equalised the state would also gain from a boost in tax revenue. Working conditions for all workers would be more easily fought for.

Detractors would say that this would "open a flood gate" of migrants from across the world seeking to move to the UK. And yet available research evidence does not point to this. A study by the OECD on the question of 'why do people migrate?' found that the availability of jobs, language spoken and family connections played a far larger reason than perceptions of the benefit system in the choice of a host country. People would come to the UK if there was a serious chance of employment and most likely wouldn't if not, as is the current case with EEA migration.⁵²

6. Refugees and Asylum Seekers

While asylum seekers and refugees make up a small percentage of all migrants to Scotland, the treatment of asylum seekers in the UK is punitive and has been criticised by numerous Human Rights' organisations.⁵³ Views on an overhaul of the Asylum system have been recognised and called for by MSPs,⁵⁴ with a recent report by the Scottish Greens stating that the current system isolates and immiserates people in the asylum system by placing them in the double bind of not having the right to work while being expected to survive on meagre weekly asylum support benefits.⁵⁵ Furthermore, the continued operation of Detention and Removal Centers, which operate on an indefinite detention basis, is a shameful practice.

In the context of broadly devolved Scottish immigration policy, reforms to the asylum system could become politically viable. The effective policy change would be to guarantee asylum seekers the same rights and accesses as those with status. This would include at the very minimum access to the mainstream benefits system by ending the No Recourse to Public Funds provision and establishing the right to work for those in the asylum system. As noted by a major study at Warwick University, incorporating asylum seekers into the mainstream benefit system would be of significant long term benefit to those in the Asylum system, by measures of integration, health and labour market participation the exclusionary policies have long term detrimental impacts on a myriad of social and economic measures.⁵⁶ While Asylum support is still set by the UK Government, there already exist notable differences on how Asylum Seekers in Scotland already access social services; with education, health care and legal aid all more accessible in Scotland than in the rest of the UK,

⁵⁰ Yeo C, (2017) The hostile environment: what is it and who does it affect? www.freemovement.org.uk/hostile-environment-affect/ (Accessed 19th August 2017)

⁵¹ Yeo C, (2017) The hostile environment: what is it and who does it affect? www.freemovement.org.uk/hostile-environment-affect/ (Accessed 19th August 2017)

⁵² Muus P (2003) The Economic and Social Aspects of Migration www.oecd.org/migration/mig/15579866.pdf (Accessed 17th September 2017)

⁵³ Amnesty International (2017) United Kingdom 2016/2017 <https://www.amnesty.org/en/countries/europe-and-central-asia/united-kingdom/report-united-kingdom/> (Accessed 25 August 2017)

⁵⁴ Kirkaldy L, (2017) SNP calls on UK Government to give asylum seekers the right to work <https://www.holyrood.com/articles/news/snp-calls-uk-government-give-asylum-seekers-right-work> (Accessed 25 August 2017)

⁵⁵ Kirkaldy L, (2016) Scottish Greens call for Scottish Government to take over running of devolved asylum seeker services <https://www.holyrood.com/articles/news/scottish-greens-call-scottish-government-take-over-running-devolved-asylum-seeker> (Accessed 25 August 2017)

⁵⁶ Scottish Government (2017) New Scots: Integrating Refugees in Scotland's Communities www.gov.scot/Resource/0051/00515713.pdf (Accessed 20th October 2017)

and can serve as a pretext for how to expand the system.⁵⁷ Fundamentally though, providing asylum seekers with the right to work would dramatically improve the economic and social health of those in the asylum system, save the state millions of pounds and make those people who will become Scots eventually integrated and incorporated citizens.⁵⁸

