

Back to the future

What history tells us about the challenges of post-Brexit UK immigration policy

Jonathan Thomas

SMF

Social Market
Foundation

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ABOUT THE AUTHOR

Jonathan Thomas

Jonathan Thomas is the Migration Researcher at the SMF.

Before joining the SMF, Jonathan had a career as a practising lawyer. He holds a BA in Modern History from Oxford University and an Immigration Law LLM from Queen Mary, University of London.

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TWO IMPORTANT POINTS: CONSEQUENCES & LESSONS

Consequences

The immigration policies addressed in this Briefing generate significant passions. This Briefing's purpose is to assess their likely impacts dispassionately. It seeks to illuminate potential consequences of the UK Government's currently proposed course of action through applying lessons from history to the EU Settlement Scheme¹ (which sets out the UK's offer to stay to those EU citizens already resident here) and to the Government White Paper on the Future Immigration System² (which sets out the Government's proposals for the UK's immigration system going forward for new arrivals, with the ending of EU freedom of movement in the UK³).

Lessons

By "lessons" we mean examples that are potentially relevant to the UK's current situation which we may be able to learn from. Lessons are not the same as predictions. And history does not always repeat itself; two situations are rarely ever identical, which we highlight in this Briefing in areas where we believe it may be particularly relevant. And the relationship between policy (and importantly not just immigration policy but also many other areas of government policy) and migration outcomes is complex. The modern world is littered with the often unexpected and inadvertent consequences for migration of many different policy decisions⁴.

But at the same time human migration does tend to follow relatively forecastable patterns. The incentives, and the balance of risks and rewards to which different migration pathways and barriers give rise, have proved themselves relatively unchanging and predictable. They are also increasingly understood, as over time we now have increasing examples and experiences, analysed from different angles, on which to base our thinking about what the outcomes of certain policy courses might be. We therefore have no excuse for ignoring the lessons of the past when approaching the challenges of the present. This is the motivation for this Briefing.

EXECUTIVE SUMMARY

This Briefing takes a historical perspective on the potential consequences of ending the EU freedom of movement regime in the UK, using the lens of the past to seek to illuminate the UK's current immigration policy proposals. The Briefing touches on a number of different historical examples, including the UK's own prior experience of ending freedom of movement, from the Commonwealth, but takes as its primary inspiration the United States' experience over the past seventy years in seeking to regulate immigration from Mexico.

Across this period US immigration policy has ranged from allowing relatively free movement for work, to almost total prohibition on such movement, with various flavours in between, often with a focus on providing temporary migration routes. All accompanied by a fluctuating enforcement approach. The consequences were often unexpected, sometimes counterintuitive, but all instructive as to how immigration policies can have a profound and lasting impact on a nation.

Flowing from this are four lessons for UK policymakers today:

Lesson No. 1: Permanent Immigration Population

Greater immigration restrictions on well-established existing immigration flows can lead to an increased permanent lawful immigrant population.

For those immigrants already in-country, increased immigration restrictions combined with an offer to stay to those already here can convert some of what would have been *circular* migration into a *permanent* stay. And a number of aspects of the EU Settlement Scheme may in fact incentivise and assist this.

For those immigrants not yet in-country, the UK's proposals for greater restrictions on EU immigrants are accompanied by easing restrictions on non-EU immigrants, who have tended towards greater permanence as a way of securing their rights in the UK. And even for ongoing migration from within the EU, history suggests that placing immigration restrictions on an existing labour immigration route, which many used on a circulatory basis, may cause migrants to switch into other routes which may actually favour more permanent settlement.

Lesson No. 2: Irregular Migrant Entry

Greater immigration restrictions applied to well-established existing immigration flows can lead to increased irregular migrant entry.

The UK will remain open to visitors, tourists and students from the EU, so irregular migrants⁵ from the EU are not going to be effectively controlled at the border. The temporary routes outlined by the White Paper are designed to help business adjust to the new 'skills based immigration regime'. But history suggests that permitted temporary routes may themselves incentivise irregularity, where not sufficiently aligned with the economic and social realities of established labour market practices and incentives.

Indeed the interaction of immigration policy with the established pathways, connections and relationships that have been forged between employers and migrant employees on the one hand, and fluctuating immigration enforcement approaches on the other, has often meant that policy changes to existing lawful migration routes have led to outcomes quite different from those intended by policymakers, and irregular migrant flows have often resulted.

Lesson No. 3: Irregular Migrant Stay

Greater immigration restrictions applied to well-established existing immigration flows can lead to increased irregular immigrant stay, and therefore an increased irregular immigrant population.

Immigration enforcement dynamics both at the border but also in-country are key determinants of the size of the ongoing irregular immigrant population. This poses a particular challenge for the UK, seeking to restrict a long-established migration flow in circumstances where it will not meaningfully be able to control that flow on initial entry at the border, and is reliant instead on in-country controls. But the 'hostile environment' approach has significant limitations on the extent to which migrants no longer permitted to be in the UK can be practically identified, tracked and removed. And the UK's increasingly effective border control regime might actually accentuate the problem, incentivising migrants who become irregular to stay put, knowing their chances of re-entry, should they depart for a period, are increasingly slim.

The size of the irregular migrant population in the UK will also be impacted by the consequences of the EU Settlement Scheme. As applied in the UK, EU freedom of movement allowed for a fluid, neither here nor there immigration status for most, with few questions asked. This fluidity is now ending. The EU Settlement Scheme will instead set in stone the immigration status of EU citizens in the UK. And for those who for whatever reason are not able to access settled status, the status of being irregular in UK will henceforth become much more impactful to the migrant, and more visible to society; greater immigration control may therefore paradoxically give the impression of the opposite.

Lesson No. 4: Enforcement, Reality and Perception

An increasingly visible irregular immigrant population accompanied by increased immigration enforcement can give rise to greater public concern over immigration even if overall immigrant flows are reducing.

The recent history of the US provides a perfect example of this. Largely due to EU freedom of movement, the UK has had the luxury of not having to seriously grapple with irregular immigration. This is coming to an end. And given attitudes towards irregular migration in the UK, any spike in concern over this will likely be a deeply uncomfortable experience, for politicians and public alike.

A likely consequence will be focusing attention on the practical challenges in the UK of achieving realistic and scalable in-country immigration controls. And on difficult choices between a selection of unappetising options for identifying, tracking and removing unwanted migrants; an even more hostile environment? a local registration regime? a population wide ID card scheme? And whether such measures would assuage public concern over immigration numbers and/or control, or have quite the opposite effect?

In the light of these four lessons, the ending of EU freedom of movement in the UK as set out by the Government White Paper and the EU Settlement Scheme represents the start of a significant new challenge for the UK in managing not only immigration, but also the public's concerns, whether over immigration control or numbers.

And it should not be forgotten that the White Paper only sets out the baseline; the immigration policy which the UK will adopt in isolation. It does not address the possibility that trade deals which the UK may negotiate post-Brexit may result in less controlled access to the UK for the citizens of certain countries.

The Government needs to take this into account not only in designing the policy inputs, but also in thinking how to best manage the outputs. It should inject a dose of honest realism, coming clean about the complexities and unintended consequences of immigration policy, about the control that it does have, but also the practical limits to that control. And the trade-offs inherent in this, that it may not be realistic to have the degree of control over immigration that many people in the UK say they want, while at the same time keeping other aspects of UK society as those same people would like them.

In considering whether there are lessons for post-Brexit UK immigration policy that can be drawn from the US-Mexico experience, or indeed from the UK's own experience with ending the freedom of movement from the Commonwealth, we are not suggesting though that the same relative situation exists between the UK and the EU countries today. As a result, even if *the nature* of what is experienced in the UK may reflect the themes of this Briefing, *the scale* of what is experienced is likely to be quite different. Indeed, in terms of scale, all indicators point to the fact that going forward the main immigration pressures on the UK are likely to come from outside the EU, not from within it.

WHY IS THE HISTORY OF MEXICAN MIGRATION TO THE U.S. PARTICULARLY RELEVANT TO THE UK TODAY?

In this Briefing we aim to shine a spotlight on the UK's post-Brexit immigration policy choices of the present, using a range of immigration policy experiences from the past. These include the UK's own experience when it brought an end to freedom of movement from the Commonwealth. But the main angle from which this Briefing approaches this is through looking at the US's experiences in managing migration over its southern border, using as its core two academic papers; one by Massey and Pren (2012), the other by Clemens and Gough (2018), which analyse the consequences of the different strategies adopted by the US at different times over the past 70+ years to seek to manage these migration flows⁶.

What makes the US-Mexico experience potentially so relevant to the UK today is that it is in effect "a vast policy experiment stretching over the last 76 years" consisting of a succession of distinct phases that have spanned the full spectrum, from relatively free movement for work to almost total prohibition of movement, with various flavours in between, often focusing on making available lawful temporary migration routes, with "channels for regular migration [having] been opened, closed, and opened gain, with shifting degrees of accompanying border enforcement".⁷

In 1942 the US instituted the 'Bracero' (manual labourer) Program, a concerted attempt to utilise, but also regulate, Mexican labour migration into the US. In the subsequent period the Program underwent modifications, with important consequences for the make-up of cross-border migration flows. Then in 1965 the Program was ended, in theory stopping those flows. From that point on the US also began to develop numerical immigration caps, at an individual country, regional and worldwide level. US policymakers chose not to offer regular channels for employment-based migration across the US-Mexican border again until 2001, when a new fast track option for access to seasonal work visas was introduced. Allied to each of these policy

shifts was an immigration enforcement regime that itself shifted in focus and intensity, sometimes, but by no means always, aligned with the immigration policy changes.⁸

The US-Mexico migration experience provides one of the starkest reminders, indeed warnings, of the complex relationship between government policy and immigration outcomes. It demonstrates that when immigration policies clash with the day to day reality of established economic and social processes, those policies may not only have quite different, but indeed the very opposite, consequences from those intended by policymakers:

“From 1970 to 2010 ... the percentage of the population born in Latin America residing in the US more than tripled. These trends unfolded in spite of ... paradoxically also because of the progressive limitation of opportunities for legal entry, the massive build-up of enforcement resources at the border, the large rise in deportations, and the systematic restriction of the civil liberties and social rights of noncitizens. If the goal of such actions was to limit immigration from Latin America and prevent the demographic transformation of the United States, they achieved the opposite ... A softer line on restriction, less punitive enforcement ... could have yielded fewer permanent immigrants, less undocumented migration, and slower population growth.”⁹

We shall see how, and why, this happened. And in doing so we will look at four lessons for UK immigration policymakers today.

LESSON NO. 1: THE PERMANENT IMMIGRANT POPULATION

Greater immigration restrictions on well-established existing immigration flows can lead to an increased permanent lawful immigrant population

In the UK's current situation, with the prospect of greater restrictions being imposed on EU immigration, there are a number of different aspects to this:

- Part One: EU citizens already in the UK:

'Beat the ban' incentives can convert some of what would have been circular migration into permanent stay. For all the headline criticism directed at it, the nature of the EU Settlement Scheme provides important practical incentives to stay for those EU citizens already in the UK.

- Part Two: Migrants who have not yet come to the UK:

How might greater immigration restrictions actually lead to more new immigration into the UK on a permanent basis?

- From outside the EU, as greater restrictions on EU immigration are accompanied by lightening restrictions on non-EU immigration. But also
- From within the EU itself, as placing immigration restrictions on an existing, labour-based, immigration route, that many used on a circulatory basis, may cause migrants to switch into other routes to access the UK which favour more permanent settlement.

Part One: EU citizens already in the UK

Beat the ban?

The Commonwealth experience:

Counterintuitively, in ending free movement from the Commonwealth through the Commonwealth Immigrants Act 1962 (CIA), the UK Government cemented the foundations of multi-racial Britain¹⁰. Clear official hints that legislative restrictions on free movement were shortly to be introduced resulted in a 'beat the ban' rush, a doubling of the Asian population in the UK in the two years before the CIA came into force. "Faced with the choice of moving immediately [to the UK] or not at all, many chose to move"¹¹. "For example, of Muhammad Anwar's study of 570 Pakistani workers in Rochdale, only twenty-nine came to Britain before 1960, while 273 came between 1960 and 1963"¹².

More importantly though, until that point migration into the UK from the Indian sub-continent had been largely circulatory; individual males coming to the UK for a period, before returning and being replaced by another male from the same community. The CIA changed this. In ending the ability to move freely back and forth it encouraged those who had been sojourners to settle. Individuals leaving their families to come to the UK had always been part of a collective endeavour on behalf of their broader kinship group¹³. When the CIA brought down the curtain on circulatory work migration it therefore triggered permanent family migration; wives and children arriving in the UK to make their home here with those who had originally been sojourners: "in

Bradford there were 962 immigrant children in 1962 but 5307 by 1969”¹⁴. Followed by a chain of extended family members:

“Jaswant Singh Sohal, a retired dentist, says his father only intended to come for a few years when he moved to Birmingham in 1953. “He said he’d go back and settle when he had 5,000 rupees. It’s what most people said at the time”. He never did. Instead, he encouraged about 150 family members to join him. About half of Indian-born residents in England and Wales in 1971 were still in the country in 2011.”¹⁵

In bringing down a barrier while permitting the unification of families in this way, the CIA in effect opened up an ongoing immigration flow into the UK which incentivised and supported much greater permanent settlement of whole communities.¹⁶

The same pattern can be seen elsewhere.

Turkish guestworkers in Germany:

Germany, 1973: having remained open for over a decade, the entry invitation to Turkish guestworkers was withdrawn. The German Government “enacted a moratorium on the recruitment of guest workers, which, paradoxically, led to an increase in the numbers of foreign immigrants. Fearing that life in Turkey would not be what they expected if they went home, and that they would never be allowed to return to Germany, many Turks decided to stay and, to be on the safe side, brought their families to their adopted country ... By the mid-1970s there was a conspicuous trend towards permanent residence.”¹⁷

So when more restrictive immigration controls are placed on existing labour migration flows, combined with an offer to stay for those already here; “the right to stay put” can lead to the ‘production of immobility’¹⁸, to higher permanent immigrant numbers amongst those already in-country, converting what may have been transitory immigrants into permanent stayers.

