

# Labour migration policy post-Brexit: The contested meaning of regulation by old and new actors

Gabriella Alberti Associate Professor in Work and Employment  
Relations  | Jo Cutter Lecturer in Work and Employment Relations

University of Leeds Business School,  
Leeds, UK

## Correspondence

Gabriella Alberti, University of Leeds  
Business School, Leeds, UK.

Email [g.alberti@leeds.ac.uk](mailto:g.alberti@leeds.ac.uk)

## Abstract

The end of free movement of labour from the European Union represents an unprecedented form of re-regulation of the UK labour market. This study explores how old and new actors engage with the sphere of migration, arguing that not only their economic interests but also different political agendas and meanings of regulation shape dialogue on migration regulation post-Brexit. Our findings suggest moving away from a unilateral, positive view of regulation in work and employment as well as to overcome any artificial distinction between the economic and the social implications of international migration.

## KEYWORDS

Brexit, employment relations, labour mobility, migration, old and new actors, regulatory spaces

## 1 | INTRODUCTION

This study addresses the emergence of new migration policy in the United Kingdom following the Brexit Referendum (2016) with a specific focus on debates over the end of free movement of labour from the European Union (EU) and its connection to employment regulation. The

---

This is an open access article under the terms of the Creative Commons Attribution-NonCommercial-NoDerivs License, which permits use and distribution in any medium, provided the original work is properly cited, the use is non-commercial and no modifications or adaptations are made.

© 2022 The Authors. *Industrial Relations Journal* published by Brian Towers (BRITOW) and John Wiley & Sons Ltd.

authors explore how immigration policy and labour standards are connected through scrutiny of the ways that employment relations actors engaged in the realm of post-Brexit immigration policy. While there is a lack of formal social dialogue on labour migration in the United Kingdom (Martinez Lucio & Connolly, 2010), we contend that social actors have nevertheless interacted in this area on the basis of different understandings of regulation. Our findings have implications for the regulation of employment in the context of ongoing immigration restrictions and labour shortages as well as for the future of social dialogue on migration.

The end of free movement of EU workers to the United Kingdom was felt by some to be a positive opportunity for labour where restricting access to migrants might counter deregulatory effects of migration that contribute to a 'race to the bottom' in employment standards (Goodwin & Milazzo, 2017; Krings, 2009). Others were less hopeful. Woolfson (2017a) suggests any government 'bonfire' of regulations with Brexit might position Britain as a Singaporean-type model seeking competitive advantage offshore from continental Europe through a 'State-sanctioned legitimisation of the application of differential standards of labour protection' (2017b; p. 391). This study engages with the view that employment relations actors and community campaigns may have a role to play in resisting any downgrading of employment standards by shaping the ways immigration policy impacts upon work and workers (Woolfson, 2017b). However, we contend that understanding this requires further attention to how employment relations actors engage and interact on the terrain of migration policy and in what ways this connects to the regulation of work.

The introduction of restrictive immigration to the United Kingdom for EU workers highlights an apparent *return* of the UK state 'taking back control' over its borders. Yet, in examining how migration and employment regulation interlock, we seek to show how the return of the state does not necessarily mean positive labour market regulation (Martínez Lucio & MaKenzie 2004). The contentious politics of migration regulation in turn reflects contradictory positions among a variety of new and old actors in IR, whose logics are not always driven by solely economic reasoning and where actors intervene in the spheres they are familiar with. Industrial relations (IR) literature has discussed the growing involvement of civil society and third sector organisations as 'new' actors in IR alongside the more traditional actors of workers and employers, or their respective representatives (Heery & Frege, 2006). Yet, the role of new actors in the regulation of *labour migration* has had limited scrutiny, especially with respect to their interface with 'old' actors (MacKenzie et al., 2012). The IR literature in turn tends to emphasise the economic motives of social actors in the realm of migration, while presenting employers and migrant workers as primarily 'homo economicus' and unions as often ambivalent in their stance towards international labour mobility (Milkman, 2011).

We aim to enrich these IR debates drawing from theory that frames international migration as a form of regulation that is both economic and social in character (Afonso & Devitt, 2016; Bauder, 2006). In particular, we explore how the economic and social spheres *interlock* by examining the engagement and interactions among social actors around the development of new migration rules post-Brexit. This challenges perspectives which characterise the relations between migration and regulation as focused primarily on the impact of international migration on national systems of employment. Contrary to structuralist views that automatically associate stricter immigration controls as a positive response to 'recessionary environments' that reduce need for migrant labour (Massey, 1999; Wright, 2012), we show how migration restrictions may still occur in a relatively buoyant labour market, where employer need for migrant workers continues (Anderson & Ruhs, 2010) and where migration reregulation is rather contested.

Drawing on the concept of the regulatory space (Inversi et al., 2017; MacKenzie & Martínez Lucio, 2019) we analyse actors and dynamics of migration regulation in the context of institutional change. We consider the ‘competing engagements’ of social actors (Martínez Lucio & MacKenzie, 2004; p. 80) by comparing the position of actors that are traditionally seen as central to employment relations (trade unions, employers organisations) in relation to newly emerging civil society actors (local authorities and migrant organising campaigns), and the implications of the latter’s acquisition of new roles in the processes of changing migration regulation regimes on the regulation of work. The study covers the period between the EU exit referendum in 2016 and the United Kingdom’s withdrawal from the EU in 2020 during which the new Point Based System (PBS) for immigration was developed (UK Government, 2019). Drawing from stakeholders interviews and documentary analysis, we consider actor positions and the interests they represent, and identify ‘expertise’, ‘legitimacy’ and ‘organisational logics’ (Martínez Lucio & MacKenzie, 2004; MacKenzie & Martínez Lucio, 2019) as factors critically shaping actor dynamics and interventions in the field of migration reregulation.