Scotland has a single detention center, Dungavel IRC in South Lanarkshire, a center with a dark record of abuse, with an investigation launched into a recent death in October 2017.⁵⁹ Advocating for the the closure of Dungavel and an end of immigration detention in Scotland are immediate political goals that are winnable. The devolution of immigration policy should bolster Scotland to challenge the UK Government's operation of a barbaric system, and the closing of Dungavel and ending of immigration detention in Scotland's jurisdiction, if not outright non-compliance with the UK Government's border enforcement regime, would be a powerful step and message in this direction. The Scottish Government should furthermore hold the UK Government to account for international commitments already made, and use its devolved immigration policy to strive towards resettling the 20,000 Syrian refugees that Westminster pledged to resettle by 2020 and advocate that the UK takes in a far larger and representative share of the 170,000+ refugees still awaiting status across Europe.

Making the case for a progressive immigration policy

For years' anti-migrant rhetoric has been growing across much of the UK either unchallenged or actively encouraged by most of the political parties. Politically totemic ideas such as bringing net migration to under the tens of thousands are almost sacrosanct ideas in the UK, irrespective of their value or feasibility. Throughout this, migration continues to fester as a deeply politicised and poisonous political argument in the UK, which has erupted at times into xenophobic and racist hate crimes and deaths. The 100% increase in xenophobic and racist attacks in the aftermath of the Brexit vote is testament to this. Public opinion about immigration remains largely hostile, and migrants are still seen as a major cause of social and economic problems across Britain. Ultimately the real social anxieties and anger of millions of people has been funneled into a broad consensus that migration has been a disaster for the UK and that only with its decline can Britain become a prosperous nation again.

To make a serious and well-argued argument for a devolved immigration policy, anti migrant rhetoric must be challenged directly, while simultaneously engaging with the real concerns and anxieties faced by many people in Scotland. Because ultimately people do have many serious 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 immigration.

The presence of migrants does not cause the lowering of wages, drive unemployment, use benefits disproportionately, nor commit crimes at higher rates. Migrants have been scapegoated to avoid dealing with these very real social and economic issues. As noted by Gardener: "The aim is to rebuild public trust in immigration by establishing a stronger set of social protections for all workers regardless of their nationality or status".⁶⁰ A new progressive immigration policy in the Scottish Parliament must advocate frankly that cutting migration will not solve the myriad of social issues that Scotland faces in 2017; if anything a dramatic reduction in immigration may exacerbate them.

Creating these protections for migrants must be accompanied by a wholesale argument about the reality of cuts, austerity and the longer impact of neoliberal policies on Scotland's economy, public services and housing stock. If immigration can be de-toxified, the real cause of Scotland's problems can be identified and real solutions, that will actually work, can be developed and implemented that will work for all people living in Scotland, irrespective of their nationality or birth. But if migrants are allowed to be policed and removed, harangued and vilified in a context where their presence is conditional, migration can and will remain an easy and used scapegoat.

⁵⁷ Scottish Government (2017) New Scots: Integrating Refugees in Scotland's Communities www.gov.scot/Resource/0051/00515713.pdf (Accessed 20th October 2017)

⁵⁸ McIntyre N, (2017) Let asylum seekers work to reduce poverty and save £70m a year, says MP <http://www.independent.co.uk/news/asylum-seekers-work-reduce-poverty-say-70-million-commons-debate-mps-government-immigration-eu-a7522271.html> (Accessed 25 August 2017)

⁵⁹ Mcquade C, (2017) Exclusive: Chinese national found dead at Dungavel Detention Centre <https://www.commonspace.scot/articles/11745/exclusive-chinese-national-found-dead-dungavel-detention-centre> (28th October 2017)

⁶⁰ Gardner Z, Cooper L, (2017) Brexit and immigration: prioritising the rights of all workers www.anothereurope.org/wp-content/uploads/2017/09/aeip-free-movement-final-web.pdf (Accessed 29th September 2017)

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 how all people live in Scotland, irrespective of where they were born. 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. Because 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, yet changing this debate presents an opportunity to truly remodel the social and economic makeup of Scotland to work universally for all people living here.

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