The UK today

On the one hand we should be wary of extrapolating this lesson too far to the UK’s current situation. After all the reducing net inflows of EU citizens into the UK post the EU referendum¹⁹ hardly suggests a ‘beat the ban’ rush. Nor would the degree of criticism aimed at the EU Settlement Scheme by those intended to benefit from it suggest that EU citizens in the UK are viewing the Scheme as a wonderful opportunity to secure their rights here²⁰.

On one level this is not surprising. The relative economic factors playing into a decision between the UK and many EU countries now are quite different to those that subsisted even just a few years ago²¹, let alone those that existed between the UK and the Indian sub-continent, or Germany and Turkey, over fifty years ago.

And much more complex. For EU citizens in the UK there is not only a decision about whether to stay, but EU freedom of movement also presents a decision about where to go? Do exiting Poles return to Poland? Or do they seek to move somewhere else within the EU, Germany for example²²?

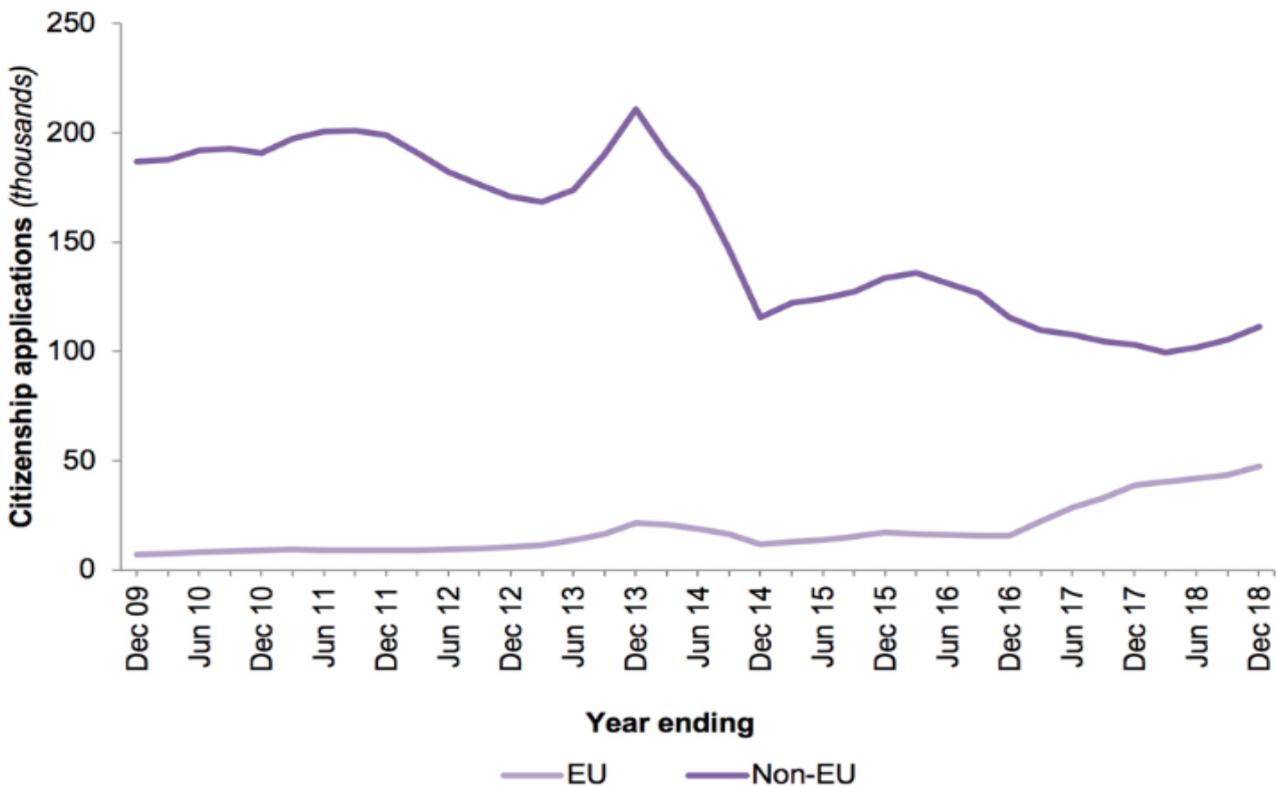
The make-up of family units may further complicate matters. Consider two families currently living in the UK, one where both parents are German, both children born in Germany, and the family speak German at home. If they do not wish to stay in the UK, their primary destination

option is relatively clear. The other a family where the husband is German, the wife French, one child French-born, the other UK-born, and the family’s common communication language in the home is English²³. With this sort of entangled, transnational family structure and experience, decisions become a lot less clear.

Evidence suggests that, for many EU citizens in the UK, emotion may be giving way to pragmatism. That even for those who feel aggrieved at being forced to make an immigration status choice resulting from a vote they took no part in, the priority for many is securing status for their children. And the practical default, particularly where those children have been born and raised for any time in the UK, is likely to be to remain²⁴.

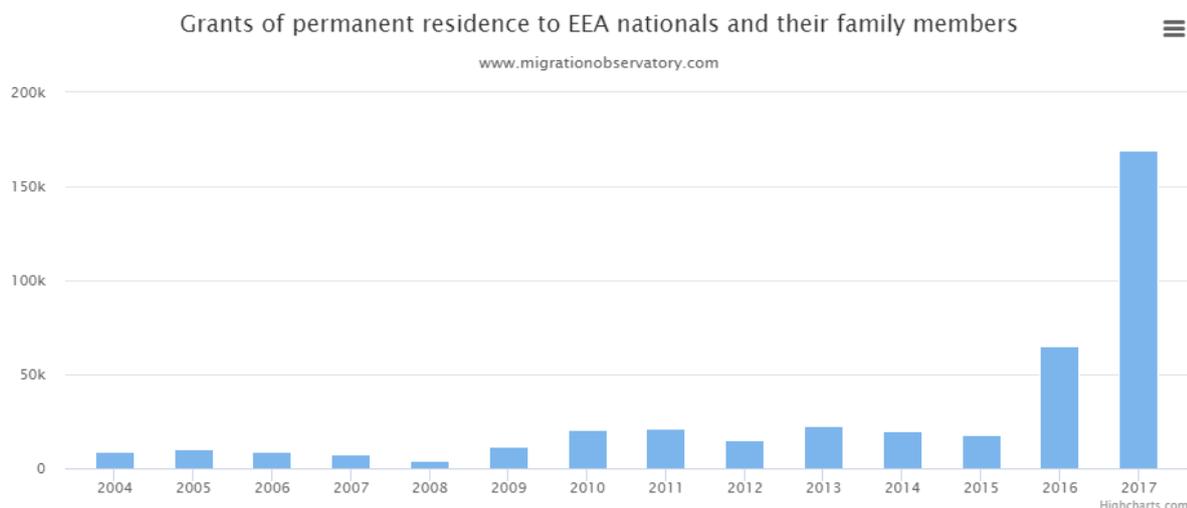
And it is the urge to permanence we are interested in here. This can manifest itself in unexpected ways. There is even evidence of EU citizens now giving Brexit as a rationale for their decision to get married in the UK²⁵. Less unexpectedly, and albeit from a low base, post the EU referendum vote there has been a significant spike in the numbers of EU citizens applying for British citizenship, with citizenship applications by EU nationals up from 12% of all citizenship applications in 2016 to 30% today²⁶.

Figure 12: Applications for British citizenship from EU and non-EU nationals¹, 2009 to 2018^{2,3}



Source: Home Office Immigration Statistics (n 19).

The rate of issuance of permanent residence cards to EU citizens has also spiked hugely in the wake of the EU referendum.



Source: *The Migration Observatory*²⁷. From Home Office immigration statistics; data includes non-EEA family members

Although this has tailed off now²⁸, this has likely only been in anticipation of the more generous and streamlined process that is the EU Settlement Scheme. Now fully operational, despite the ongoing political flux over Brexit, this allows EU citizens already in the UK to remain here permanently after Brexit.

The EU Settlement Scheme: A generous offer ...?

The EU Settlement Scheme does not adopt the declaratory approach that was taken with the ending of freedom of movement from the Commonwealth²⁹. Its purpose is to “avert a situation in future years where people with every right to be here find they have difficulty evidencing their status”³⁰. In terms of incentivising and assisting settled status, ie the right to stay in the UK permanently: “we have made it as simple and straightforward as possible ... to obtain a UK immigration status: [EU citizens] will just need to prove their identity, confirm their UK residence and declare any criminal convictions”³¹.

First generous aspect:

It is the eligibility and evidential requirements that could be considered the Scheme’s first generous aspect. Because these requirements are more generous than those under the EU freedom of movement regime³², as unlike under that regime the Scheme requires no evidence that EU citizens in the UK have been exercising Treaty Rights. “This means that EU nationals will not need to show that they have been working, studying or held Comprehensive Health Insurance (a big issue for many people refused permanent residence documents in the past).”³³

To obtain settled status under the EU Settlement Scheme, EU citizens will instead just be required to evidence five years continuous residence in the UK. So there will be EU citizens in the UK who could not satisfy the evidential burden to successfully prove their right to stay in the UK permanently under the EU freedom of movement rules, but who will be able to gain settled status to permanently stay in the UK under the EU Settlement Scheme rules.

While the Scheme has been designed around automated checking of work-related evidence³⁴, it does allow other forms of evidence of residence. Whereas, under the EU freedom of

movement regime, evidence of having interacted with certain types of benefits or services in the UK could be actively damaging in undermining the claim to economic self-sufficiency for the purposes of successfully applying for permanent residence, under the EU Settlement Scheme evidence of such interactions can be good evidence for simply having been resident here.

Second generous aspect:

Another generous aspect of the EU Settlement Scheme is the long grace period; until the end of 2020, fully four and a half years after the EU referendum, in which EU citizens coming to the UK can avail of the right to claim settled status.³⁵ Close family members living overseas can also claim the same status, as long as the close family relationship exists prior to the end of 2020 and continues to exist when the family member comes to the UK.

A caveat to this is in the event of a 'No Deal' Brexit. But even then the Government's current position is that the EU Settlement Scheme will still be available on broadly the same terms, albeit with the cut-off date moved forward to the planned Brexit date³⁶. Indeed the Government has even suggested that in this case an EU citizen who arrives in the UK after the Brexit date, but who was previously living in the UK before that date, can also avail of the EU Settlement Scheme.³⁷

Third generous aspect:

The length of the period interlinks with another arguably generous aspect of the Scheme; the concept of pre-settled status, in effect giving an applicant two bites of the cherry. If they cannot show evidence of five years continuous residence in the UK, the system defaults to allocating them with pre-settled status, giving them the right to simply stay in the UK until they have reached the five year threshold.

Fourth generous aspect:

The final generous aspect is that the Government has been at repeated pains to point out its more charitable approach to exercising discretion: "Throughout, we will be looking to grant, not for reasons to refuse, and caseworkers will be able to exercise discretion in favour of applicants where appropriate, to minimise administrative burdens."³⁸ This is very different from the approach taken by the Government to permanent residence applications under the EU freedom of movement regime, which have been marked by an often tortuous process, a high evidential bar, and a significant rate of refusal³⁹.

Therefore, as currently presented, in terms of the right to permanently settle in the UK, the transition from the EU freedom of movement regime to the EU Settlement Scheme is a transition from tough requirements (five years continuous exercise of treaty rights) toughly applied (high evidential bar) to much more benign requirements (simply five years continuous residence) relatively benignly applied (lower evidential bar), subject only to the EU citizen not having previously received a deportation decision from the UK on the grounds of criminality⁴⁰.

Of course, the proof of the pudding will be in the eating. And it could yet be that if the immigration policy debate, thus far relatively muted amidst the ballyhoo of much else in the Brexit process, once more becomes a flashpoint, the Government may be tempted to row back on some of its promises, for instance perhaps taking a more aggressive line on those EU citizens who cannot demonstrate that they would not have been removable under the EU freedom of movement

regime⁴¹. But, for now, the net result is a relatively open door for those EU citizens who wish to make the UK their permanent, lawful home. And the evidence suggests that while Brexit has certainly caused some migrants to consider their options for leaving the UK, increasing numbers seem to be starting to realise the nature of the offer that is being made, and those “migrants that feel informed are less likely to consider leaving”⁴².

... That nobody talks about

Some have expressed surprise that the more generous aspects of the EU Settlement Scheme have not been better advertised.⁴³ But this is hardly surprising. On the one side the UK Government does not want to advertise the fact that, under the Scheme, both the legal and evidential requirements for lawful permanent stay in the UK are more generous than under the EU freedom of movement regime.

And on the other side the most vocal are the critics of the Scheme, which broadly come from those representing opposite ends of the spectrum:

One end of the spectrum is those who should have little difficulty in successfully meeting the criteria of the Scheme, should they wish to do so; often more highly-skilled EU citizens who have been working in the UK for a considerable period. To this group though, to be forced by the Scheme to make a choice and formalise their immigration status seems an irksome and unjust imposition⁴⁴.

At the other end of the spectrum are those EU citizens at risk of not successfully applying for settled status, most likely, although not exclusively, because they may lack the awareness of, or ability to successfully navigate, the administrative process required. As a result they risk falling into an irregular immigration status, with the consequences that could entail⁴⁵. This is a potentially very significant aspect of the EU Settlement Scheme, which we shall come on to in Lessons Nos. 3 and 4.

Part Two: Migrants who have not yet come to the UK

One door closes, another door opens?