The analysis of old and new actors engagements, claims and agenda shows how the politics of migration and employment regulation involves both conflict and convergence among these actors as they contend the boundaries of regulation and roles within the interconnected spheres of migration and employment. We find a shared understanding emerging between unions and ‘new’ actors that the new UK immigration regime could further aggravate a ‘race to the bottom’ of labour standards for both EU and ‘home’ workers through processes of informalisation. These are not solely the result of weakening employment standards, as originally argued by unions (Teague & Donaghey, 2018), but also the result of stricter immigration policies that increase economic and social vulnerabilities of EU workers, with a concomitant effect on the bargaining power of all workers in the United Kingdom. Despite this nascent convergence of union and community actor perspectives, we also find a degree of unfamiliarity among old actors in understanding the connections of migration and employment and between the social and economic spheres of regulation. While this lack of familiarity might explain their ambivalence towards new immigration policy development, it also suggests that any prospect of advancing a more coherent social dialogue in this area is conditioned by the nature and limitations of social actor engagement in the regulation of migration for work. Our argument is that these engagements are therefore shaped not only by actors’ competing economic interests (as might be expected), their different expertise and claims for legitimacy, but also by the different meanings of regulation that these actors bring.

## 1.1 | The ending of free movement from the EU to the United Kingdom: IR actor positions

The centrality of migration to Brexit debates can be considered through the interests expressed by different social parties around leaving or remaining in the EU, intertwined with the conservative Governments’ stated political agenda for regaining sovereignty over national borders and, by implication, labour markets (Woolfson, 2017a). This was seen as a response in particular, to the effects of EU Enlargement in 2004 when the United Kingdom became one of the countries receiving the highest number of EU migrants, whose total number grew to 2.38 million in early 2019 (ONS, 2019). The post-Brexit immigration policy proposal was to limit access to the United Kingdom to the ‘right sort’ of migrants and protect the welfare state from ‘outsiders’ (Favell & Barbulescu, 2018).

Marino et al. (2017; p. 359) highlight how the post-2008 austerity crisis and attack on working conditions as well as the parallel health and housing crises were key factors leading to increasing hostility towards migrants, including inside the labour movement. Perceptions of the negative impact of EU migration on working conditions have indeed likely played a considerable role in the outcome of the Brexit vote. While there is little evidence of a direct negative impact of EU migration on the quantity of jobs for UK workers, wages levels and standards (MAC, 2018), it is well documented that employers use migrants to respond to their flexible needs (McCollum & Findlay, 2015) and that EU nationals often work below their skills level in sectors of the economy that tend to be low-paid and classed as low-skilled (Portes & Forte, 2017; Williams, 2020).

The new United Kingdom immigration legislation, which came into law in November 2020 uses entry qualifications based on skills levels and occupational shortages. These are domains which, under freedom of movement, had predominantly been regulated 'from below' by employers, workers and increasingly specialist employment agencies (Forde et al., 2015; McDowell et al., 2008). In the new 'point-based immigration system' the rules (applied to both EU and non-EU workers) include: the requirement of employer sponsorship, a minimum salary of £25,600 (with exceptions set out by the Government's shortage occupation list [SOL]), and an English language test (Home Office, 2020). These proposals were expected to (Teague and Donaghey, 2018) and are in fact creating, considerable recruitment challenges in sectors reliant on migrant workers in jobs paid below the salary threshold (Alberti et al., 2020).<sup>1</sup>

Even before the new rules came into force, net migration began to fall after the Referendum in 2016, registering a steep decline from the end of 2019 and into 2020 (Migration Observatory, 2022). Furthermore, during the shock of Covid-19, around one and half a million of non-UK workers are believed to have left the country (Portes & Connor, 2021; The Guardian, 2021). Alongside this, by the end of June 2021 over 5 million EU nationals in the United Kingdom obtained a settled or pre-settled status, with local authorities playing an increasingly important role in supporting EU nationals' application for settlement to help mitigate the risks of failing to regularise their status (Doležalová et al., 2021). Local authorities and third sector organisations have increased engagement in initiatives supporting the newly created category of EU-settled migrants, both campaigning for social rights (see for instance CPAG, 2020; a charity that engaged in legal battles to protect access to Universal Credit for 'pre-settled' EU migrants), supporting migrant workers into employment and ensuring awareness of existing rights.

The official positions of most of the British unions and the TUC pre-Brexit centred on keeping the United Kingdom in the EU due to the economic and employment benefits associated with EU trade, and to defend the higher protection for workers under the EU framework as opposed to that anticipated in neoliberal, independent Britain (Williams, 2020). Trade unions, however, were reluctant to take a clear stance on the Referendum: investment in the campaign for Remain was limited, with resourcing and strategic decisions varying across different unions (Fitzgerald et al., 2022). This uncertainty was attributed mostly to union concerns around alienating members, for whom the disadvantages of free movement, especially in communities already affected by austerity, it was argued, outweighed the advantages derived from EU membership (Coderre-LaPalme & Greer, 2018; Fitzgerald et al., 2022). Overall unions faced difficulties in reconciling a positive stance on immigration and their priorities in

<sup>1</sup>See for example the 'Pick for Britain' campaign and extension of seasonal workers scheme (6 months visa) in 2021 from 30,000 to 60,000 ([https://www.farminguk.com/news/uk-residents-made-up-just-11-of-harvest-2020-workforce\\_56861.html](https://www.farminguk.com/news/uk-residents-made-up-just-11-of-harvest-2020-workforce_56861.html))

representing members' interests. While the Trade Union Congress offered their official support to Remain, on the ground this was often fragmented and strained (Teague & Donaghey, 2018).

On the side of employer representation, it is worth noting that there has been scarce literature in employment relations or political economy covering their position (or lack thereof) in the lead-up to the Referendum on the question of free movement of labour or skills policies (for an exception see Bickerton, 2019). While the Confederation of British Industry (CBI) and the other employer organisations such as the Federation of Small Businesses and the Engineering Employers Federation took a lobbying position for Remain, the degree of internal support from different sector representatives was not homogenous (Gooberman et al., 2018; p. 127). The British Chamber of Commerce took a neutral position, whereas the CBI (2018) lobbied for an 'Open and Controlled' approach where the mobility of labour is carefully monitored but open enough to support business needs. Therefore, a generally (under)stated preference for free movement among 'old' IR actors was a default, secondary position as a condition of trade and access to the European single market, while the party in government insisted on regaining sovereign control over the labour market by ending freedom of movement.

## 1.2 | International migration and the regulation of work

In theorising regulation of work *per se*, IR literature has tended to equate it to a positive force of 'joint regulation' of employment, especially in the face of increased marketisation and imbalance of worker power (Crouch, 1993). This view of regulation highlights the importance of predictable behaviours and outcomes by the state and institutional actors entering negotiation to ensure labour standards for workers and orderly markets for employers. Other views suggest, that in the context of international migration for work, (stricter) 'regulation' may acquire detrimental meanings, for example, furthering the relative disadvantage of migrant workers subject to immigration controls (see Alberti & Danaj, 2017; Anderson & Ruhs, 2010), labour informalisation and exploitation (Camp, 2020).

