



Llywodraeth Cymru
Welsh Government

Brexit and Fair Movement of People

Securing Wales' Future

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1 First Minister's Foreword



The way in which the UK Government deals with the issue of migration to and from the European Union (EU) is critical to securing the right outcome of the UK's negotiations on leaving the EU – an outcome that is right for all parts of the UK, and which reflects the varying and specific needs across the devolved nations and English regions.

The results of the General Election showed clearly that the UK Government has no mandate for a 'hard Brexit' in which our economy is sacrificed, and public services damaged, for self-defeating, arbitrary limits on migration. More than ever, there is a need for a broad-based consensus to be developed which is in the best interests of Wales and the whole of the UK.

At the same time, we recognise that concerns about migration featured prominently in the debate leading up to the referendum on the UK's membership of the EU and that too many people here in Wales feel vulnerable and exploited.

That's why the Welsh Government that I lead is committed to making Wales a fair work nation where everyone can access better jobs closer to home, where everyone can develop their careers, and where we can all expect decent, life-enhancing work without exploitation or poverty.

In our White Paper, 'Securing Wales' Future', we set out an approach which would allow Wales and the UK to continue to benefit from inward migration while taking on board these concerns. It is an approach consistent, we believe, with our top priority of securing continued full and unfettered access to the Single Market.

In this paper – the latest in a series of policy documents examining in detail the implications for Wales of leaving the European Union – we develop these ideas, based on further research and analysis, and also consider the implications should the UK Government nevertheless pursue a policy based on quantitative restrictions on EU migration.

The fair migration policy which we propose – in which migration is linked more closely to work and in which exploitation of workers is tackled properly – is one which I believe would command wide support from people across Wales and the whole UK.

It is a policy which would be fair to EU citizens who have already made Wales their home – a group which the UK Government has treated like pawns in a game – fair to those who come in the future, who we will need if our economy is to flourish and our public services are to work

effectively, and fair to those across our country who feel vulnerable to what is seen as competition for work, benefits and public services.

A handwritten signature in white ink on a dark red background, reading 'Carwyn Jones'.

Carwyn Jones
First Minister of Wales

2 Preface from the Cabinet Secretary for Finance and Local Government



Wales welcomes people from around the world – people who want to visit and conduct business in the short term; people who want to move here for longer periods to work or study; and people fleeing danger such as refugees and asylum seekers.

We celebrate the fact that many citizens of other countries choose to make Wales home, and those who live and work in Wales play a crucial role in our society – they are employed in our key business sectors, deliver vital public services and strengthen the academic excellence in our universities.

Although levels of immigration in Wales are relatively low compared to some other parts of the UK, immigration was a concern for a significant number of people who voted ‘leave’ in the referendum on membership of the EU. For some, these views were based on ‘taking back control’ of immigration, and perceptions that immigration creates pressures on public services, jobs and wage levels.

Wales’ interests are best served through full and unfettered access to the Single Market. Consistent with this we advocate a flexible – but managed – approach to migration more closely connected to employment. This must be coupled with rigorous prevention

of exploitation of workers which will, we believe, improve wages and conditions for all workers. That is why an integral strand of this document is concerned with looking at how existing legislation to prevent exploitation of workers can be better enforced to improve wages and conditions, particularly for the lowest paid.

The evidence-based position we set out in this document contrasts with the UK Government’s blinkered view on immigration which has distorted their approach to negotiations with the EU. Their insistence, for example, that students should be counted within net migration targets was based on a flawed estimate of the number of students overstaying their visas, but recent statistics have shown this to be grossly overstated. We maintain that students – who contribute to our economy and to our society as a whole – should not be counted in net migration targets.

We will also continue to need to recruit doctors, nurses, engineers, workers for the tourism, food and agriculture sectors, academics and others from Europe after Brexit. We are starting to see a worrying number of EU citizens leaving the UK. This is putting pressure on employers who, in some cases, are already experiencing recruitment challenges.

The consequences of closing our borders would be damaging to Wales’ economy and public services. That does not need to happen, as this document demonstrates.

We do not intend here to describe a new immigration system in full detail – that is the UK Government’s job – instead we describe a framework for future migration which we believe will meet Wales’ needs, and work for the UK as a whole.