The recent fixation with EU immigration into the UK has been coupled with a tendency to view immigration from outside the EU increasingly benignly; from the reaction to the treatment of the Windrush generation, to the perceived impact of the Tier 2 cap on the NHS workforce, to the focus on the importance of the non-EU workforce in the social care sector, even to the relative popularity among the public of overseas students, over two thirds of whom come from outside the EU.⁴⁶

The practical outcome of this, as reflected in the Government White Paper, is an incremental liberalisation of the rules for lawful immigration to the UK from outside the EU: through the removal of the Tier 2 cap, the reduction of the required skill level for a Tier 2 visa, the abolition of the Resident Labour Market Test, and the incremental liberalisation of overseas students’ post-study work rights and of the parameters for switching from a student to a Tier 2 visa.⁴⁷ And, as currently articulated, the Opposition’s policy majors on no longer treating Commonwealth and other non-EU migrants “as second-class migrants ... We will level up, not level down.”⁴⁸

Per the ‘Applications for British Citizenship’ graph earlier, migrants from outside the EU have traditionally been much more likely than those from within the EU to seek to secure their rights in the UK by obtaining UK citizenship.

Top 10 nationalities receiving UK citizenship, 2017

Country of previous nationality 2017		
India	16,607	13
Pakistan	10,392	8
Poland	7,124	6
Nigeria	6,953	6
Italy	3,520	3
United States	3,187	3
South Africa	3,105	3
Bangladesh	3,086	3
Romania	3,025	2
Zimbabwe	2,852	2

Source: *The Migration Observatory, Naturalisation as a British Citizen; Concepts and Trends*⁴⁹

Alternative routes to permanence?

The ending of EU freedom of movement will clearly place a constraint on new labour flows from the EU⁵⁰; some EU workers will now require a UK employer sponsor to come, and others will not be allowed at all. But even where migration pathways have been restricted, the very fact of those restrictions may drive strategies whose outcome is in fact increased permanent lawful immigration.

The nature of the US Bracero Program, at its fully functioning height, favoured circular migration: “During the period 1955-59, around half a million Mexicans were entering the US each year, the number fluctuating around 450,000 temporary Bracero migrants and 50,000 permanent residents”⁵¹. Fast forward to today; Mexicans permanently settled in the US number over 13% of all working-age Mexicans and over 13% of all immigrants in the OECD⁵². When one thinks of the Mexican influx into the US, one thinks of illicit breaches of the border and irregular migration. And it is certainly true that when the Bracero Program was ended this was a key outcome, as we shall come on to under Lesson No. 2. But something less intuitive also happened; over time lawful permanent migration from Mexico also significantly increased, and circular migration decreased.

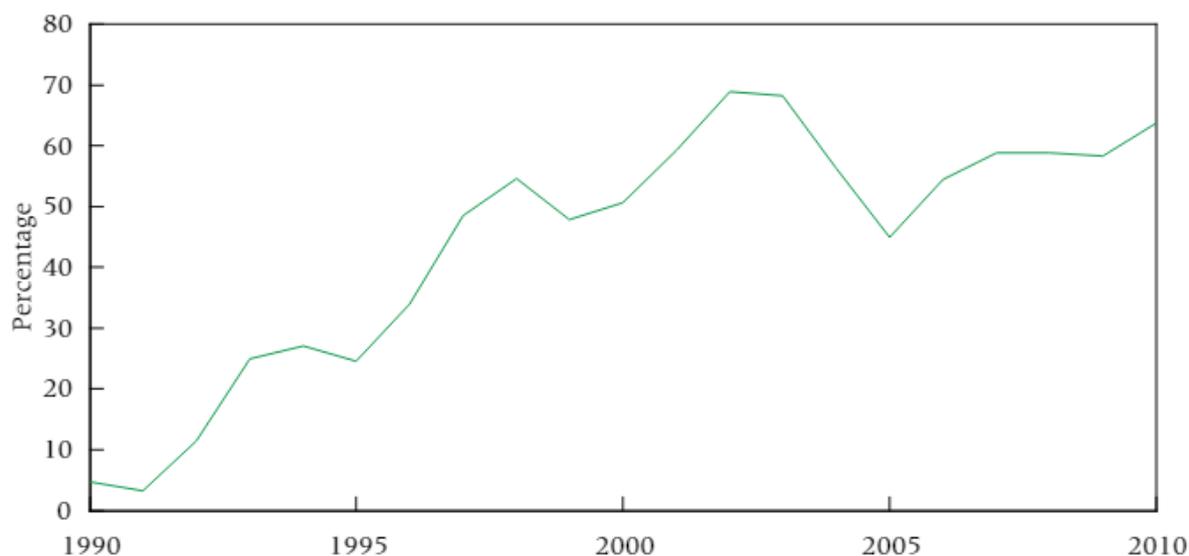
On the face of it this should not have happened, because lawful migration from Mexico to the US became severely restricted. At the same time as the Bracero Program was ended, the number of permanent US resident visas available to Mexicans was capped at 20,000 per annum, ie 200,000 per decade. Yet numbers ran considerably above that level, peaking at 2.8 million during the 1990s. What can explain this in the context of such a tightly controlled area of lawful migration?

A lesson from the US on family migration ...

It was the unintended consequence of the interplay of two separate policy strands which over time became interwoven. The first, the decision to exempt close relatives – parents, spouses, and minor children – of US citizens from the country quota limitation. The second, a series of

policy developments, from 1986 onwards, that facilitated, indeed incentivised, Mexicans who were resident in the US to naturalise in order to protect their position. “An additional 2 million Mexicans naturalized after 1986 compared to what would have been the case under the previous circumstances”. And as naturalized citizens went to the front of the queue for family reunion, the result of these processes was increased future legal immigration. Whereas only 5% of Mexicans were admitted to the US outside the Mexico country quota in 1990; ten years later this had risen to over 50%.⁵³

FIGURE 8 Percentage of Mexicans admitted outside the country quota as relatives of US citizens, 1990–2010



SOURCE: US Department of Homeland Security (2012).

Source: Massey and Pren (n 6)

The acquisition of citizenship can be the culmination of integration into a society. But, as seen in the US experience, it can also be an immigration strategy, which conversely may even point in the opposite direction. “The acquisition of destination country citizenship sets migrants free to either return or move on without fear of losing their right to re-migrate.”⁵⁴ For some migrants, achieving permanent residence or citizenship can be a defensive strategy, most attractive to those migrants who feel least integrated and secure⁵⁵. As a result, in the UK migrants from some countries of origin have been much more likely to seek naturalisation than others⁵⁶. This pattern seems to have continued in the early testing stages of the EU Settlement Scheme; Romanians, for instance, engaging with the Scheme at a much higher rate than other nationalities⁵⁷.

... But is it applicable to the UK?

We should be careful about extrapolating too far from the US experience. Not least because arguably no other country matches the US for investing such importance in extended family reunion as a ‘moral cornerstone’⁵⁸ of immigration policy⁵⁹. And no other country has created such potential for resident diasporas to develop and extend their presence through this route⁶⁰.

That said, a not dissimilar picture was seen in the UK when it ended free movement from the Commonwealth. Family reunion then became the key route to lawful migration from the Indian sub-continent⁶¹. This extended not just to transnational family reunion, but also to family

formation, with new spouses continuing to come into the UK from the country of origin, which gave this route greater expansive potential than policymakers had envisaged⁶².

But the UK's approach to family migration has hardened over the years, from the application of immigration rules to combat those seeking immigration status advantage through 'marriages of convenience'⁶³ to the current minimum income and language requirements for an overseas spouse visa⁶⁴.

But one should be wary of overexaggerating the US's openness to family migration, which the current President has taken aim at⁶⁵. Immediate relatives of US citizens may be exempted⁶⁶, but the interaction of caps on both family-based and single country visas can mean that, for certain categories of non-immediate relatives, for some of the main immigrant nationalities the wait for a family sponsored green card is currently decades long⁶⁷.

And at the same time, even the most draconian approach to family reunification rights is unlikely to eliminate the ability of diasporas to attract and sustain further migration inflows⁶⁸. Notwithstanding the UK's approach, evidence suggests the transnational marriage route to access the UK has been subject to abuse which has not always been strictly policed⁶⁹.

And there are also signs that UK policy on family reunion may be beginning to swing back towards a more accommodating approach, from the provisions under the EU Settlement Scheme allowing settlement of close family members, to the debate over the Refugee Family Reunion Bill⁷⁰, to Labour's proposal to end the minimum income requirements for a spouse visa⁷¹.

The path of least resistance

The main lesson though is that "migration always locates the path of least resistance"⁷²; when one migration route is blocked, potential flows often re-route into a parallel stream⁷³. The Government White Paper implicitly acknowledges this, making clear its estimate for long-term net EU work-related migration "does not include the potential behavioural responses of firms and workers, or entry for work under other routes"⁷⁴. Indeed, when it is the work migration route which is blocked off, any re-routing may actually mitigate towards greater permanence in immigrant settlement.

In seeking to understand migration into the UK we should be wary of stereotyping the migrant to their current migration channel of choice. Or indeed of viewing the challenges of immigration policy through the assumed "typical narrative for an average migrant"⁷⁵. There is indeed often considerable fluidity and interconnectedness between the work, study and family migration routes.

This is particularly the case where significantly sized diasporas are already situated in-country, and therefore make family migration a potential route for some⁷⁶, as is the case in the UK. And family migrants are more likely to settle long term in the UK than those coming through other routes⁷⁷.

The UK is also the second highest recipient country across the globe for international students⁷⁸. It may seem strange to focus on the international student route in the context of lower skilled immigration into the UK, but there are two opposite reasons why this might be relevant. The first is that not all those who have been entering the UK through the lower skilled work route have

necessarily been lower skilled. And the second is that, conversely, not all those entering through the student route are necessarily highly skilled.

The many different angles of international students

The ability for international students in the UK to extend their stay to work post-study was significantly restricted earlier this decade. The Post Study route being closed off, with the numbers of international students granted a visa extension for work dropping sharply⁷⁹.

But here also the pendulum now seems to be starting to swing back to a more accommodative approach. The incremental liberalisation of international students' post-study work rights proposed by the White Paper, including additional time and flexibility to switch into a Tier 2 work visa at the end of the study period⁸⁰, is now being positioned as part of an explicit post-Brexit Government sponsored 'export strategy' to boost the value of education exports by 2030 from £20 billion to £35 billion per year, through raising international higher education student numbers in the UK from their current level of 460,000 to 600,000⁸¹.

It may seem fanciful to suggest that any 'lower-skilled' EU immigrants, restricted from working entry into the UK, might instead utilise the study route to gain access. But "the 'Why rocket scientists pick strawberries?' line of inquiry" suggests that, just as "a significant number of highly skilled immigrants to the US used family-based tracks for convenience while they were fully eligible to use economic migration tracks such as H1B or special talent visas"⁸², some well-educated, higher-skilled EU migrants have been utilising the EU freedom of movement regime as the simplest, most flexible way to gain initial access to the UK, allowing them to gain a foothold and improve their English language before going on to deploy their skills at a higher level⁸³.

This may also help to explain why, notwithstanding the UK's openness to all skill levels of immigration under the EU freedom of movement regime, the percentage of immigrants in the UK with post-secondary qualifications significantly exceeds the percentage of the native-born population with such qualifications. Of course, much of this derives from the UK's restrictions on lower skilled non-EU immigration, but, nevertheless, the overall relative skill of the UK's foreign-born population versus the native-born population looks impressive.

Immigrants in several countries are more highly educated than the native born

% of adults 25 years and older with a postsecondary diploma or degree in 2015, by nativity

	Foreign-born population	Native-born population	Pctg. point difference
Israel	49	35	14
UK	49	37	12
Canada	65	60	4
Australia	63	59	4
Sweden	41	40	1
Italy	14	15	-1
Spain	29	31	-1
France	26	30	-3
U.S.	36	40	-4
Netherlands	28	33	-5
Germany	22	28	-5
Greece	22	31	-9

Note: Differences are rounded after subtraction of unrounded percentages. College education is the completion of a postsecondary diploma or degree.

Source: Country censuses and surveys. See Methodology for complete list of data sources and years. See Appendix B for additional advanced economies.

"Majority of U.S. Public Supports High-Skilled Immigration"

PEW RESEARCH CENTER

Source: Pew, *High-Skilled Immigration* (n 59).

Of course accessing the UK through the international student route incurs upfront costs; both educational and immigration related⁸⁴. But these costs can be mitigated; international students can access the UK through further education and English language training establishments, not only through higher education institutions. And even within the higher education route, a Masters program requires only one year's costs rather than the multi-year commitment of an undergraduate degree.

The MAC and Masters students:

In this regard the Migration Advisory Committee highlighted some interesting data. While undergraduate earnings outcomes at all earnings quartiles show UK, EU and non-EU students relatively evenly matched, and indeed overseas students going on to earn more than native students two years after graduation, this changes significantly for Masters students. For these students, while earnings outcomes are relatively evenly matched for the upper and median quartiles, there is a stark difference at the lower quartile, with non-EU student outcomes significantly adrift. And for MBA students this differential is pronounced across all quartiles.

Table 7.5b: Postgraduate: Master's taught – earnings of 2013/14 graduating cohort, in the 2015/16 tax year

Domicile	Number in earnings figs	Earnings – lower quartile	Earnings – median	Earnings – upper quartile
UK	68,450	£20,500	£25,400	£35,900
EU	4,080	£20,400	£26,200	£33,800
Non-EU	4,655	£15,400	£24,700	£35,900

Source: DfE Graduate outcomes (LEO): Postgraduate outcomes in 2015 to 2016 (Table 3)²⁵²

Note: These figures do not include Master's research graduates. This data is published within Table 3 of the same publication, and the number of international students in the earnings figures are small.

Table 7.6. Earnings in the 2015/16 tax year of 2013/14 graduating cohort who had studied for an MBA

Domicile	Number in earnings figs	Earnings – lower quartile	Earnings – median	Earnings – upper quartile
UK	1,765	£37,600	£58,000	£85,800
EU	75	£33,000	£62,300	£84,400
Non-EU	465	£16,300	£25,700	£63,900

Source: DfE Graduate outcomes (LEO): Postgraduate outcomes in 2015 to 2016 (Table 3)²⁵⁴

Source: Migration Advisory Committee, *Impact of international students in the UK*⁸⁵:

*Footnote 252 in Table 7.5b is <https://www.gov.uk/government/statistics/graduate-outcomes-leo-postgraduate-outcomes-in-2015-to-2016>

The MAC concludes that “many overseas students having studied certain subjects did not move into the same type of job as UK and EU students”. For Masters students more generally, “this data suggests that more than 25 per cent of non-EU Level 7 taught graduates have earnings close to what one could obtain by working full-time at the minimum wage and well below the minimum salary threshold for Tier 2, the main work-related route”.⁸⁶ There are examples from around the world of where education migration and work intersect at the bottom end of the pay scale, not only at the top⁸⁷, and a certain cohort of non-EU migrants certainly seem to be undertaking lower paid work in the UK having gained access through a Masters program.