Engagement of political economy and IR with international migration has been at best slow (McGovern, 2007), yet positions developed within the variety of capitalism (VOC) approaches constitute valuable exceptions. Dominant institutionalist approaches in IR have tended to see immigration as an external force de-stabilising the 'system' of national regulation by exerting social pressure on local wages and conditions (e.g., Cremers et al., 2007; Krings, 2009). For example, research on migration pre-Brexit focused on how the posting of workers (where EU nationals move as services and are not subject to local standards), and the free movement of workers from the new accession countries were identified as a cause of social dumping on locals' wages and labour standards (Goodwin & Milazzo, 2017; Meardi, 2012). Research by Wright (2012) and Afonso and Devitt (2016) on the role of state migration policies in shaping labour supply and demand under different economic conditions brought more nuance to mainstream understandings of the role of international migration in the wider regulation of capitalist markets. However, their institutionalist focus continues to place migration as macro-economic variable alongside welfare and IR systems, giving prominence to how different modes of market regulation, skills and social policies and bargaining models shape immigration policy preferences rather than other way round. For instance, Wright (2012) sees the relative relaxation of immigration for work in the UK under the Blair Government as clear example of

how a liberal market economy (LME) in the context of the early 2000s (low unemployment, a de-regulated skill market with small state investment in training and declining unionism) guaranteed access to large pools of cheap labour from the EU as a substitute for skill investment. While with merits, this approach tends to focus on state actions driven by economic interests and overlooks how the state and other actors variously develop positions on migration regulation that try to reconcile economic interests alongside political agendas (Teague & Donaghey, 2018) and organisational imperatives (Martínez Lucio & MacKenzie, 2004).

A more in-depth understanding of the function of 'regulation' and its (not necessarily binary) relation with 'de-regulation' is therefore needed. The work of labour geographers explaining the construction of markets and capitalist modes of accumulation, building on the *régulation* school (Boyer, 1987), foregrounds a multiplicity of public and private actors that contribute to processes of marketisation. Peck et al. (2005) emphasise how these processes include the weakening of employment standards but also forms of active 're-regulation' that can facilitate neoliberal reforms. The ambivalence of processes of 'regressive re-regulation' by both state and private actors is apparent when governments introduce labour market reform or decide not to regulate labour market actors such as the operation of temporary staffing agencies (Peck et al., 2005), actively contributing to the segmentation of work (Piore, 1979).

Drawing from migration scholarship we may actually unveil how migration per se may be considered a form of re-regulation. Bauder (2006) in particular notes that, if understood purely in economic terms, states and employers rely on migrant labour to fill in shortages and operate entire productive sectors where migrants tend to work on harsher and more informal conditions than non-migrants (see also Anderson & Ruhs, 2010). But when migrant labour is considered in its social character the international mobility of workers appears to facilitate the regulation of labour markets in specific ways, where social and cultural mechanisms play a role alongside economic ones. In this sense, migration impacts and is impacted by, locally specific social relations within and beyond the sphere of production or capitalist accumulation, encompassing reproduction and community spheres. For instance, a significant aspect post-Brexit is migrants' settlement choices and their decision or ability to leave or stay after introduction of the new immigration regime, beyond economic motives. These practices can create significant uncertainties in the labour market. In turn, the action of nontraditional IR actors in supporting and facilitating migrant settlement and integration processes, bear direct consequences for regulatory interventions and attempts at socioeconomic coordination by the state, employers and unions.

In the field of employment relations, the 'new actors in IR' debate (Heery & Frege, 2006) had indeed already shaken the ground of traditional understandings of employee voice and worker representation, illuminating the emerging interventions of non-union actors, and new institutional and regulatory dynamics springing from the spaces of civil society into the workplace. However, while this literature has included third sector organisations intervening in the employment sphere, the field of actors' engagement with migration regulation per se has been overlooked, and the interactions between old and new actors less clearly understood (MacKenzie et al., 2012; Martínez Lucio & Connolly, 2010).

We, therefore, draw from critical migration scholarship, labour geography and employment studies to qualify the unstable and intrinsically *political* nature of regulatory processes in the field of labour migration, which in turn reflects the undetermined and unequal nature of the employment relation and its regulation (Edwards, 1990; Hyman, 1975). To do so, we use the notion of 'regulatory spaces' as an analytical tool to focus on the positions and substantive

*interests* that guide social actors' engagement in labour migration policy: Martínez Lucio and MacKenzie (2004; p. 80) describe employment regulation as the dynamic processes between social actors existing within a 'regulatory space' where there are 'competing engagements over a series of issues in terms of a play of power around diverse interests and agendas'. By critically emphasizing the *convergence and conflict* between actors' positions and motives, we provide new lenses for considering how regulatory activities may be contended between actors who are more or less familiar with the social sphere of migration regulation. In seeking to understand the relationship between the regulation of migration and employment, we focus on the roles of old and new IR actors emphasising the relationality of these actors engagements and their understandings of regulation in shaping (or failing to shape) immigration policy, and assessing prospects for labour standards post-Brexit.

## 2 | METHODS

Primary data collection took place between June 2017 and February 2020, namely between the anniversary of the Referendum result, when government consultation on the new PBS was beginning, and the period just after the new migration policy came into effect (before the COVID19 pandemic affected labour mobilities in the United Kingdom). We adopted a three-step approach. The first was to identify which actors were involved in the 'regulatory space' of migration for work (MacKenzie & Martínez Lucio, 2019); the second was to examine how actors engaged, their positions and the substantive basis of claims made, and the third to explore the relational aspects of this engagement. Documentary analysis was undertaken of the 417 submissions to the Migration Advisory Committee's call for evidence on EEA-workers in the UK labour market in 2017 to help identify the range of actors engaged in this quasi-formal (one-way) process of government consultation. This was supplemented with a review of actor engagement to the MAC consultation on the new PBS (Home office, 2020; Pepin et al., 2020), review of the SOL (MAC, 2020b) and evidence given to the Home Affairs Select Committee call for evidence on immigration policy (2017–2019). The review identified the range of contributions from employers, employer representative groups, professional bodies, trade unions, employment agencies, migrant groups and regional agencies including local authorities, of positions taken on the new immigration regime. We selected 10 organisations representing these diverse actors and undertook stakeholder interviews, supplemented with a review of 60 policy documents, reports and 'grey' materials such as blogs and webpages produced by these actors in the period 6 months before the EU exit referendum through to March 2020. The interviews explored perspectives on labour mobilities, how organisations and their constituencies were preparing for regulatory changes on the ground and the anticipated impacts of the new policy.