A handwritten signature in black ink that reads "Mark Drakeford". The signature is written in a cursive, slightly slanted style.

Mark Drakeford
Cabinet Secretary for Finance and Local Government

3 Summary

In our White Paper, ‘Securing Wales’ Future’, we set out our priorities to ensure Wales’ future prosperity after the UK’s exit from the EU. These priorities include a managed but flexible approach to migration that supports our ambition for full and unfettered access to the Single Market, linking migration more closely to employment. We address concerns about the perceived role of migration in undermining wages and conditions for workers, by emphasising better enforcement of legislation to prevent their exploitation.

This document sets out information and evidence about migration in Wales, and describes our ideas for the future, focusing specifically on future migration from the European Economic Area (EEA). This does not mean that we believe the current system for non-EEA migration is necessarily well-suited to Wales’ needs: but we recognise that, firstly, the movement of people between the UK and the rest of the EEA will be a key issue in discussing the future relationship between the UK and the EU; and secondly, that given the challenges of Brexit, significant reform of wider migration policy will need to wait until after we have left the EU.

Although this document focuses mainly on future migration policy, we also consider the EU and UK Government proposals for the rights and status of EU citizens who are already in the UK, and for UK citizens in the EU. The EU citizens who live in Wales

contribute immensely to our economy and society. Their rights should be protected, as should those of Welsh and UK people living elsewhere in the EU. The continuing uncertainty over their future rights and status is unwelcome and, we believe, unnecessary.

Our proposals are summarised below.

Future UK Immigration System for EEA and Swiss nationals

We are committed to developing the skills of people in Wales to ensure that they have the abilities needed to seize job opportunities. Alongside this, the Welsh economy will continue to need and benefit from the contributions of immigrants. Our analysis shows that the majority of EU nationals who live in Wales are part of a family unit; future policy must recognise that migration is not just about individuals but families too.

We believe that, after our departure from the EU, our future special relationship with Europe should include a differentiated and preferential approach to immigration for EEA and Swiss nationals. Leaving the EU should not affect the arrangements for the Common Travel Area (CTA), which has existed since 1922 and therefore pre-dates the UK and Republic of Ireland’s membership of the EU.

We oppose the UK Government’s aim of reducing migration numbers to an arbitrary target, as this risks the sustainability

of our key economic sectors and delivery of our public services. In the longer term, we would like to discuss with the UK Government a reform of wider UK migration policy which would recognise that the distinct needs of Wales and indeed other nations and regions within the UK cannot easily be met through the blunt and resource-intensive UK-wide approach currently in place.

If the UK decides to adopt an immigration approach which favours specific sectors at a UK level, we believe that this could severely disadvantage Wales by making it very difficult to recruit to sectors where we currently have a high demand for migrant workers. We would be firmly opposed to such an approach. Rather, our preference would be for a spatially-differentiated approach, where the Welsh Government would have a stronger role in determining how future migration to Wales would be managed, in order to ensure that Wales’ key sectors, public services and universities can continue to recruit from Europe. Any such approach must be based on fairness, proper enforcement of rules and proportionate administration.

Self-employment is a critical part of our economic mix and appropriate arrangements must be factored into any new immigration system. We need careful controls to ensure that migrants proposing to work on a self-employed basis are doing so in accordance with clear rules in order to prevent the exploitative practice of false self-employment, or other abuses of the system. Any abuse or exploitation must be tackled vigorously.

We believe that migrants from the EEA and Switzerland who are coming to work in the UK should be able to access benefits and public services in a broadly similar way as they do now.

Students

Students should not be counted as migrants for the purpose of net migration targets – they come to study, pay fees, spend money, enhance our universities and our economy, and the majority returns home. We do not wish to see additional immigration restrictions for EU, EEA and Swiss students.

Changes to immigration policy for students have a direct impact on our devolved policy on Higher Education. In the Welsh Government’s paper ‘Brexit and Devolution’, we call for a new approach that recognises the reality of such inter-connected responsibilities, ensuring that, through agreement, the UK and Welsh Governments’ powers are exercised in the interests of better governance and delivery for citizens.

The Welsh Government wants to ensure that any post-study visa flexibilities on offer elsewhere in the UK can be offered to overseas students at Welsh universities, and calls for the current, narrowly-focused pilot scheme to be extended far more widely across all parts of the UK.