This raises a number of questions. How is this possible under the current immigration rules? Does this suggest a problem with the data? Or are these students remaining in the UK and working irregularly? Or have they lawfully been able to stay in the UK by switching to family routes which means they are not bound by the Tier 2 minimum salary threshold? The MAC was unable to find out.

More broadly, while, for some, studying abroad is designed to secure a certain status in their home country, which can obviate the need to emigrate for work⁸⁸, over the longer term it is the case that the study route has provided many with a first-step on the path to more permanent settlement in the UK, particularly for those groups for whom other lawful migration routes have

been more constrained. Of those granted settlement in the UK in 2016, 28% had initially arrived as students or their dependants⁸⁹.

Going forward, the Government White Paper's proposals add/enhance another potential access point into the UK; work migration routes explicitly promoted as being temporary only, which we turn to in Lesson No. 2.

LESSON NO. 2: IRREGULAR MIGRANT ENTRY

Greater immigration restrictions applied to well-established existing immigration flows can lead to increased irregular migrant entry

The White Paper: Temporary tensions

When presented with different measures for seeking to reduce irregular immigration, in comparison with other countries surveyed, the UK public shows the strongest support for further reinforcing the border. This is in preference to alternative measures such as increased in-country labour market enforcement, increased spending on development aid in countries of origin, or increased avenues for legal migration.⁹⁰ British politicians rarely miss a chance to talk up the importance of border control, whatever their political hue or approach to immigration policy more broadly – from Home Secretary Sajid Javid responding to small boats of Iranians crossing the Channel in December 2018⁹¹ to Shadow Home Secretary Diane Abbott’s pledge to add five hundred extra border guards to prevent illegal immigration⁹².

Yet the number of ways/places that migrants can realistically enter the UK undetected are few and far between, as those Christmas channel boat crossings demonstrate. But even after the ending of EU freedom of movement in the UK, EU citizens will not need to adopt such strategies to enter the UK. Because the UK is almost certain to remain “open” to visitors, tourists and students from the EU. So they will still be able to come into the UK quite lawfully. And if they are entering the UK with the intention to work in a job, or under job terms, for which they are no longer eligible under the UK’s proposed new skills based immigration regime, there will be no practical way of preventing that at the border, provided the incoming EU citizen simply conceals their intention. For all the political posturing, therefore, irregular migrants from the EU are not going to be effectively controlled at the UK border.

The dependence of some sectors of the UK economy on EU labour has been well documented, particularly in the Migration Advisory Committee’s investigation into the use of EEA workers in the UK labour market⁹³. The final parameters of the UK’s proposed new skills-based immigration regime, including salary threshold and additional transitional immigration routes, and the time allowed for moving to this new regime, will determine how much of a shock this immigration policy shift is to the UK system; particularly in those more EU labour dependent sectors such as construction, hospitality, social care, horticulture.

The Government recognises “the challenges faced by these employers, particularly in sectors like construction and social care, who would find it difficult immediately to adapt”⁹⁴. Indeed, these concerns are primarily responsible for both the continued uncertainty over, and Government engagement on, the Tier 2 minimum salary threshold⁹⁵. And also for the Government’s increased focus on temporary immigration routes, including:

- a new transitional (at least up to 2025, subject to review) temporary (up to 12 months stay allowed) labour route (TTR)
- a refocus on the possibilities of the Youth Mobility Scheme (YMS) (up to 24 months stay allowed) with the potential expansion of the existing small selection of countries included within the scheme to include EU countries
- a refocus on the possibilities of the Government Authorised Exchange route for certain types of temporary workers

- a pilot for a seasonal agricultural work scheme, although, as with TTR, only proposed on a transitional basis

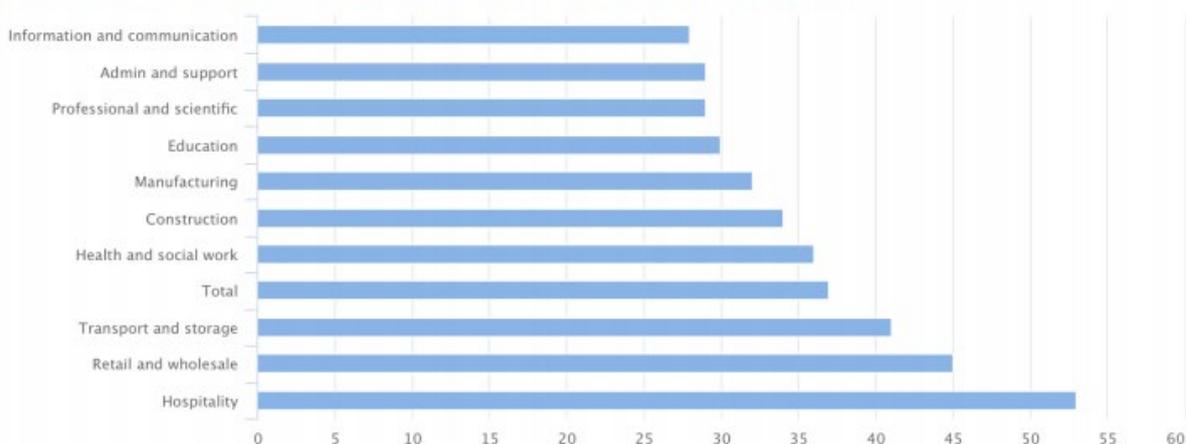
All are designed to recognise the business need for EU labour while simultaneously seeking to incrementally wean business off its reliance on it⁹⁶ and assist transition to the new regime. The intention is to give “employers sufficient time following the Implementation Period to make the necessary changes in their ways of working. Government will work with employers in key sectors to help drive this level of business change”⁹⁷.

These new/revised proposed temporary routes may achieve this. But they could also create problems of their own. Indeed there may be aspects of the design of these lawful temporary routes which may themselves create the conditions for unlawfulness.

Where particularly might tensions arise?

- The YMS is only open to migrants aged between 18 and 30. One third of newly arrived EU migrants in recent years would not have been over this age band. And there is some variation by industry; with hospitality, for instance, relying more on 18-30 age bracket workers, whereas education, manufacturing, construction tend rely more on more experienced hires.⁹⁸

Figure 3: Share of EU-born adults who are 18-30, arrived 2004+, by industry, 2017



Source: Migration Observatory analysis of APS 2017.

Note: includes all working adults age 18+ who arrived in 2004 or later, including both employees and self-employed. Small differences may not be statistically significant; comparisons mentioned in text are statistically significant, however, comparisons mentioned in the text are statistically significant.

Source: *The Migration Observatory (n 98)*. Note this shows age at 2017 rather than on arrival, but demonstrates the different EU-born age profile between different industries

- Under both the YMS and TTR the migrant is not allowed to bring in any dependants; one third of recently arrived EU migrants came with children.⁹⁹
- The YMS currently only allows access, on a reciprocal basis, to those from a small number of low-risk countries, with caps for each participating country. Thus far the caps have not been binding. But that might change if the YMS is extended to EU countries, and with the intention that it becomes a much more fundamental part of the UK’s labour immigration system than the minor additional feature it has thus far been.

- The YMS was designed primarily as a cultural exchange program, not as source of labour. YMS visa holders therefore have a number of options other than working. And even if YMS participants are planning to work, employers operating in the less glamorous worlds of horticulture, meat processing and social care may in practice find it difficult to compete against potentially more attractive jobs, such as restaurant and bar work.¹⁰⁰
- A key feature of both the YMS and TTR is the finite nature of the right to work. For the YMS, in its current formulation it is essentially a once-in-a-lifetime opportunity; you can only take part in the scheme once. As for the current proposal for the TTR, “this route will allow people to come for a maximum of 12 months, with a cooling-off period of a further 12 months to prevent people effectively working in the UK permanently”¹⁰¹. Although the Government does seem open to the possibility of a shorter cooling off period, this seems to be on the basis that a shorter cooling off period is matched with a shorter working period¹⁰².

It is understandable that the Government is seeking to aid business’ transition to the future immigration regime by providing/augmenting temporary routes. Without these the incentives and temptation for irregular working would be considerable. But this route does commit the Government to take a more active regulatory role. And one can envisage scenarios where the restrictions surrounding these lawful temporary routes may themselves potentially lead to the very problem they are seeking to address.

An employer may want to access a particular EU worker with whom it is already familiar, but who may no longer be in the UK and/or not have (pre-)settled status here. Or, having invested time and effort in training and having developed a relationship of trust with a worker hired under the YMS or the TTR, an employer may want to continue to hold on to that worker after the lawful temporary period runs out, rather than have to source a new, unknown, untrained worker.

The clear tensions, and incentives for irregularity are plain to see, to the extent that the restrictive conditions attached to these new immigration routes are at odds with the economic and social realities of established labour practices and preferences established under the EU freedom of movement regime which businesses have become so accustomed to operating under. In addition, in combination with the impact of the national minimum wage and auto-enrolment for pensions, new immigration restrictions can be viewed as part of a three-way shock to the lower paid end of the labour market which may incentivise employer non-compliance¹⁰³.

From the perspective of the temporary worker themselves, a key aspect of compliance can be tied to the interaction of the costs and time period of migration. Put bluntly, “the less time a migrant spends abroad, the less time they have to accomplish the goals which were their reasons for risking leaving home in the first place”¹⁰⁴. And, in particular, if the costs of “the migrant recruiting industry” are passed on to the worker, this can incentivise overstaying in order to make back these costs, particularly where temporary workers are only allowed to remain in-country for a relatively short time¹⁰⁵. Evidence suggests that this is what happened with the previous UK sector based scheme for temporary workers; “Workers were only allowed to come for one year, but it was impossible for them to recoup their high migration costs in this period, so most stayed on illegally.”¹⁰⁶ In this regard the increasing prevalence of agency workers amongst the EU worker base in the UK¹⁰⁷ may give cause for concern. But, equally, in funnelling recruitment through a more regulated, licensed channel this might actually help to ensure this concern is appropriately mitigated¹⁰⁸.

Stop me if you think you've heard this one before

What might the US-Mexico experience tell us about the potential outcome of these tensions? Of course the situation of EU workers coming to the UK should be distinguished from that of Mexicans going to the US. In practical terms the Mexicans have literally nowhere else to go, whereas EU workers still have a number of alternatives, the rest of the EU being open to them. What is not clear though is the extent to which these alternatives will trump, or be trumped, by the established pathways, connections and relationships that have been forged between employers in the UK and workers in certain parts of the EU over the last two decades.

For this reason, the US-Mexico experience is still worth considering. And, given the Government White Paper's focus on temporary labour routes, the lessons of the 1942-1965 period in the US may be particularly relevant. And they give significant pause for thought as to what can happen when immigration policy cuts across approaches and relationships that have become deeply rooted between employers and labour.

Irregular incentives: lessons from the North America and Europe

While the US Bracero Program was designed to facilitate the lawful movement of low-skilled seasonal labour across the border, "several features of the program raised employers' incentives to hire on the black market. For example, an employer who liked a specific worker one season and wished to rehire him the next could not do so, as workers were only assigned from a common labour pool. As a result, many such employers simply rehired the desired person on the black market. The result was rising irregular migration alongside rising regular migration."¹⁰⁹

In 1954 the US Government instituted a new phase of the Bracero Program, amending it to allow both "a new "specials" program, allowing employers to hire named individual workers they trusted, and the new "mica" (or I-100) program, allowing them to renew/extend a worker's contract without the worker having to first return to Mexico". The result was an important shift of incentives that saw employers move to hiring through regular channels, and irregular migrant numbers collapsed.¹¹⁰

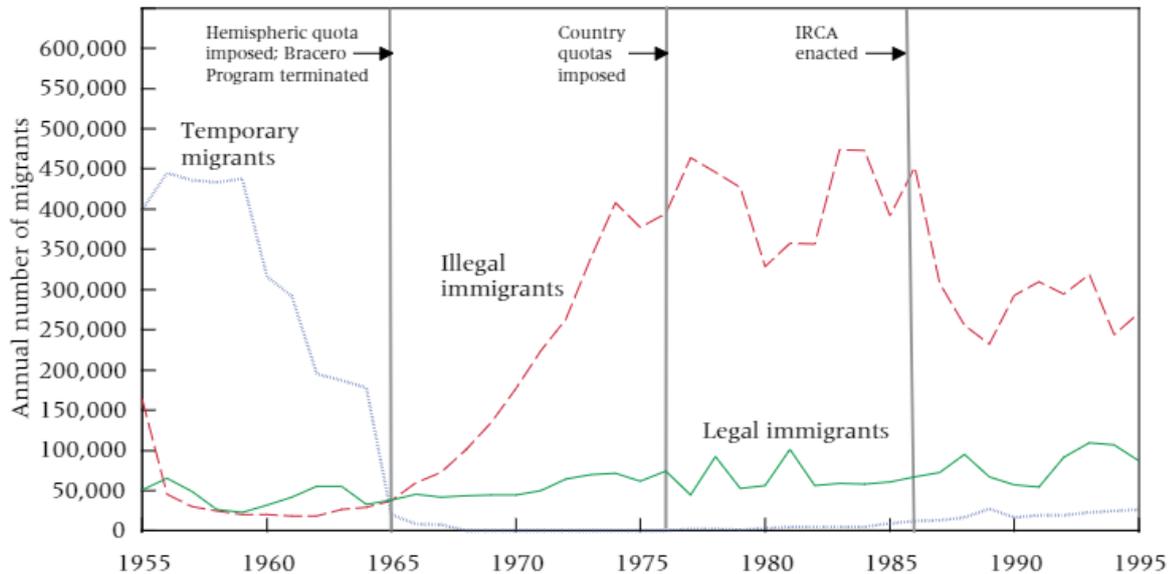
The German struggle to import labour, not people:

A similar tension was seen a decade later in Germany's relationship with immigrant Turkish guestworkers. The whole rationale of the system was to "*import labour but not people*", "to ensure 'rotation' by recruiting workers for a limited period, restricting their rights, and minimizing family reunion ... [but] many industries were becoming dependent on migrant labour. *Temporary workers were being recruited to meet permanent labour demand*, and the 'rotation' principle was breaking down."¹¹¹

In 1964, pressure from German industry, loathe to pay the costs of constantly training new workers, led to the two year "rotation clause", intended to limit a foreign worker's stay in Germany, being removed from the German-Turkish treaty.¹¹² But the tensions between business' needs and the formal requirements of the government controlled immigration process persisted. By 1969 over half of foreign workers in Germany were being hired directly by business on the basis of individual job offers rather than through the official recruitment processes¹¹³.