Senior officers from the selected organisations were invited to a series of three focus groups at key stages in the evolution of the new immigration policy: early proposals and responses (September 2017, Workshop I), interim policy proposals and EU migrant settlement (July 2019, Workshop II) and the newly introduced PBS policy (February 2020, Workshop III). Each workshop session involved 10–15 participants from the actor organisations noted above, with attendance from a core group present at all three sessions (the Trade Union Congress, which is the umbrella organisation of union in the United Kingdom, an employer representative, a local authority and a migrant advocacy group). The analysis pays particular attention to how old and new actor positions converge and conflict over the evolution of the new labour migration

regime and how actors draw upon their expertise, legitimacy and organisational logics (Martínez Lucio & MacKenzie, 2004) to express their position and interests towards the new PBS, outlining how and on what these are counter-posed with those of other actors. We present the findings into two main sections reflecting the key areas of migration re-regulation and its intersection with the economic and the social spheres.

## 2.1 | Immigration and the (re)-regulation of economic relations: Salary and skills thresholds

In eliciting positions on the prospects of a new immigration regime and the implications for work and workers, Roundtable I (2017) participants were first asked for their perspectives on how the immigration regime had operated before the Brexit referendum. It was noticeable that the two 'traditional' employment relation actors (employer and union representatives) could not provide much comment on the workings of the previous immigration system, nor on the envisaged effects of the introduction of work permits for EU nationals. Traditional actors did critique some specific aspects of the proposed migration system (see below) but were much more likely to engage in the discussion from the perspective of wider employment and economic issues of labour and skills supply and training, wages and labour market dynamics rather than the nuts and bolt of the functioning of the new migration policy, notably the visa system for EU migrants.

Union and employer representatives expressed distinct reasons for criticising the new points-based regime based on anticipated effects of new immigration regulation for both EU migrant and local workers: both highlighted disadvantages for workers and employers, but employers' organisations expressed more straightforward objections to the skills threshold of £25,600 pointing to the detrimental effect on employers and 'low skilled' sectors dependent on labour from the EU. The employer reps also criticised the cost and bureaucratic burden of the new system. One route to contest the new post-Brexit policy for employers has been lobbying flexibilities and exemptions from the SOL including jobs exempted from the standard salary threshold. And yet, despite the review of the UK SOL in 2019 (MAC, 2020b) the ongoing exclusion of occupations such as hospitality staff and elementary manufacturing jobs continued to elicit employer concerns of significant labour shortages (MAC, 2018, 2020b).<sup>2</sup>

Unions commented more critically on the inflexible notion of skills reproduced by skilled-based immigration policy as proposed by the Government suggesting that skills are a 'stock' of personal endowments (UK Government, 2019). The individual trade unions and the TUC present at Roundtable II (2019) noted that this approach eschews the recognition of migrants' formal skills because of inadequate mechanisms acknowledging certification and titles across borders and, further, that migrants often acquire new skills once in the destination country. One union representative pointed to the role that worker reps play in improving skills development for home and migrant workers through training and workplace learning programmes (Roundtable II, TU rep 2). Shifting to the more familiar regulatory space of economic/employment relations and skills development, unions mobilised their legitimate role

<sup>2</sup>Only certain employer group lobbies have succeeded at persuading the Government to introduce short-term visas in transportation (HVG drivers) and food processing (poultry workers) to tackle unprecedented shortages in 2021, and at the start of 2022 visas for care workers (Alberti et al., 2022). These short-term visas appeared to have limited success in relieving ongoing problems with shortages.

in improving workplace training and skills systems, reconceiving skills more as a 'flow' rather than a stock and as collectively produced (Busemeyer & Trampusch, 2012). Employers' rationale for their opposition to the new skilled-based rules in contrast reflects the internal organisational logic of advocating to reduce 'regulatory burdens' for business members, alongside advocating for a labour market and government policy that supply the labour deemed necessary to business needs.

A recurring theme of discussion was the new 'salary threshold' of the new PBS. Employers, unions and migrants' organisations all opposed the proposed salary thresholds initially set at £30,000 (MAC 2018). In Roundtable II, representatives of employers' associations were particularly vocal arguing, that under these conditions, employers would struggle to recruit, given the realities of lower salaries in migrant-dominated sectors of the UK economy, particularly in certain low-pay regions of the United Kingdom. Employers argued that the prospect of labour shortages would have profound effects on employment and work organisation through the possible substitution of labour by automation or the relocation of operations (Roundtable III, Logistic employer; Roundtable II; see also Bickerton, 2019).

While employers focused on the theme of labour shortages and substitution, the TUC stood against the extension of the immigration controls to EU workers highlighting other unwanted effects. Initially, the TUC argued against the ending of free movement because it challenged the (now surpassed) political stance of the favoured Brexit outcome of a negotiated deal that would keep the United Kingdom in the EU single market and access to trade that would have a positive impact on jobs for all workers in the United Kingdom. The TUC also advocated a pragmatic stance that, at least in the immediate term, the Government should enable employers to recruit EU workers to fill vacancies in socially necessary sectors like teaching, nursing and social care (where the average annual pay is below the salary threshold). Once the prospect of the exit from the EU became more evident, the TUC's position on immigration shifted to focus more on employment regulation per se, advocating that a salary threshold would not in and of itself avoid 'undercutting' (TUC, 2019b, 2020). Rather, that the low coverage of collective agreements and weak enforcement of rights for workers would continue to lead to social dumping. This clearly invokes an established demand from the UK union movement to redress the loss of institutional and regulatory powers against capital in the economic sphere. This argument also advances the 'positive meaning' of regulation (Crouch, ) as that which coincides with the 'extension of collective agreements across more workplaces and sectors' and the enforcement of rights through more resources provided to enforcement agencies' (TUC, 2019a; p. 12).