Tackling Exploitation in the Workplace

Some migrant workers are particularly vulnerable to exploitation in the workplace though such exploitation is by no means confined to them. Exploitation is not caused by

immigration, but by unscrupulous employers, and tackling this exploitation will benefit all workers. Vigorous enforcement of the law will also address concerns on the potential for the exploitation of migrant workers to undermine wages and conditions for other workers.

The onus for reporting and seeking redress for exploitation in the workplace falls at present too heavily on the individual who is affected. The Welsh Government supports stronger enforcement by public authorities of existing legislation against exploitation and also the extension of collective bargaining arrangements and widening access to trade unions. This is to ensure that workers have the support that they need, both to prevent exploitation in the workplace and to tackle it when it occurs.

Most of the levers to address this issue lie with the UK Government, but the Welsh Government is already doing a great deal to drive stronger compliance and good practice among employers in Wales, and will seek to do more. The Fair Work Board will identify the steps needed for Wales to become a fair work nation.

The Welsh Government will work with trade unions and core funded advisory services to support them in identifying exploitative practices, providing advice to workers who need it, and driving greater compliance in the workplace.

The Welsh Government will also seek ways to influence behaviours through its key employer and business networks as well as working through its

established social partnership fora with employers and trade unions – in particular, the Workforce Partnership Council and the Council for Economic Development.

The UK Government must do more to ensure that all workers are more aware of their rights, for example, through using innovative tools such as mobile phone applications.

The UK Government must also put more resources into enforcing the National Living Wage (NLW) and focus their efforts on the nations and regions which have the greatest proportion of workers covered by the NLW. It must also be more transparent and provide more detail about investigations and prosecutions in Wales related to non-payment of the NLW.

The UK Government should support the EU’s efforts to tighten the EU Posted Workers Directive to ensure that its provisions bring equal pay for equal work. Crucially, it must ensure that this principle is reflected in domestic law in the future, and in any new arrangements between the UK and the EU going forward.

Much of the UK’s current employment law is based on EU law. The Welsh Government believes that the employment and social protections provided by EU law should be preserved and enhanced once the UK leaves the EU.

Engaging with People and Communities

We acknowledge that some people have genuine concerns about migration for a number of reasons, including perceived pressures on public services

and access to employment opportunities, as well as feelings of apprehension about the change that migration might bring to local communities. Through our Community Cohesion National Plan we are working to ensure that cohesion takes root in all communities.

Our vision for Wales is an inclusive country in which people from all backgrounds are welcomed, and where there is no room for xenophobia, racism or bigotry. The Welsh Government will continue to show leadership here, but this is an action for all.

A note on references and data used in this document:

Throughout this document, we refer to the EU, EEA, non-EU EEA countries and Switzerland, depending on the context.

*Where we refer to the **EU**, we are usually referring to the remaining 27 Member States of the European Union (not including the UK) – as we are describing what will happen once the UK has left the EU.*

*When we refer to the **EEA**, we are usually referring to the remaining 27 EU Member States, plus Iceland, Liechtenstein and Norway.*

*When we refer to the **non-EU EEA countries**, we are referring to Iceland, Liechtenstein and Norway.*

Third countries are those countries which are outside the EU, EEA and Switzerland.

We attempt to make it as clear as possible what grouping of countries we are referring to throughout this document and any exceptions to the definitions above.

The data and analysis set out in this document reflect our best understanding at the time of writing (August 2017). Data throughout the document comes from a range of sources and this may result in what appear to be inconsistencies, but can be because the basis of data is slightly different (for example, we have data on EU citizens based on nationality, as well data on those born in the EU by country of birth). We have been as explicit as possible about the source and scope of the data.

The Annual Population Survey (APS) was revised in July 2017 to take on board the 2015 population estimates. All APS analysis in this document was conducted prior to the re-weighting of the APS. Therefore, the figures presented here may differ to estimates produced using the APS from July 2017 onwards.

4 Background, context and definitions

Introduction

In total, 176,600 people born outside the UK are currently resident in Wales, including 79,100¹ from other EU Member states. The majority of these people are working – in our key economic sectors, public services or higher education institutions – and contribute greatly to our society. We know that this is a two-way process, and many Welsh people live and work in other countries around the world.