Back across the Atlantic, by the 1960s “a massive circular flow of Mexican migrants had become deeply embedded in employer practices and migrant expectations ... which connected sending communities in Mexico to work sites in the United States”¹¹⁴. Unsurprisingly the ending of the Bracero Program in 1965 did not therefore result in the termination of that flow, but rather led to its reconstitution from a de jure guestworker program to a de facto undocumented migrant route¹¹⁵. For the decades following, US policymakers chose not to employ regular channels for employment-based migration as a tool to reduce irregular migration. The result was “one of the largest waves of irregular labour migration the world has seen”.¹¹⁶

FIGURE 1 Mexican immigration to the United States in three categories, 1955–95



SOURCE: US Department of Homeland Security (2012). See text and Table A1.

Source: Massey and Pren (n 6)

In intervening “forcefully in complex social and economic systems without understanding their dynamics” Congress made “consequential policy decisions with scant consideration of the underlying dynamics of the social processes involved ... took little notice of the long history of recruitment ... the high degree of circularity that historically had prevailed; the strong connection of flows to the dynamics of labor supply and demand; the key role of networks in sustaining and expanding migration over time; the motivations of migrants and how they change in the course of a migratory career; the structural transformations that occur in sending and receiving areas as a result of mass migration ... the large size and well-established nature of flows into the United States on the eve of restriction; and most importantly the strong momentum that accrues to migratory flows once underway.”¹¹⁷

It is easy to be critical of Congress. But a number of fundamental features of migration processes, such as network effects, migratory momentum, migrant motivations, were not so well understood at that time¹¹⁸. That they are better understood today though does not seem to stop governments still trying – and failing – to design temporary migration regimes that can be practically enforced, and indeed in their administrative inflexibility often creating persistent incentives for both employers and workers to engage in illegality¹¹⁹.

The Canadian temporary foreign worker programme:

Set up in 1973 but only extended to lower skilled labour in 2002, the period of stay which was initially limited for 12 months was first extended out to 24 months, then expanded to include the possibility for further extension, but with the proviso that workers go back to their countries for 4 months before extending. But that requirement was itself then abandoned in 2009, with workers being allowed instead to repeatedly extend their stay while remaining in-country.¹²⁰

In the UK Government's parameters for the use of temporary labour set out in the White Paper, such as forced rotation due to the required cooling off period, there are strong echoes of other countries' experiences, from Bracero onwards, of authorities fighting a losing battle with labour markets¹²¹. These are examples of a quest for compliance in temporary labour immigration regimes when it was more than temporary labour that was needed, which instead often resulted in increased permanence of immigrants or the systematic use of undocumented migrant workers, or both¹²².

The intersection of immigration policy with immigration enforcement

The opening up and closing off of lawful immigration routes was not the only factor though in contributing to the different migration outcomes in the US. Immigration enforcement also played a key part. When the Bracero Program was ended, immigration enforcement rose only modestly, therefore doing little to constrain irregular flows. It was only from the late 1990s that the US Government significantly stepped up its border enforcement. And since the turn of the millennium an irregular migrant's likelihood of being apprehended at the border has almost doubled.¹²³ It is immigration enforcement which provides the jump off point for Lesson No. 3.

LESSON NO. 3: IRREGULAR MIGRANT STAY

Greater immigration restrictions applied to well-established existing immigration flows can lead to increased irregular immigrant stay, and therefore an increased irregular immigrant population

Immigration enforcement and irregular migration: Unintended consequences, unpleasant surprises, and the UK's particular challenge

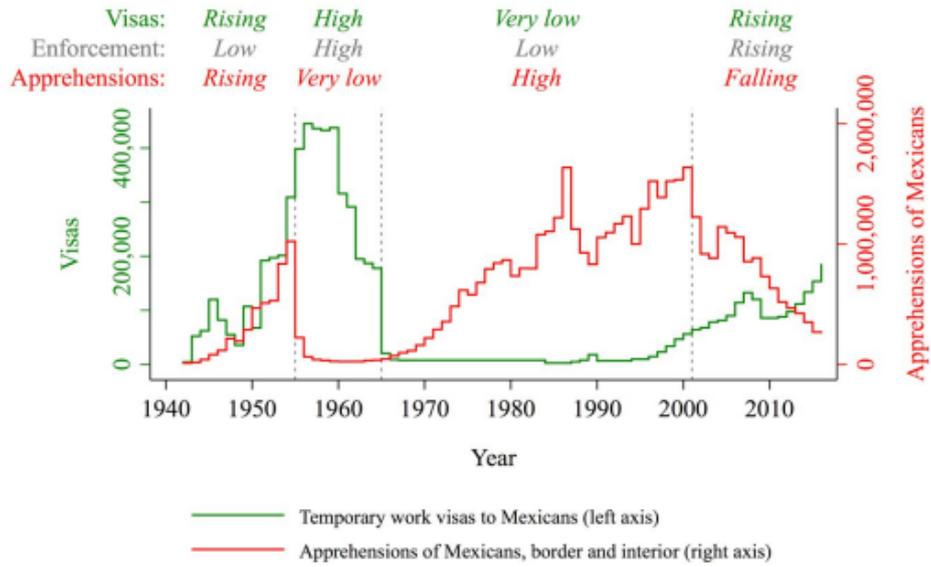
The ebb and flow of immigration enforcement

Immigration enforcement was an important factor not just following the ending of the Bracero Program, but also during its life, in particular in the shift from the more restrictive phase of the Program (1942-1953) to its more liberal phase (1954-1965). In the first phase the more restrictive rules were accompanied by relatively low enforcement intensity, which did little to address circumvention of the rules. Whereas the expanded options for lawful hiring that were introduced in the second phase of the Program were accompanied by a shift to stricter, and more visible, immigration enforcement. It was this combination which firmly skewed the incentives towards adopting lawful hiring practices.¹²⁴

And importantly this more aggressive enforcement environment operated not just at the border, but also inside the US. “Roughly one million Mexican nationals were deported via a wave of raids and roadblocks officially named “Operation Wetback”.¹²⁵ In this way immigration enforcement supported the more flexible lawful immigration routes now available in incentivising the switch from irregular to regular migration routes.

Whereas in the mid-1980s we see the opposite combination. The US Immigration Reform and Control Act of 1986 aimed to address the problem of irregular immigration by making hiring of unauthorised aliens an offence, while at the same time legalising 2.7 million migrant workers who could prove they had been in the US for a certain period. As the newly legalised workers moved out of low-wage agricultural work, agricultural employers successfully lobbied for the Replacement Agricultural Workers Scheme. But the employer sanctions regime aimed at those employers still making use of undocumented workers proved ineffective. And, in tandem with the strict terms and significant administrative hoops to be jumped through to hire through the legal channel, the result was that it was still cheaper and easier for employers to employ illegal workers¹²⁶. There was therefore a considerable increase in the legal immigrant population, but without a meaningful reduction in undocumented entry either¹²⁷. It was only from the mid-1990s that internal enforcement activities began to reassert themselves as a key feature of the US immigration control regime.

FIGURE 1 . Regular migration channels have curbed irregular migration at the US-Mexico border—when paired with robust enforcement

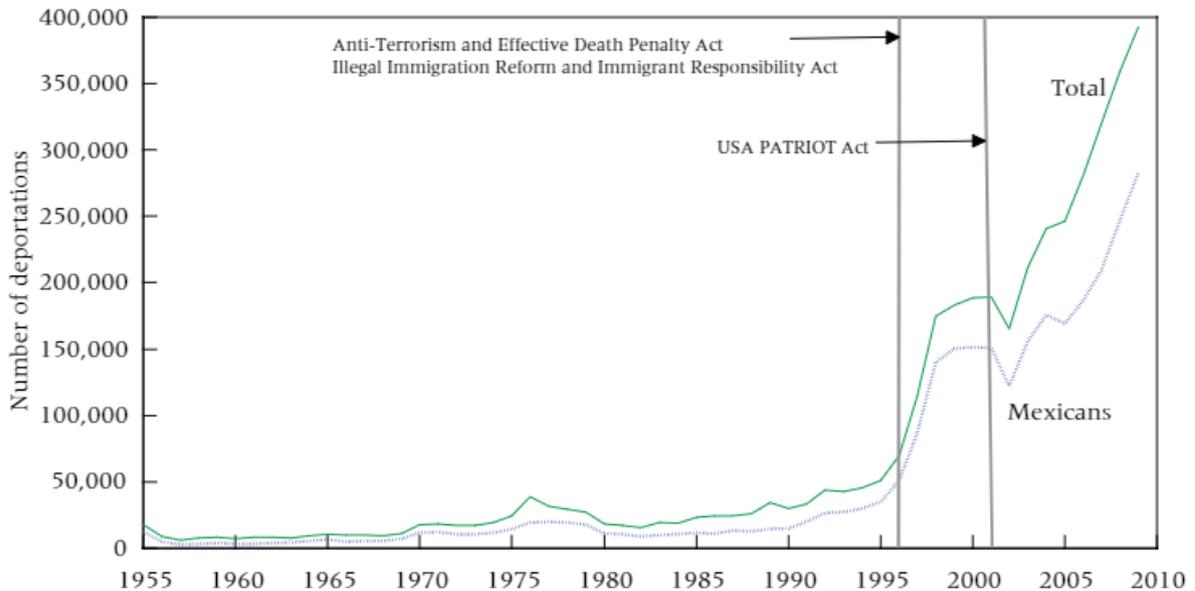


Source: Data sources through 2012 given in Gutierrez et al. (2016) *op. cit.*, updated to 2016 with the DHS Yearbook of Immigration Statistics and DHS Immigration Enforcement Actions reports for 2015 and 2016. "Visas" are low-skill seasonal work visas.

Source: Clemens and Gough (n 6).

From there deportation levels quadrupled to the end of the century. They then swiftly doubled again, with the more aggressive immigration control measures instituted in the aftermath of 9/11.¹²⁸

FIGURE 6 Annual deportations from the United States, 1955–2009



SOURCE: US Department of Homeland Security (2012). See text and Table A1.

Source: Massey and Pren (n 6). Note the definition of 'deportations' in this graph equates to 'removals by court order' in the 'Total Immigration Deportations' graph in Lesson No. 4, ie this graph's depiction of removals does not include administrative returns at the border.

The UK: particularly fertile ground for an increase in irregular immigration?

It is the combination of immigration enforcement dynamics at both the border and in-country that is a key determinant not just of irregular migrant entry, but of irregular stay, and therefore of the size of the ongoing irregular immigrant population. This poses a particular challenge for the UK.

The tools by which the UK controls its border look increasingly effective¹²⁹. But as we have already touched on, these tools cannot effectively control irregular migrants from the EU, as EU citizens will almost certainly not be ‘irregular’ at their initial entry; they will generally be entitled to enter the UK. Any irregularity in their status will only occur later as a consequence of their subsequent actions, overstaying their entry permission, or taking a job in the UK outside of the eligibility requirements¹³⁰. And to these irregulars will be added those EU citizens who continue to reside here but who for whatever reason do not successfully acquire settled status.

In managing the potential irregularity of EU citizens, the focus will therefore not be on border control, but on *in-country control*; and how to identify those actions giving rise to irregularity, and what approach to take to tracking, identifying and addressing the situation of such migrants¹³¹. For all the comment the ‘hostile environment’ excites, in comparison with its border control regime the UK’s regime of in-country immigration enforcement has considerable weaknesses and practical limitations: whether from the perspective of knowing how many migrants are here, where they are and what they are doing, enforcing labour market rules¹³², or identifying and removing people we have decided no longer have the right to be here¹³³.

It is not that the UK has stood still in this respect. Witness the biometric residence permits issued to non-EU migrant arrivals over the last decade and the new digital system accompanying the EU Settlement Scheme. And there is the ‘Status Checking’ Project, the Home Office’s longer-term ambition “to establish a system that obtains and shares an individual’s immigration status in real time with authorised users, providing proof of entitlement to a range of public and private services, such as work, rented accommodation, healthcare and benefits”¹³⁴.

Yet, when it comes to in-country enforcement the UK’s reliance on the ‘hostile environment’ shows its hand is still relatively weak. Outsourcing immigration control responsibilities to private actors to police irregular immigrants, with the aim of making life sufficiently difficult that those who are not meant to be here, or are not meant to be doing what they are doing, decide to leave of their own accord, may currently be the most cost-effective and realistic immigration enforcement option the UK has. But this strategy admits to significant practical limits, which do not bode well for any government that wants to more actively control the potential growth of the irregular migrant population in the UK.

In fact, bringing this all together it could be argued that the UK’s approach may in fact be *unwittingly creating favourable conditions for a rise in its irregular immigrant population by:*

- restricting a long established migration flow, in ending EU freedom of movement
- lacking the ability to meaningfully control that flow on initial entry at the border
- being reliant on in-country processes that have significant limitations on the extent to which they can systematically identify, track and address the situation of those people not authorised to be here.