Meanwhile, new actors appeared to provide a much clearer understanding of the workings of migration regulation, partly based on their experience of supporting migrant workers during this period of regulatory change, which in turn shapes their understanding of the new policy' effects on the regulation of work for both migrant and home workers. The following section illustrates this and how union actors began to articulate converging positions.

## 2.2 | Immigration and the (re)-regulation of social relations: Precarity and informalisation

The study included local authority representatives with a specific competence on migrant integration and community matters, as well as migrant advocacy representatives active in supporting EU nationals transitioning to the new settlement status. These news actors, and

only latterly unions, highlighted the social over or alongside the economic dimensions of migration regulation. These included aspects focused on inequalities, social rights, vulnerabilities and power relations. Civil society-groups and unions both warned of a rise in informal employment and new forms of precarity for migrant workers as likely consequences of the new immigration system: notably as migrants rely on employer sponsorship have less flexibility and freedom to switch jobs (see also Camp, 2020) or those that risk overstaying short term visas move into the informal sector. The migrant organisation and representatives from the city council working on migration and community issues highlighted much more vocally than others the risks of expanding the informal economy as a consequence of the end of free movement and of equal treatment for EU citizens in the realm of welfare rights. Their concern centred on those left without recourse to public funds, including housing and social benefits recipients (Roundtable II, City council), who might be pushed to accept poor employment conditions such as 0-h contracts and poverty wages, or be left victim of illegal practices in the informal market (Roundtable II, migrant advocacy).

These concerns clearly reflect the expertise and organisational logics of the local authority and migrant advocates with experience of and familiarity with migrant workers' issues on the ground. Employer and state representatives did not comment specifically on this issue during the Roundtables. Some critical insights emerged from the documentary analysis of actors' submissions to the government, with the (MAC, 2020a) highlighting the risks that exceptions to the salary threshold may cause further pressure on wages and conditions in low-waged occupations with shortages. The TUC position paper of 2019 (MAC, 2019a) formally noted the wider social consequences of immigration rules commenting on how the exclusion of low-skilled routes for migration and the absence of legal channels risks pushing labour underground, degrading wages and conditions and facilitating informal employment.

A further area of apparent convergence between the employers and migrant advocates was around the regulatory change to visa fees and sponsoring of EU migrant workers, which both employers and the migrant rights organisation argued against. Critically, these features of the new system were articulated as 'red tape' and a 'burden' by employers, but as a source of social exclusion and economic discrimination against migrants by migrant advocates. Again, we see two of the social actors allying in their engagement on an aspect of the regulatory 'burden' but for *different* underlying motives. The advocacy groups spoke more explicitly of the 'hostile environment' created by Brexit for many EU workers. Although, this emerged as an area of action from union actors, with examples given of the use of the union learning fund to run cross-cultural learning and events in workplaces where tensions between home and Eastern European workers had emerged in the wake of the Brexit vote. The migrant advocacy also highlighted the agency of migrants and community groups contributing to the processes of regulatory change (Bauder, 2006) and mitigating its detrimental effects, suggesting the effective action of pro-migrant groups defending the social rights of precarious migrants (Doležalová et al., 2021).<sup>3</sup>

In terms of anticipated outcomes, the consequences of social and employment precariousness denounced among the implicit effects of migration restrictions (Anderson & Ruhs, 2010), and the wider informalising effects of the post-Brexit migration system on

---

<sup>3</sup>Successful campaigning on the issue of welfare benefits for EU nationals post-Brexit by migrant organisations (momentarily at least) has protected the right to prove habitual residence and entitlement to means-tested benefits for those with 'pre-settled' status (EU nationals legally residing in the United Kingdom before June 2021 but without continuous 5 years of residence),

employment, emerged more vividly from the new actors' positioning both in the context of the Roundtables and from the documentary analysis. Thus, over the study period, as the proposals for the new immigration regime became clear, a sharper range of positionings emerged between actors, exposing the 'unstable boundaries' (Martínez Lucio & MacKenzie, 2004) emerging across new regulatory spaces of migration and employment, but also various levels of familiarity with the social aspects of migration re-regulation and how this interlocks with employment.

### 3 | DISCUSSION AND CONCLUSION

The contestation of the post- Brexit immigration regime can be considered a rich example of regulatory spaces being redrawn and different actors seeking to both shape the new migration regime and anticipate its effects, surfacing the 'competing engagements' of employment relations actors (Martínez Lucio & MacKenzie, 2004; p. 80) in the field of migration. The discrete ways in which old and new actors (Heery & Frege, 2006) influence or fail to influence specific government policy outcomes in terms of the new United Kingdom immigration system exceeds the aim of this study. Rather we focus on actors' interactions and relationality in the context of the (limited) social dialogue on migration and labour reregulation. The focus on relational processes across the contested and elongated Brexit period (2016–2020), illuminates how the relatively new actors in the field of migration regulation are more familiar with how migration influences both the economic and social spheres, as they articulate their positions and adopt new regulatory roles moving into the space of employment regulation (MacKenzie & Martínez Lucio, 2019; MacKenzie et al., 2012).

Some of the apparent convergences and potential for alliances among actors, emerge as particularly unstable and contested, due to actors' different interests, organisational logics, legitimacy or expertise, but also critically, because of their very different understandings of regulation, namely: as a burden for employers, as a positive force for unions, as an ambivalent process of reregulation and source of informalisation for the migrant advocacy group and the local government. Following critical labour studies' view of the employment relationships as unequal and undetermined (Edwards, 1990) we may interpret the divergent positioning in light of their conflicting interests on the substance of regulatory outcomes, further showing how the relationships between IR actors continue to be conflict and power-laden, competitive rather than cooperative (MacKenzie & Martínez Lucio, 2019).

However, in the interlocking area of migration and employment regulation, traditional employment relations actors revealed not only their limited understanding of the significance of migration policy but also different conceptions of regulatory issues. For example, in questions of the salary threshold, while superficially showing convergence between employers and unions resisting the proposals, further analysis reveals different economic and political motives for opposing it: for employers, attempting to lower the salary for certain occupations through the SOL review to ensure the reproduction of a continued labour supply and fill skills gaps at 'reasonable costs.' In contrast, the trade unions, alongside state bodies like the Migration Advisory Committee, may accept lower salary thresholds as a temporary solution arguing that lowering thresholds in occupations already struggling to recruit local workers may only perpetuate the problem of shortages in key sectors and jeopardise key services (MAC, 2020a; TUC, 2019a).