The decision for the UK to leave the EU means that a new UK immigration system will be needed with respect to nationals of the 27 remaining EU Member States, the non-EU European Economic Area countries of Iceland, Liechtenstein and Norway, and of Switzerland.

Immigration policy is the responsibility of the UK Government, but given its significance for Wales' economic sectors, public services, universities and communities more widely, we need to ensure that this new system meets Wales' needs. At the same time, we need to think about the effects of migration in Wales.

In this document we will:

- Describe what migration means for Wales now, focusing on the contribution that migrants make to the Welsh workforce and to the economy as a whole, as well as considering public attitudes to migration;
- Analyse the impact of potential options for future UK immigration policy, and set out what Wales needs from a future policy; and
- Consider the wider range of policy responses that will be needed in respect of changes to migration, and to strengthen efforts to tackle exploitation of low-paid workers.

In considering the future, we focus principally on migration from the EEA and Switzerland, not from the rest of the world. This is not because we believe the current system for third country migration is necessarily well-suited to Wales' needs: but we recognise that, firstly, the movement of people between the UK and the rest of the EEA and Switzerland will be a key issue in discussing the future relationship between the UK and the EU; and secondly, that given the challenges of Brexit, significant reform of wider migration policy will need to wait until after we have left the EU.

Migration and the UK – processes, definitions, and circumstances

The words 'migration' and 'immigration' are often used to describe a range of processes and circumstances. In Annex A we explore some of the different types of migration, and distinguish between them.

In particular, we distinguish between:

- Citizens of different countries: in this paper, which focuses on the consequences of Brexit, we concentrate on citizens of the EEA – people from the 27 other member states of the EU and the other EEA members, Norway, Iceland and Liechtenstein, as well as Swiss nationals who are treated in the same way for migration purposes. But we also consider the evidence about the role and characteristics of all migrants in Wales.
- People with different involvement in the labour market: jobseekers, workers (those already with a job) and the self-employed; students; 'self-sufficient' individuals (people who do not need to work, such as pensioners); and family members – people who migrate to be with spouses, parents or children who are living here.
- Different forms of migration – short term visitors for tourism or business travel (who may or may not require a visa to visit, depending on which country they come from), those who come to live here, refugees and asylum seekers and illegal and irregular immigrants.

¹ Source: StatsWales (June 2016) based on data from Labour Force and Annual Population surveys – included in 'Securing Wales' Future' Annex B, pg 50.

It is also important to note that, as the UK Government has made clear, leaving the EU should not affect the CTA – comprising the UK, Republic of Ireland (RoI), Isle of Man and Channel Islands – which has existed since 1922

and therefore pre-dates the UK and RoI's membership of the EU.

Finally, it is important to distinguish between *border control* and the right to live, work or access public services in the UK. Border control is enforced

at all entry points to the UK – air, sea and rail – and under all circumstances, as the UK is not part of the Schengen Agreement which allows passport-free travel within the majority of EEA countries and Switzerland.

The below table summarises the current rights and restrictions, described in Annex A, for overseas nationals travelling to the UK for a range of purposes:

| | Short Term | Jobseeker | Employed/ Self Employed | Student | Spouses and Dependants | Permanent Residence/ Indefinite Leave to Remain |
|------------------------------------|---|--|--|--|--|---|
| CTA | Travel for all above purposes permitted without restriction, with access to benefits ² | | | | | |
| EEA and Switzerland ³ | Entry permitted without restriction for stays of <3 months | Permitted, some restrictions (but limited enforcement) | Permitted, some restrictions (but limited enforcement); access to some benefits | Permitted, no access to benefits, must have comprehensive sickness insurance | Rights derived from EEA / Swiss national they are accompanying. Access to some benefits | After 5 years, where individuals meet criteria |
| Third country – Non visa Nationals | Entry permitted without visa <6 months | Not permitted | Visa required, no access to most benefits (entitlement to benefits linked to NI contributions) | | Allowed to accompany family member with student/working visa, as long as not relying on public funds | Application after 5 years continuous residence ⁴ |
| Third country – (others) | Visa required | Not permitted | Visa required, no access to most benefits (entitlement to benefits linked to NI contributions) | | | |

Changes to immigration policy

Following the UK vote to leave the EU, the previous UK Government signalled a preference for the UK to leave the Single Market, and for the UK to no longer participate in current EEA and Switzerland frameworks on the free movement of people. These changes will require a new immigration policy to set out how immigration to the UK for EEA and Swiss nationals will be managed in future; the UK

Government has committed to introducing an Immigration Bill for this purpose.