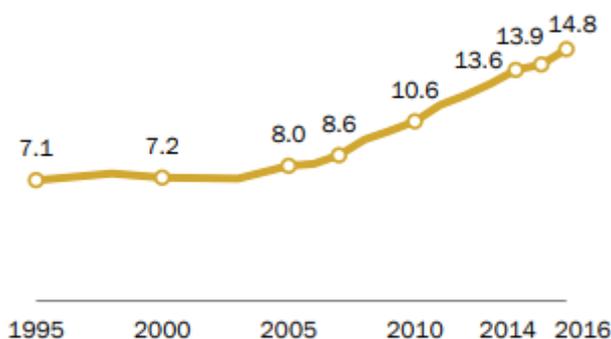
The dynamics of irregular immigrant immobility ...

Indeed the US experience suggests that of themselves increased controls at the border may be more effective at preventing circular migration back out of the country, encouraging irregular migrants into “hunkering down and staying”, rather than in dissuading or preventing their entry in the first place. “Indeed it was a sharp decline in the outflow of undocumented migrants, not an increase in the inflow of undocumented migrants, that was responsible for the acceleration of undocumented population growth during the 1990s and early 2000s, and this decline in return migration was to a great extent a product of US enforcement efforts.”¹³⁵

These dynamics have meant that in the US today unauthorised immigrants are now more likely than not to be long-term residents, “two-thirds of adult unauthorized immigrants having lived in the country for more than 10 years”¹³⁶. As the sizeable undocumented immigrant cohort of the US begins to reach that age at which lawful residents increasingly come to rely on a range of public programs for their income and support, which undocumented migrants have no access to, it is becoming clear that this approach to immigration control has potentially stored up significant social problems. Even now few of these unauthorised immigrants are willing to return to their country of origin, even for the shortest period. Instead, “increasingly, undocumented aging workers are deciding to stay in the United States”, fearing that the tightening of immigration controls means they will never be allowed to re-enter the US should they travel abroad.¹³⁷

The typical unauthorized immigrant has lived in the U.S. for nearly 15 years

Median years of U.S. residence for adult unauthorized immigrants



Source: Pew Research Center estimates based on augmented U.S. Census Bureau data. See Methodology for details.

“U.S. Unauthorized Immigrant Total Dips to Lowest Level in a Decade”

PEW RESEARCH CENTER

Source: Pew, *US Unauthorized Immigrants* (n 136).

Evidence from elsewhere suggests that while a hostile environment approach may convince some irregular migrants to return, it may cause others to prolong their stay and indeed postpone their planned return as hurdles they experience in their attempts to integrate into, and make a living in, the receiving society result in them accumulating resources for return more slowly than they had anticipated.¹³⁸ In addition, the potential to re-migrate seems key to migrants’ willingness to return to their country¹³⁹, and “policies aiming at limiting immigration discourage migrants to return and push them into a longer settlement in destination countries”¹⁴⁰.

... As applied to the UK

In the UK, the evidence seems to support these findings, suggesting that those whose immigration status becomes irregular become less likely to leave the slimmer they think their chances of re-entry are¹⁴¹. This may become increasingly material now that the fact of overstaying and/or immigration infractions are more likely to be captured by exit checks from the UK, and more systematically applied to re-entry decisions.

The UK has a number of significantly sized diaspora communities, and for irregular migrants assistance from such communities can be crucial to them getting by in the face of the hostile environment. Indeed one of the key challenges for the hostile environment is that it primarily targets exactly those groups - lower-skilled irregular migrants - which are more likely to form part of a supportive existing diaspora community¹⁴², and that this may in turn make them best placed to resist exactly those levers which the hostile environment seeks to deploy against them¹⁴³.

Framed in this light, counterintuitively the UK's increasingly sophisticated border control regime might therefore be regarded as part of the problem, not the solution, accentuating the challenges of irregular immigration by incentivising irregular migrants to stay put, knowing that their chances of re-entry are increasingly slim if they are in breach of their original immigration permission. Thus a combination of tough border, softer interior, and increasing restrictions on lawful immigration routes, is likely to lead to an increasing irregular immigrant population who are overstaying or exceeding their immigration permission. And this may be compounded by the consequences of the EU Settlement Scheme.

The EU Settlement Scheme: the end of the murk is nigh

A two-way street

As set out in Lesson No. 1, the EU Settlement Scheme will regularise the immigration status of some, and irregularise the immigration status of others. It will provide the opportunity for those EU citizens in the UK not able to demonstrate their continuous exercise of treaty rights here to instead fulfil the simpler requirements of the Scheme by merely evidencing residence here. Even if they cannot prove their continuous residence over a five year period, they can still be granted pre-settled status, in effect starting the clock running on their residence from that point.

But the Scheme will also irregularise the regular, as it is inevitable that some EU citizens will not successfully apply under the Scheme¹⁴⁴, either because they fail the eligibility requirements, or lack the required proof, or because for whatever reason they cannot, or will not, practically access or engage with the process to secure their status.¹⁴⁵

Notwithstanding the Government's provision of up to £9 million of local funding, aimed at more vulnerable groups who may need extra assistance¹⁴⁶, and proactive approach to publicising the Scheme¹⁴⁷, there are significant practical challenges in ensuring that all who need to be are made aware of the requirements of the Scheme.

A consequence of not having kept tabs on EU citizens in the UK is nobody knows exactly how many need to be reached out to¹⁴⁸. The outreach challenge though is not just identifying the audience of EU citizens, but actively engaging them¹⁴⁹ so they clearly understand that, in order to secure lawful status in the UK, all EU citizens in the UK (unless they have already secured

British citizenship) must complete the EU Settlement Scheme process, no matter how long they have been here.

Opposite, but not equal

Even were the numbers regularised and irregularised to cancel each other out as a result of the Scheme, the consequences of this would not. Because the status of being irregular in UK will have an increasingly fundamental impact on the life of the migrant, and a key part of this will be that this status will become increasingly visible to society as a whole.

Contrast this with the position under the EU freedom of movement regime, at least as applied in the UK, where being an EU citizen irregularly in the UK (ie: not working or otherwise exercising treaty rights) had very little practical impact for the vast majority, and was largely invisible. Indeed, it could be argued that the EU freedom of movement regime is primarily responsible for so little attention being paid to irregular immigration in the UK in the past decade; scarcely meriting a mention since the ‘Strangers into Citizens’ campaign¹⁵⁰ a decade ago.

The EU freedom of movement regime decreased the visible irregular immigrant population in the UK in two ways. First, retrospectively, by providing a de facto path for those from the EU8 and EU2 countries, who might otherwise have been in the UK irregularly, to regularise their status. Second, by adopting a relatively *laissez faire* approach going forward, not checking whether EU citizens in the UK in fact met the requirements for regular stay by working/otherwise being self-sufficient. They were for the most part left untroubled from an immigration enforcement perspective, even when the hostile environment was ratcheted up.

The EU freedom of movement regime in fact provided a degree of ambiguity of which the Government took full advantage. Unlike in many other EU countries, no meaningful steps were taken to keep tabs on EU citizens after their arrival or to enquire whether they were actually fulfilling the requirements of the EU freedom of movement regime to be entitled to remain in the UK¹⁵¹. The main exceptions to this were where:

- specific legal questions have been raised over a specific element of treaty rights; for instance the Government’s attempts to remove EU citizen rough sleepers¹⁵²;
- EU citizens have themselves sought to assert their continuous exercise of treaty rights, in order to apply for permanent residence or for the purpose of certain benefit entitlements; which assertions have generally been carefully and sceptically scrutinized by the UK authorities;
- EU citizens, having been convicted of a criminal offence and threatened with deportation from the UK, have sought to legally challenge this on the basis of the rights they have acquired by reason of the length of their exercise of treaty rights in the UK.

But the vast majority of EU citizens in the UK have never come into contact with the UK authorities for any of these reasons, and their exact immigration status therefore never scrutinised. But now, with the EU Settlement Scheme, the end of that ambiguity is nigh. Whereas the EU freedom of movement regime “created a new phenomenon – an indeterminate “neither one thing nor the other” category of resident”¹⁵³, the EU Settlement Scheme will result in the opposite; in all EU citizens in the UK in effect having their status determined one way or the other. And recorded as such, for all purposes, in the Government’s systems.

Those EU citizens entitled to stay in the UK will receive the full entitlements that brings. But those who do not get that status? They may well hunker down, in practice unlikely to be removed immediately, but increasingly unlikely to be readmitted if they leave¹⁵⁴. Not achieving settled status¹⁵⁵ will affect their ability to work, to be housed, to live. And it is the sheer size of the unprecedented experiment in technology and human behaviour that the EU Settlement Scheme entails¹⁵⁶ which drives the wider potential impact of this ambitious process. “Should just 5% of those who need settled status fail to apply or be refused, this adds up to 175,000 people in the UK with an insecure immigration status or no status at all.”¹⁵⁷

In technical terms the UK will have taken a step forward for those who want greater control of immigration. But in practical terms the numbers of irregular migrants may well feel like they are increasing, even if in reality they have not. Greater immigration control may paradoxically give the impression of the opposite. This has occurred somewhere else in recent times – the US. And it has not been a happy experience.

LESSON NO. 4: ENFORCEMENT, REALITY AND PERCEPTION

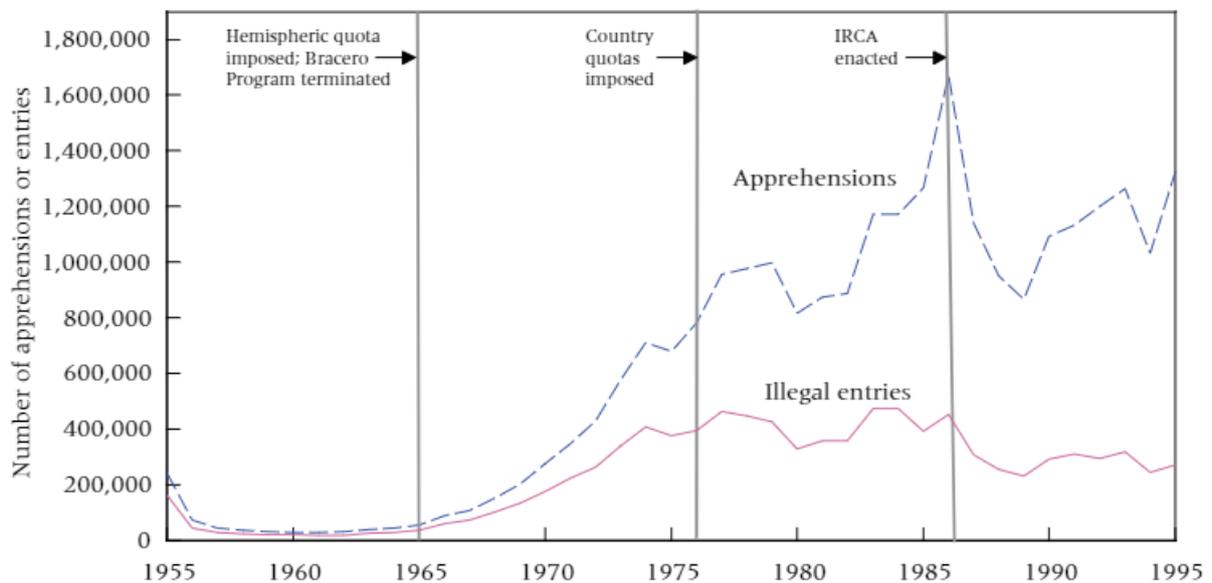
An increasingly visible irregular immigrant population accompanied by increased immigration enforcement can give rise to greater public concern over immigration even if overall immigrant flows are reducing

The US enforcement loop, migration reality and public perception

More restrictive US immigration policies pushed Mexican labour into irregular channels, spawning the “Latino threat” and “border under siege” narratives in parts of the American media, and transforming “what had been a largely invisible circulation of innocuous workers into a yearly and highly visible violation of American sovereignty by hostile aliens who were increasingly framed as invaders and criminals”. This created an ‘enforcement loop’; the threat narrative raised public concern, which generated restrictive legislation and more stringent enforcement operations, which resulted in higher levels of apprehensions of irregular immigrants, which generated increased public concern, which demanded even stricter laws and enforcement. And so on.¹⁵⁸

In the US this “self-feeding chain reaction of enforcement” generated more apprehensions of irregular migrants even as their flow first stabilised, then actually fell, “bringing about a growing divergence between apprehensions and the actual volume of undocumented migration”¹⁵⁹.

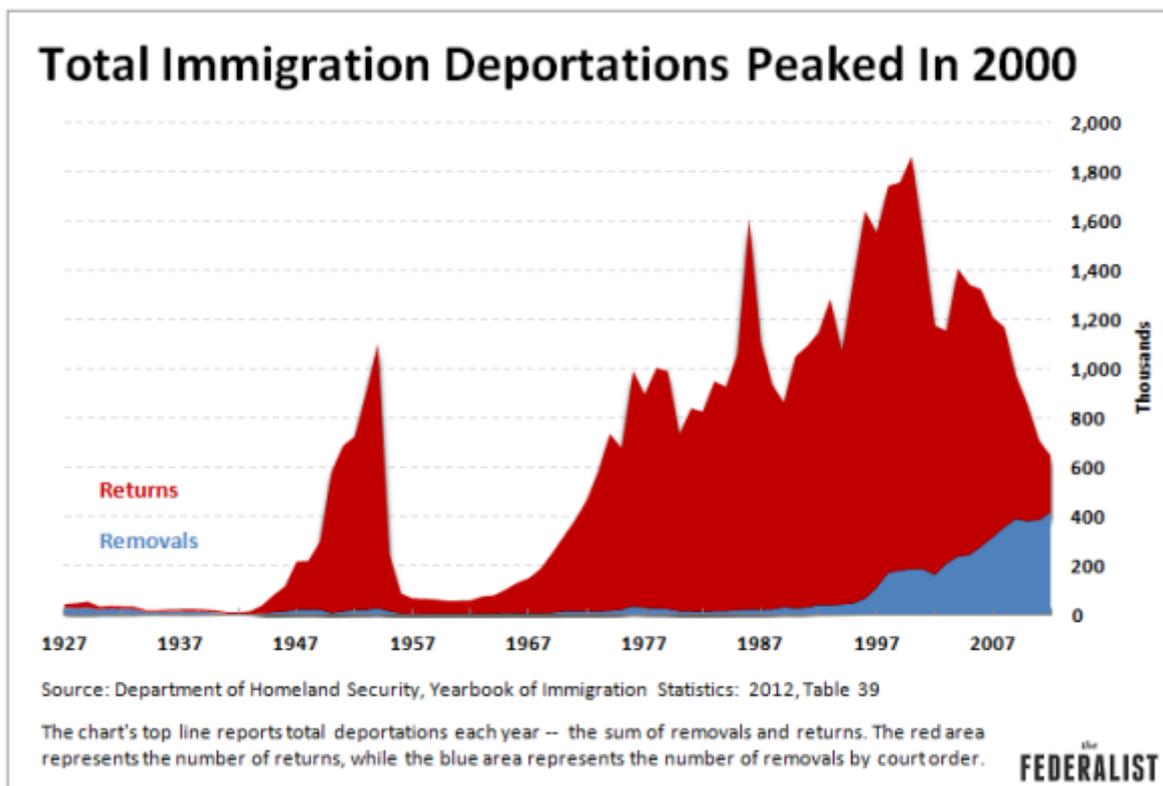
FIGURE 3 Annual number of apprehensions and estimated illegal entries, 1955–1995



SOURCE: US Department of Homeland Security (2012). See text and Table A1.