In terms of the skills threshold debate, the contribution by the trade unions in advocating for a broader conception of skills within migration policy can in turn be understood as an attempt to make the case for their legitimate role in defending employment standards and the training of workers. This is suggestive of the broader project of UK trade unions in seeking to solidify their (precarious) role in the regulation of employment and skills (Mustchin, 2012; Stuart et al., 2013). Such stance among unions is likely to continue to be challenging unless the Government decides to invert their voluntaristic and market approach to skills reproduction. Such inversion may be necessary in a context where the end of free movement is generating an unprecedented shortage crisis, making impossible to hold on all the 'pillars' of the UK LME model (Teague & Donaghey, 2018). Wright's (2012) argument that a LME system such as the United Kingdom is associated with the pillar of 'relaxed borders' is therefore true only under certain circumstances, and certainly not in the current hostile environment to immigration. Concerning the interlock of migration with the social sphere, the migrant advocacy organisation and the local authority appeared to actively participate in the regulation of labour mobility, through engagement with the new immigration policy and settlement scheme, and through drawing upon their experience in the adjacent spheres of social and employment regulation. The expertise of 'new actors' is itself shaped by the state's mandating of new regulatory functions, upon, for example, the local authority tasked to promote the settlement scheme. Previously regulated 'from below' by employers and workers in the context of free movement, new actors regulatory functions are transferred from other actors by the state (Gebhardt, 2016; MacKenzie & Martínez Lucio, 2019) to manage the mass regularisation of the millions of EU nationals resident in the United Kingdom. At the same time new actors' intervention in the field of social rights and related campaigning (CPAG, 2020) denote the agency of migrant representatives in their communities to sustain and reproduce their social lives. Overall, this suggests the active role of migration as a form social regulation (Bauder, 2006) shaping the economic sphere from below by influencing the reproduction of skills and labour, rather than as a mere tool of labour market regulation by the capitalist state (Afonso & Devitt, 2016; Wright, 2012).

The study also illustrates how new actors anticipate that the new forms of employment precariousness engendered by the withdrawal of social protections and access to public funds can be detrimental for migrants, sharing the concerns of other commentators: it is feared that the lack of a general immigration route for lower-skilled work, combined with high visa costs for employers and applicants, and the feeble border controls for EU and 'non-visa nationals' into the United Kingdom from January 2021, will create the perfect mix for putting new migrants at greater risks of exploitation and trafficking (Camp, 2020; The Guardian, 2022). As argued by Woolfson in this journal, under a 'Singapore scenario' the UK economy will be exposed to further degradation of labour relations, with a larger pool of officially unprotected second class non-citizens (i.e., migrants on temporary visas), with the potential to lower wages and de-unionise workplaces and further erode labour standards for all.

In terms of the substantive effects of regulation, our study shows how certain social actors anticipate that a migration system can be performatively more coercive, giving the impression of regaining control over national borders (away from an LME model), to reduce allegedly 'unwanted' immigration, but at the same time create more incentives for irregular migration and informal employment to expand. While assessing these outcomes is beyond the scope of this study, the analysis of their positions and interactions, their convergence and conflicts over the very meaning of regulation, shows the nature of dialogue and engagement among old and new actors as focused on the economic or social sphere. In particular new actors highlight how

processes of migration re-regulation across the economic and the social spheres may give rise to informalisation of work. This in turn highlights the contradictory meaning of regulation in neoliberal markets (MacKenzie & Martínez Lucio, 2019; Peck & Theodore, 2010) suggesting the need to move away from a unilateral, positive view of regulation in work and employment as well as to overcome any artificial distinction between the economic and the social implications of international migration (Bauder, 2006).

In conclusion, while Martínez Lucio and MacKenzie (2004) looked at the ongoing importance of state regulation despite its supposed 'withdrawal' in favour of the market, our analysis shows the relevance of new actors in the re-regulation of migration, and the need to pay attention to their interactions with old actors in this area. Such attention is critical in the face of the spectacular 'return of the state' in the control of labour mobility. Furthermore, the different meanings of regulation among actors questions a pluralist and institutionalist view that assumes a mutual recognition of the 'rules of the game' among social partners at times of regulatory change (Martínez Lucio & MaKenzie, 2004). Rather, the critical role played by new actors in the field of migration call for more inclusionary understanding of social dialogue beyond the tripartite model of joint regulation adopted by institutionalist approaches (cf. Afonso & Devitt, 2016). Understanding the nature of dialogue, including converging and conflicting engagements among old and new actors is particularly essential in a context where international mobility, whether for economic, social or environmental reasons, is likely to continue despite the rise of hostile and utilitarian 'skill-based' migration regimes, and where the labour and migration crises precipitated by the global pandemic, continue to unfold.

## ACKNOWLEDGEMENTS

We are grateful to our colleagues Chris Forde, Zyama Ciupijus, Ioulia Bessa and Marketa Doležalová from the Centre for Employment Relations Innovation and Change for their ongoing engagement and discussion on the common research on labour migration, precarious work and the end of free movement and for their involvement in and contribution to the Labour Mobility Roundtables. We also would like to thank Robert MacKenzie and Mark Stuart for their precious comments on earlier drafts of the paper. Finally, we thank the Business School at the University of Leeds for having provided seed-corn funding for the exploratory research on which this article is based, that has subsequently led to a successful grant by the UKRI.

## CONFLICT OF INTEREST

The authors declare no conflict of interest.

## ORCID

Gabriella Alberti  <http://orcid.org/0000-0001-5673-6568>

## REFERENCES

- Afonso, A., & Devitt, C. (2016). Comparative political economy and international migration. *Socio-Economic Review*, 14(3), 591–613.
- Alberti, G., Bessa, I., Ciupijus, Z., Cutter, J., Forde, C., & Roberts, M. (2020). The coronavirus pandemic and the post-Brexit regulation of migration. CERIC Briefing Paper. [https://business.leeds.ac.uk/downloads/download/166/ceric\\_briefing\\_paper\\_-\\_migration\\_and\\_covid-19pdf](https://business.leeds.ac.uk/downloads/download/166/ceric_briefing_paper_-_migration_and_covid-19pdf)

- Alberti, G., & Danaj, S. (2017). Posting and agency work in British construction and hospitality: The role of regulation in differentiating the experiences of migrants. *The International Journal of Human Resource Management*, 28(21), 3065–3088.
- Alberti, G., Forde, C., Graham, G., Bessa, I., Ciupijus, Z., Cutter, J., & Dolezalova, M. (2022). *From health crisis to labour crisis? Omicron, Brexit and labour shortage*. CERIC Word Press. <https://cericleeds.wordpress.com/2022/01/13/from-a-health-crisis-to-a-labour-crisis-omicron-brexit-and-labour-shortages/>
- Anderson, B. & Ruhs, M. B., (Eds.). (2010). *Who needs migrant workers? Labour shortages, immigration, and public policy*. Oxford University Press.
- Bauder, H. (2006). *Labor movement: How migration regulates labor markets*. Oxford University Press.
- Bickerton, C. J. (2019). The limits of differentiation: Capitalist diversity and labour mobility as drivers of Brexit. *Comparative European Politics*, 17(2), 231–245.
- Boyer, R. (1987). Labour flexibilities: Many forms, uncertain effects. *Labour and society*, 12(1), 107–129.
- Busemeyer, M. R., & Trampusch, C. (Eds.). (2012). *The political economy of collective skill formation*. Oxford University Press.
- Camp, D. (2020). *The impact of the new UK immigration system on human trafficking into the UK*. Alliance Hr. [https://www.ihrb.org/uploads/member-uploads/The\\_impact\\_on\\_Human\\_Trafficking\\_of\\_the\\_new\\_UK\\_Immigration\\_System\\_-\\_October\\_2020.pdf](https://www.ihrb.org/uploads/member-uploads/The_impact_on_Human_Trafficking_of_the_new_UK_Immigration_System_-_October_2020.pdf)
- CBI. (2018). *Opened and controlled: A new approach to immigration after Brexit*. Accessed May, 2019. <https://www.cbi.org.uk/articles/open-and-controlled-a-new-approach-to-immigration-after-brexit/>
- Coderre-LaPalme, G., & Greer, I. (2018). Dependence on a hostile state: UK trade unions before and after Brexit. In S. Lehndorff, H. Dribbusch, & T. Schulten (Eds.), *Rough waters European trade unions in a time of crises* (pp. 259–284). ETUI.
- CPAG. (2020). *Child poverty action group*. 'Access to means-tested benefits for EU citizens with pre-settled status | CPAG'. <https://cpag.org.uk/welfare-rights/legal-test-cases/current-test-cases/eu-pre-settled-status>
- Cremers, J., Dølvik, J. E., & Bosch, G. (2007). Posting of workers in the single market: Attempts to prevent social dumping and regime competition in the EU. *Industrial Relations Journal*, 38(6), 524–554.
- Crouch, C. (1993). *Industrial relations and European state traditions*. Clarendon Press.
- Doležalová, M., Barbulescu, R., Mirza, N., & Bica, M. (2021). *Closure of EU settlement scheme risks leaving migrant Roma behind*. Policy Leeds: University of Leeds. [https://eprints.whiterose.ac.uk/176035/1/PolicyLeeds-Brief7\\_Closure-of-EU-Settlement-Scheme-risks-leaving-Roma-](https://eprints.whiterose.ac.uk/176035/1/PolicyLeeds-Brief7_Closure-of-EU-Settlement-Scheme-risks-leaving-Roma-)
- Edwards, P. K. (1990). Understanding conflict in the labour process: The logic and autonomy of struggle. In D. Knights, & H. Willmott (Eds.), *Labour process theory. Studies in the labour process* (pp. 125–152). Palgrave Macmillan.
- Favell, A., & Barbulescu, R. (2018). Brexit, 'Immigration' and anti-discrimination. In P. Diamond, P. Nedergaard, & B. Rosamond (Eds.), *The Routledge handbook of the politics of Brexit* (pp. 118–133). Routledge.
- Fitzgerald, I., Beadle, R., & Rowan, K. (2022). Trade Unions and the 2016 UK European Union Referendum. *Economic and Industrial Democracy*. 43(1), 388–409. <https://doi.org/10.1177/0143831X19899483>
- Forde, C., MacKenzie, R., Ciupijus, Z., & Alberti, G. (2015). Understanding the connections between temporary employment agencies and migration. *International Journal of Comparative Labour Law and Industrial Relations*, 31(4), 57–370.
- Gebhardt, D. (2016). When the state takes over: Civic integration programmes and the role of cities in immigrant integration. *Journal of Ethnic and Migration Studies*, 42, 742–758.
- Goberman, L., Hauptmeier, M., & Heery, E. (2018). Contemporary employer interest representation in the United Kingdom. *Work, Employment and Society*, 32(1), 114–132.
- Goodwin, M. J., & Milazzo, C. (2017). Taking back control? Investigating the role of immigration in the 2016 vote for Brexit. *British Journal of Politics and International Relations*, 19(3), 450–464.
- Heery, E., & Frege, C. (2006). New actors in industrial relations. *British Journal of Industrial Relations*, 44(4), 601–604.
- Home Office. (2020). The UK points based system of immigration: A policy statement. <https://www.gov.uk/government/publications/the-uks-points-based-immigration-system-policy-statement/the-uks-points-based-immigration-system-policy-statement>
- Hyman, R. (1975). What is industrial relations. In R. Hyman (Ed.), *Industrial relations: A Marxist introduction* (pp. 9–31). Macmillan.