Source: Massey and Pren (n 6)

“Controlling for the enforcement effort, illegal migration rose from 1965 to 1977 as the circulation of the Bracero Era was re-established, but thereafter levelled off and fluctuated before ultimately falling. In contrast, the total number of apprehensions grew at a faster pace after 1977 ... [as] anti-immigrant sentiment fed off itself to drive the bureaucratic machinery of enforcement forward to new heights, despite the lack of any real increase in illegal migration”.¹⁶⁰ From 2000 (at least up until this year’s Central American influx) annual apprehensions at the US-Mexico border declined sharply¹⁶¹, but US federal spend on immigration enforcement spiralled, significantly exceeding collective spending for the FBI, Drug Enforcement Administration, Secret Service, U.S. Marshals Service and Bureau of Alcohol, Tobacco, Firearms and Explosives put together¹⁶².



Source: Dara Lind, *Removals vs Returns*¹⁶³. Note the different definition of ‘deportations’ in this graph from the ‘Annual deportations’ graph in Lesson No. 3. In this ‘Total Immigration Deportations’ graph, deportations = returns + removals, whereas in the ‘Annual deportations’ graph in Lesson No. 3. deportations = removals

The above chart also shows the increasing proportion of removals versus returns; returns being administrative returns at the border, whereas removals involve a formal court order, which also prohibits re-entry. One reason for this changing mix is that of those attempting the border crossing, an increasing number are not Mexicans, but from Central America, so cannot simply be administratively returned over the border.¹⁶⁴

Indeed there are nearly half a million fewer Mexican immigrants in the US today than in 2010, the biggest decline of all immigrant groups in the US in that period.¹⁶⁵ The reversal of the unauthorised flow of Mexicans into the US has more recently been obscured by significant unauthorised inflows of Central Americans, which continue to rise¹⁶⁶. But the decade from 2007 saw the unauthorised immigrant population of the US shrink by 13% at a time when the lawful

immigrant population grew by 22%¹⁶⁷. And the number of immigrants apprehended along the US-Mexico border for fiscal year 2017 was the lowest since 1971¹⁶⁸, albeit the flows up through Mexico from Central America this year are at least temporarily reversing that trend¹⁶⁹. Calibrating for the huge expansion of the US Government's spending on enforcement in that period¹⁷⁰, until the recent spike in Central American flows levels of irregular border crossers into the US were likely back to levels not seen since the 1960s.

But this is not the impression one would have received from the political rhetoric, media focus, and public concern over immigration in the US that played such a part in President Donald Trump's campaign and election, and the increasingly fractious debate and toxic polarisation over immigration into the US. Of course, the particular political personalities involved have undoubtedly contributed significantly to this mix. But there can be few better examples of how increased immigration controls can set in motion a chain of events which can lead to increased, rather than decreased, anxiety amongst those very sections of the public that called for the controls in the first place¹⁷¹.

Irregular Immigration and the Public

Two sides of a Transatlantic tale

Any spike of concern over irregular immigration in the UK would likely be a deeply uncomfortable experience, for politicians¹⁷² and public alike. It is testament to the fact that irregular migration has played such a peripheral part in the UK debate on immigration over the past fifteen years¹⁷³ that there is so little statistical information on either the size of the phenomenon in the UK¹⁷⁴ or UK public attitudes to it specifically¹⁷⁵. What little there has been though tends to show the UK public decidedly allergic to this topic; a fairly constant 80+% agreeing with the statement that 'Britain should take stronger measures to exclude illegal immigrants'¹⁷⁶. UK public concern about illegal immigration appears to be materially above the EU average¹⁷⁷.

In contrast, the US is living with the often fraught and polarising legacy of its long exposure to substantial irregular immigration, and "the vitriolic and corrosive politics surrounding the several million irregular migrants now living in the United States"¹⁷⁸. But this long exposure has also moulded US attitudes towards irregular migrants. Today two thirds or more of Americans are sympathetic towards immigrants who are in the United States illegally, believe that undocumented immigrants are no more likely than US citizens to commit serious crimes, and mostly fill jobs US citizens do not want to do.¹⁷⁹ Two thirds of Americans say they do not view it as a reward to grant legal status to immigrants who are in the U.S. illegally; even Republicans are evenly split on this question¹⁸⁰. Not only is there significant support for amnesties/regularisations in the US, but of those Americans who support regularisation, 86% think that should extend to include a path to citizenship.¹⁸¹

With the caveat that public polling on illegal immigration seems particularly sensitive to how exactly the statement/ question is phrased¹⁸², the UK public's views on this issue do appear significantly less liberal than those found in the US.¹⁸³ And it may be that the UK's relatively low exposure to the reality of irregular immigration goes some way to explaining this¹⁸⁴.

The end of the age of luxury for the UK

It is not that there have been no regularisation mechanisms or programs in the UK¹⁸⁵. There are some legal routes under which immigrants who have been in the UK irregularly for considerable periods of time can regularise their status¹⁸⁶. And there have on occasion been in effect targeted de facto regularisations, particularly in the context of efforts to clear the asylum case backlog¹⁸⁷.

But, in general the UK has enjoyed the luxury of not having had to seriously grapple with the issue of irregular migration, and of being able to remain a hawkish outlier on the regularisation of irregular migrants¹⁸⁸. Whereas many other European countries have not had this luxury and have felt a greater need to reluctantly embrace rounds of regularisation as an important additional release valve, in spite of the complexities¹⁸⁹ and the increasing public perception challenges of doing so¹⁹⁰.

In the UK the issue of irregular immigrants did briefly fizzle up the agenda a decade ago, with the faith group led 'Strangers into Citizens' campaign. But it then fizzled out again¹⁹¹, largely because EU freedom of movement appeared to negate the need to grasp this particular nettle, keeping irregular immigrant numbers in the UK relatively low by providing a very broad lawful pathway for a number of migrants who might otherwise have fallen into an irregular status, and regularising the position of a number of migrants already here.

To avoid the US experience with irregular migration, the UK will now need to grasp the nettle of in-country immigration controls, and come clean about the challenges that presents. Both philosophically, in a policy area where, notwithstanding its potential political toxicity, legal challenges, social policy concerns and economic drivers can all place constraints on political action¹⁹². But also practically; which requires much better knowing who is where, doing what. There will likely be renewed focus and debate on the question of more comprehensive immigrant, or even population wide, registration or ID card schemes¹⁹³. Indeed the immigration control challenges attendant on the ending of EU freedom of movement make it more likely over the medium term that the idea of ID cards or their digital equivalent¹⁹⁴ will be seriously (re)examined.

Such schemes applied across the population as a whole might better address the challenges of the potentially discriminatory impacts of more explicitly immigrant focused control methods¹⁹⁵. And locally based registration requirements, along the lines of the approach used in Germany for example¹⁹⁶, could also help monitor movements of people, both internal and international migration, into local areas, and help with better matching allocation of resources with population pressures and demand. At the very least those opposed to ID cards may need to articulate which of the array of unappetising options for in-country immigration control they favour instead¹⁹⁷. And explain exactly how their alternative preference presents a realistic, practical and scalable option for doing so.

How would the public react to action against irregular migrants in the UK becoming not only more visible, but also more draconian? Given that large sections of the UK public, even those not necessarily well-disposed to immigration, seem thoroughly disturbed by the reality of in-country immigration controls; recent examples abound, from the macro to the micro, from the reaction to the Windrush generation revelations, to the all night stand-off between police and the local community in Bristol over the attempted removal of just a single migrant¹⁹⁸.

And how might increased in-country enforcement measures and the further ratcheting up of the hostile environment appear to those concerned about immigration numbers and/or control? Comforted that everything is in control? Or quite the opposite? Particularly if the UK begins to feel the need to supplement this approach with regularisations of certain cohorts of irregular immigrants, with the debates over the increased pressures on health and housing resources that may bring¹⁹⁹.

NUMBERS, CONTROL, TRADE DEALS AND THE UK PUBLIC

In the light of the four lessons outlined in this Briefing, the ending of EU freedom of movement in the UK in the form set out by the EU Settlement Scheme and the Government White Paper will represent the start of a significant new challenge for the UK in managing both lawful and irregular immigration. And while the headlines may suggest a significant positive shift in the UK public's views on immigration²⁰⁰, recent academic evidence suggests that although the salience of immigration can undergo significant short-term swings, deep-seated views about immigration tend to move at a glacial pace²⁰¹. Are the British public's concerns over immigration about control²⁰² or numbers²⁰³? That debate will continue, but the lessons highlighted in this Briefing should give significant pause for thought either way.

For those uncomfortable with immigrant *numbers* in the UK, and expecting a return to times past following Brexit, disappointment may await. On the one hand the ending of EU freedom of movement will clearly place a constraint on new labour flows from the EU. But history suggests that the offer to stay under the EU Settlement Scheme, combined with the potential re-routing of EU migrants to alternative migratory routes into the UK which may mitigate more towards permanent settlement, may over time favour increased, not reduced, permanent immigrant numbers in the UK, particularly in tandem with the relaxation of restrictions on non-EU immigrants. And as for any perceived increase in irregular immigrant numbers, those concerned with immigrant numbers are unlikely to react with anything other than heightened concern, even if officially reported immigrant inflows are declining.

Those more worried about *control* exercised over immigration into the UK may be more mollified by a reduction in inflows. But they would find many of the potential developments outlined in this Briefing concerning. The extent to which they will be concerned if there is any increase in lawful permanent immigration may well depend upon the channels through which that immigration primarily occurs, and whether that appears appropriately controlled or is presented by the media as a product of abuse. Any suggestion that family or student or temporary worker immigration routes may be being abused and/or that the irregular migrant population in the UK has increased would likely lead to a further deterioration of public confidence and trust in the Government's ability to properly control and manage immigration, now that the UK Government is (in its own words, at least) taking back full control of its immigration policy.

Illegal immigration in the news:

The media may play a key role in this respect. Over the medium term 'illegal' has been the main 'go to' modifier in the reporting of immigration for a significant section of the UK press.

Top Ten Modifiers of 'Immigrants' or 'Migrants', All Publications, 2006-May 2015

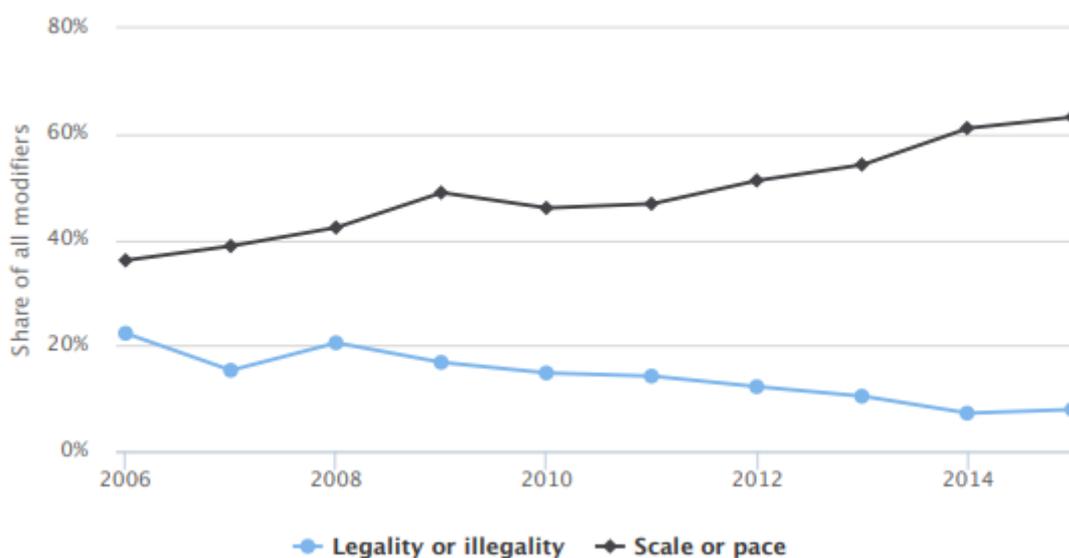
Rank	Modifier	Frequency	Share of all modifiers
1	illegal	14,202	30.4%
2	EU/European	3,271	7.0%
3	many	1935	4.1%
4	new	1395	3.0%
5	more	1043	2.2%
6	African	921	2.0%
7	Jewish	782	1.7%
8	Polish	777	1.7%
9	Irish	750	1.6%
10	recent	551	1.2%

Source: Allen, *The Migration Observatory*²⁰⁴.

But in more recent times the UK press' primary focus on the scale of net migration and the challenges of controlling EU immigration have deflected press attention away from illegal immigration, the references to which have undergone a significant and sustained decline.

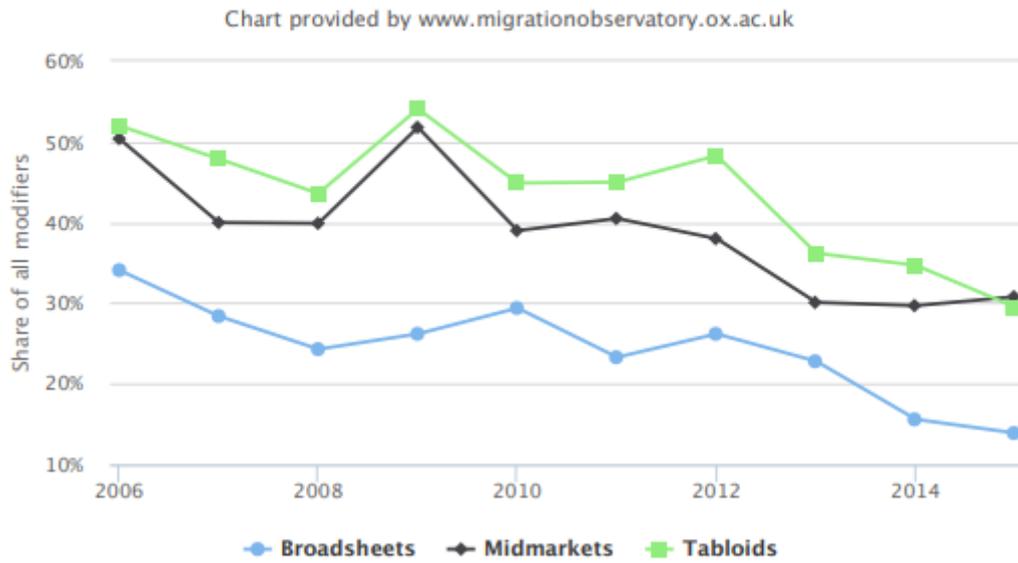
Shares of modifiers relating to illegality or scale, all publications, 2006-May 2015

Chart provided by www.migrationobservatory.ox.ac.uk



Source: Allen, *The Migration Observatory* (n 204).

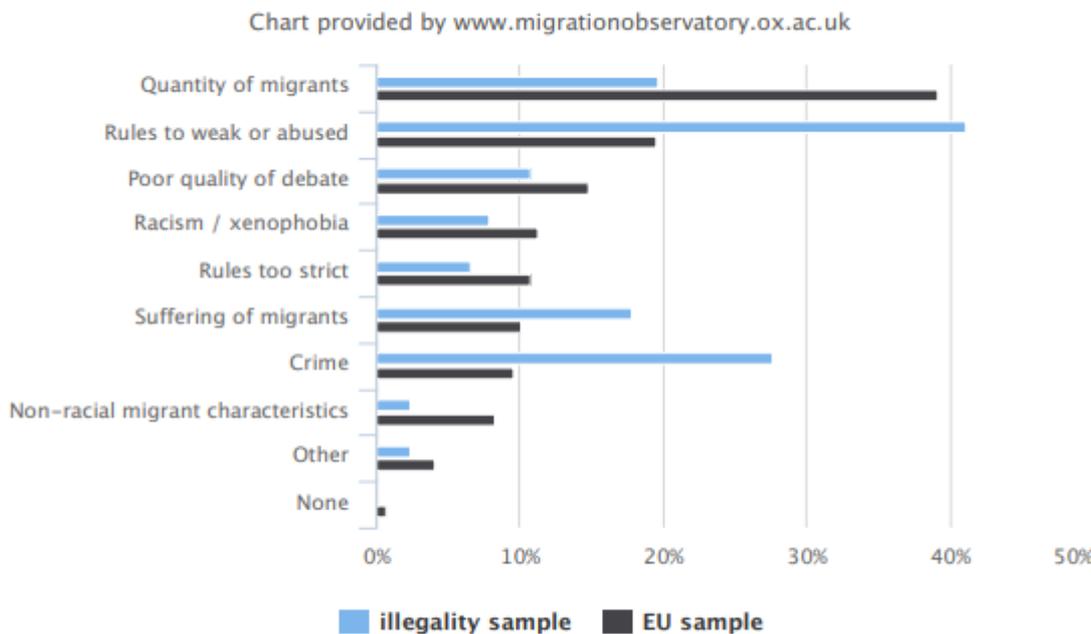
Shares of 'illegal' as modifier of 'immigrant(s)' by publication type, 2006–May 2015



Source: Allen, *The Migration Observatory* (n 204).

The preoccupation of some sections of the UK press with illegal immigration could therefore be regarded as potentially very significant, but currently dormant. Given their previous predilection for stories about rules that are seen as too weak or being abused, particularly if the temporary work routes prove hard to police there is little reason to think that the ‘illegal’ framing will not reawaken from its slumber, and swiftly bubble back up into the public consciousness.

Main problem types, by sampled topic, 2006–May 2015



Note: percentages within topics do not total 100% because articles could have multiple actors blamed for problems or credited for successes.

Source: Allen, *The Migration Observatory* (n 204).

And whereas stories about migrant illegality in the press have previously tended to focus more on the culpability of the migrants themselves²⁰⁵, rather than of the immigration control functions, given the central role that will need to be assumed by the Government and business in policing the proposed temporary migration routes, this may not be the case going forward.

And all of this is without even addressing the challenge, for both numbers and control, that the Government White Paper only sets out the baseline; the immigration policy the UK will adopt in isolation. It does not address the possibility that trade deals which the UK may negotiate post-Brexit may result in less controlled access to the UK for the citizens of certain countries.

The seriousness of these potential consequences should give the Government considerable pause for thought, both in designing the inputs of immigration policy, but also in thinking about how best to manage potential outputs, including how it explains and justifies these to the public. A dose of honest realism is needed. The Government could, and should, be more transparent about some of the complexities and unintended consequences of immigration policy, about the control that it does have, but also the practical limits to that control, and the trade-offs inherent in this²⁰⁶.

Is the degree of control that the UK public are assumed to want over immigration only achievable with an ID card and more intrusive in-country surveillance regime, combined with a much more aggressive approach to irregular migrant removal but also supplemented by a more pro-active regularisation approach? And, if so, are the public really prepared for any, let alone all, of those approaches²⁰⁷? Only when the Government begins to more publicly address these big questions will it be able to convincingly debate, and win more informed public consent for, the fact that it may not be realistic to have the degree of control over immigration that many people in the UK say they want, while at the same time keeping other aspects of UK society as those same people would like them.

A FINAL NOTE ON CONTEXT

Lessons are not the same as predictions. History does not always repeat itself. Two situations are rarely exactly analogous. But, while migration is a complex process, as the unexpected and inadvertent consequences of many policies designed to control it bear witness, the incentives, and the balance of risks and rewards to which different migration pathways and barriers give rise, have proved themselves relatively stable and predictable. And increasingly understood over time, as we now have increasing examples and experiences, analysed from different angles, on which to base our thinking about what the outcomes of certain policy courses might be. We therefore have no excuse for ignoring the lessons of the past when approaching the challenges of the present.

There is one final point though on which we should be clear. The Mexico-to-US migrant flow experienced from the 1980s-2000s was one of the largest international migration episodes the world has ever seen, largely the result of specific relative demographic and economic factors between those two countries²⁰⁸. In considering the lessons for post-Brexit UK immigration policy that can be drawn from that experience, or indeed from any other experience, such as the UK's ending of freedom of movement from the Commonwealth, or from the German experience with

Turkish guestworkers, we are not suggesting that the same relative situation exists between the UK and the EU countries today.

Not least because the EU itself is quite a different beast, still providing freedom of movement opportunities within the continuing block. As a result, in the situation in which the UK and the EU find themselves today, even if *the nature* of what is experienced in the UK may come to reflect the themes of this Briefing, *the scale* of what is experienced may be quite different. Indeed in terms of scale, to put the whole UK-EU immigration debate into context, relative economic, social and demographic factors all point to the likelihood that going forward the biggest immigration pressures on the UK in terms of migrant numbers are likely to come from outside the EU, not from within it²⁰⁹.

ENDNOTES

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<https://www.cgdev.org/sites/default/files/CGD-shared-border-shared-future-report-eng1.pdf>.

⁷ *ibid*, Clemens and Gough.

⁸ *ibid*. And Massey and Pren (n 6).

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¹¹ Alison Shaw, 'The Pakistani Community in Oxford', in Roger Ballard edited, *Desh Pardesh: The South Asian Presence in Britain* (Hurst 1994).

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¹³ Shaw (n 11).

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¹⁴ Figures for Bradford: D.E.S. Education Survey 13, *The Education of Immigrants* (HMSO 1971) in David Swift, 'Competition or culture? Anti-migrant hostility and industrial decline: the case of West Yorkshire, 1962-1981' (2019) *Journal of Ethnic and Migration Studies*, 1.

¹⁵ 'The new Europeans' *The Economist* (9 February 2019), 19.

¹⁶ Spencer (n 10).

Ballard, *Desh Pardesh* (n 13).

Roger Ballard, 'Transgressive initiatives 'from below' and the defensive reinforcement of jurisdictional boundaries' (2011) <http://www.casas.org.uk/papers/pdfpapers/transgressive.pdf>.

¹⁷ Matthias Bartsch, Andrea Brandt and Daniel Steinvorh, 'Turkish Immigration to Germany: A Sorry History of Self-Deception and Wasted Opportunities' *Spiegel Online*, 7 September 2010

<http://www.spiegel.de/international/germany/turkish-immigration-to-germany-a-sorry-history-of-self-deception-and-wasted-opportunities-a-716067.html>.

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¹⁹ Home Office, 'Summary of latest statistics' (29 November 2018) <https://www.gov.uk/government/publications/immigration-statistics-year-ending-september-2018/summary-of-latest-statistics#how-many-people-continue-their-stay-in-the-uk>.

²⁰ Marie Godin, Presentation on 'Brexit and EU Families' at 'Speed Geeking: the Many Dimensions of Migration' (COMPAS, Oxford, 8 November 2018).

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¹⁵⁰ 'Strangers into Citizens' - For the Regularisation of UK People Without Status

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¹⁶⁷ Pew, U.S. Unauthorized Immigrants (n 136).

¹⁶⁸ United States Border Control, Southwest Border Sectors, 'Total Illegal Alien Apprehensions by Fiscal Year (Oct 1st through Sept 30th)' <https://www.cbp.gov/sites/default/files/assets/documents/2017-Dec/BP%20Southwest%20Border%20Sector%20Apps%20FY1960%20-%20FY2017.pdf>.

¹⁶⁹ *BBC*, Trump threatens to shut border (n 166).

¹⁷⁰ Doris Meissner et al, Immigration Enforcement in the United States (n 162).

Massey and Pren (n 6).

¹⁷¹ 'Diversity and its discontents' *The Economist* (23 February 2019), 42.

¹⁷² Alasdair Palmer and David Wood, 'The Politics of Fantasy: Immigration policy in the UK after Brexit' (Civitas, June 2017) <http://www.civitas.org.uk/content/files/thepoliticsoffantasy.pdf>.

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¹⁷⁴ GLA Economics, Economic impact of an earned regularisation (n 130).

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¹⁷⁶ British Social Attitudes 31 (NatCen Social Research, 2014)

http://www.bsa.natcen.ac.uk/media/38893/bsa31_full_report.pdf.

- ¹⁷⁷ The German Marshall Fund of the United States, 'Transatlantic Trends: Mobility, Migration and Integration' (10 September 2014) <http://www.gmfus.org/publications/transatlantic-trends-mobility-migration-and-integration>.
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- ¹⁸⁰ *ibid.*
- ¹⁸¹ The German Marshall Fund of the United States, Transatlantic Trends (n 177).
- ¹⁸² Ana Gonzalez-Barrera and Phillip Connor, 'Around the World, More Say Immigrants Are a Strength Than a Burden' (Pew Research Center, 14 March 2019) <http://www.pewglobal.org/2019/03/14/around-the-world-more-say-immigrants-are-a-strength-than-a-burden/>.
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- ¹⁸⁴ Although, set against that, there is evidence that, at least prior to all the furore in the UK over EU freedom of movement, one third of the UK public believed that most immigrants were in the UK illegally: see The German Marshall Fund of the United States, Transatlantic Trends (n 177).
- ¹⁸⁵ Regularisation mechanisms are defined as a permanent feature of immigration policy whereas regularisation programs are a one-off approach to the regularisation of certain groups in a certain circumstance: in Kate Brick, 'Regularizations in the European Union: The Contentious Policy Tool' (Migration Policy Institute, December 2011) <https://www.migrationpolicy.org/research/regularizations-european-union>.
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- ¹⁹⁰ Collett and Somerville, Trade-Offs in Immigration Enforcement (n 131).
Hooper, Spain's Labour Migration Policies' (n 132).
Brick, Regularizations in the European Union (n 185).
- ¹⁹¹ Testament to the fact that thus far irregular immigration in the UK has been viewed as primarily a London issue: see GLA Economics, Economic impact of an earned regularisation (n 130), David Lammy did raise the issue as part of the last London Mayoral campaign but it received little traction: Joe Murphy, 'David Lammy: let 300,000 illegal immigrants remain in London', *Evening Standard*, 17 August 2015 <https://www.standard.co.uk/news/politics/lammy-let-300000-illegal-immigrants-remain-in-london-a2871701.html>.
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- ¹⁹³ Question from Lord Kirkhope to Caroline Nokes, oral evidence (n 57).
- ¹⁹⁴ Chris Yiu and Harvey Redgrave, 'A New Approach to Digital Identity', Institute for Global Change, 29 March 2018 <https://institute.global/insight/renewing-centre/new-approach-digital-identity>.
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²⁰⁶ Collett and Somerville, Trade-Offs in Immigration Enforcement (n 131).

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²⁰⁸ Hanson and McIntosh (n 52).

²⁰⁹ *ibid.*