- Inversi, C., Buckley, L. A., & Dundon, T. (2017). An analytical framework for employment regulation: Investigating the regulatory space. *Employee Relations*, 39(3), 291–307.
- Krings, T. (2009). A race to the bottom? Trade unions, EU enlargement and the free movement of labour. *European Journal of Industrial Relations*, 15(1), 49–69.
- MacKenzie, R., Forde, C., & Ciupijus, Z. (2012). Networks of support for new migrant communities: Institutional goals versus substantive goals. *Urban Studies*, 49(3), 631–647.
- MacKenzie, R., & Martínez Lucio, M. (2019). Regulation, migration and the implications for industrial relations. *Journal of Industrial Relations*, 61(2), 176–197.
- Marino, S., Roosblad, J. & Penninx, R., (Eds.). (2017). *Trade unions and migrant workers: New contexts and challenges in Europe*. Edward Elgar Publishing.
- Martínez Lucio, M., & Connolly, H. (2010). Contextualizing voice and stakeholders: Researching employment relations, immigration and trade unions. *Journal of Business Ethics*, 97(1), 19–29.
- Martínez Lucio, M., & MacKenzie, R. (2004). 'Unstable boundaries?' Evaluating the 'new regulation' within employment relations. *Economy and Society*, 33(1), 77–97.
- Massey, D. S. (1999). International migration at the dawn of the twenty-first century: The role of the state. *Population and Development Review*, 25(2), 303–322.
- McCollum, D., & Findlay, A. (2015). 'Flexible' workers for 'flexible' jobs? The labour market function of A8 migrant labour in the UK. *Work, Employment and Society*, 29(3), 427–443.
- McDowell, L., Batnitzky, A., & Dyer, S. (2008). Internationalization and the spaces of temporary labour: The global assembly of a local workforce. *British Journal of Industrial Relations*, 46(4), 750–770.
- McGovern, P. (2007). Immigration, labour markets and employment relations: Problems and prospects. *British Journal of industrial relations*, 45(2), 217–235.
- Meardi, G. (2012). Union immobility? Trade unions and the freedoms of movement in the enlarged EU. *British Journal of Industrial Relations*, 50(1), 99–120.
- Migration Advisory Committee. (2018). *EEA migration in the UK, final report*. [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/741926/Final\\_EEA\\_report.PDF](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/741926/Final_EEA_report.PDF)
- Migration Advisory Committee. (2020a). *A points-based system and salary thresholds for immigration, MAC report*. [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/873155/PBS\\_and\\_Salary\\_Thresholds\\_Report\\_MAC\\_word\\_FINAL.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/873155/PBS_and_Salary_Thresholds_Report_MAC_word_FINAL.pdf)
- Migration Advisory Committee. (2020b). *Review of the shortage occupation list: 2020*. [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/922019/SOL\\_2020\\_Report\\_Final.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/922019/SOL_2020_Report_Final.pdf)
- Migration Observatory. (2022) *Briefing: Migrants in the UK labour market: An overview*. <https://migrationobservatory.ox.ac.uk/resources/briefings/migrants-in-the-uk-labour-market-an-overview>
- Milkman, R. (2011). Immigrant workers, precarious work, and the US labor movement. *Globalizations*, 8(3), 361–372.
- Mustchin, S. (2012). Unions, learning, migrant workers and union revitalization in Britain. *Work, Employment and Society*, 26(6), 951–967.
- Office for National Statistics. (2019). International migration and the healthcare workforce. <https://www.ons.gov.uk/peoplepopulationandcommunity/populationandmigration/internationalmigration/articles/internationalmigrationandthehealthcareworkforce/2019-08-15#overall-healthcare-workforce>
- Peck, J., & Theodore, N. (2010). Labour markets from the bottom up. In S. McGrath Champ, A. Herod, & A. Rainnie (Eds.), *Handbook of employment and society: Working space* (pp. 87–105). Edward Elgar Publishing.
- Peck, J., Theodore, N., & Ward, K. (2005). Constructing markets for temporary labour: Employment liberalization and the internationalization of the staffing industry. *Global Networks*, 5, 3–26.
- Pepin, S., Holland, S., & Gower, M. (2020). *Post-Brexit immigration system proposals: Responses from stakeholders, house of commons library briefing paper CBP8838*. <https://researchbriefings.files.parliament.uk/documents/CBP-8838/CBP-8838.pdf>
- Piore, M. J. (1979). *Birds of passage: Migrant labour and industrial society*. Cambridge University Press.
- Portes, J., & Connor, O (2021). *Estimating the UK population during Covid-19. UK in a Changing Europe*. <https://ukandeu.ac.uk/estimating-the-uk-population-during-covid-19/>
- Portes, J., & Forte, G. (2017). The economic impact of Brexit-induced reductions in migration. *Oxford Review of Economic Policy*, 33(Suppl\_1), S31–S44.

- Stuart, M., Cutter, J., Cook, H., & Winterton, J. (2013). Who stands to gain from union-led learning in Britain? Evidence from surveys of learners, union officers and employers. *Economic and Industrial Democracy*, 34(2), 227–246.
- Teague, P., & Donaghey, J. (2018). Brexit: EU social policy and the UK employment model. *Industrial Relations Journal*, 49(5–6), 512–533.
- The Guardian. (2021). *A million people have left Britain. What does this mean for the country?* The Guardian.
- The Guardian. (2022). *Revealed: Indonesian workers on UK farm at risk of debt bondage.* The Guardian.
- Trade Union Congress (TUC). (2019a). *Points based system and salary thresholds TUC response to Migration Advisory Committee (MAC) November 2019.* <https://www.tuc.org.uk/research-analysis/reports/tuc-submission-migration-advisory-committee-points-based-system-and>
- Trade Union Congress (TUC). (2019b). *Building solidarity, stopping undercutting.* <https://www.tuc.org.uk/research-analysis/reports/building-solidarity-stopping-undercutting>
- Trade Union Congress (TUC). (2020). *Why the new points-based immigration system threatens everyone's rights at work.* <https://www.tuc.org.uk/blogs/why-new-points-based-immigration-system-threatens-everyones-rights-work>
- UK Government. (2019). *The UK's points-based immigration system: An introduction for employers.* Accessed January, 2020. <https://www.gov.uk/government/publications/uk-points-based-immigration-system-employer-information/the-uks-points-based-immigration-system-an-introduction-for-employers>
- Williams, S. (2020). *Introducing employment relations: A critical approach.* Oxford University Press.
- Woolfson, C. (2017a). The 'Singapore scenario': The uncertain prospects for labour standards in post-Brexit Britain. *Industrial Relations Journal*, 48(5–6), 384–402.
- Woolfson, C. (2017b). *The politics of Brexit: European free movement of labour and labour standards.* Linköping. University Electronic Press.
- Wright, C. F. (2012). Immigration policy and market institutions in liberal market economies. *Industrial Relations Journal*, 43(2), 110–136.

**How to cite this article:** Alberti, G., & Cutter, J. (2022). Labour migration policy post-Brexit: The contested meaning of regulation by old and new actors. *Industrial Relations Journal*, 53, 430–445. <https://doi.org/10.1111/irj.12382>