Immigration policy is reserved to the UK Government. However, immigration policy affects Wales in a wide range of devolved areas and it is important that a future immigration system takes account of the distinct circumstances in Wales – considering our economic sectors, delivery of public services and our population.

EU negotiation context

The UK Government's development of a new immigration system – although within the UK Government's control – needs to be considered in the context of the UK's negotiations with the EU. The negotiations are on two distinct issues: the first being on the terms for the UK's withdrawal from the EU, followed by a separate set of negotiations over the UK's future relationship with the EU.

2 Subject to 'habitual residence test' if the individual has lived outside of the CTA for an extended period.

3 See Art. 24 of EU Citizenship Directive 2004/38 for details of social assistance entitlement.

4 Some holders of Tier 1 Visas, and family members can apply after either 2 or 3 years.

The status and rights of EU nationals currently living in the UK, as well as arrangements for UK citizens living elsewhere in the EU, are the first priority in the EU's Negotiation Directives for the Withdrawal Agreement, which were adopted by the Council of the European Union in May 2017⁵, and have been discussed at the negotiations between the EU and the UK which have taken place in June, July and August. It is important to note that the scope of this part of the negotiations relates only to the other 27 EU Member States, and not the non-EU EEA countries plus Switzerland – which the UK will need to negotiate with separately.

In negotiating the UK's future relationship with the EU, the UK Government has indicated that it would seek to negotiate a comprehensive free trade agreement with the EU. The scope and ambition for this is not yet clear but it is reasonable to conclude that the more ambitious the deal sought, the more likely it is that the EU will be seeking increased flexibility of approach on future migration from the EU to the UK and vice versa. In particular, where services are part of such an agreement, and if these need to be delivered in person, flexibility of movement for those people will be an important consideration. The development of a future UK immigration policy will need to keep this in view.

There is political commitment both from the UK Government and EU institutions to preserve

the CTA arrangement as it currently stands. Movement of goods, capital and services between the UK and Ireland is a separate question, and there will need to be detailed consideration of the customs issues between the UK and the Republic of Ireland (these are not discussed within this paper).

Government Policy Positions

This document focuses on the Welsh Government's position on a future UK immigration policy but it is useful to set this in context of the rest of the UK. Each of the devolved administrations will be seeking to influence the UK Government's policy position to ensure that the UK approach will best meet the needs of their nation.

Wales

The Welsh Government's White Paper 'Securing Wales' Future' sets out priorities for the UK's exit and future relationship with the EU. In the paper, we set out an approach to future immigration which would support our future ambitions for full and unfettered access to the Single Market, at the same time recognising that there have been concerns about the extent and speed of immigration and the need for more control over this. Our policy position outlines that future migration to the UK should be more closely linked to employment – those wishing to come to the UK should either have a job, or the ability to find one quickly. We also advocate stronger enforcement

of legislation that prevents the exploitation of low-paid workers, on the basis that tackling this exploitation would improve wages and conditions for all workers, not just migrants.

Scotland

'Scotland's Place in Europe'⁶ similarly sets out the Scottish Government's priorities for EU exit. The key recommendation is for the UK to remain within the Single Market (the UK Government has since rejected that possibility) or, if not the UK as a whole, then for Scotland to remain in the single market and continue to benefit from the free movement of persons. On immigration, it states the need – regardless of Single Market status – for “greater flexibilities on immigration for different parts of the UK” to reflect different needs. Varying approaches are described, such as post-study work routes, and regional visas. Later in this paper, we consider whether approaches such as this could be appropriate for Wales.

Northern Ireland

The Northern Ireland Executive has not published a position paper in the same way as Wales and Scotland, but they have fed in views and analysis to the UK Government on the issues of specific significance for them. A key consideration in respect of movement of people will be around the 'soft border' between Northern Ireland and the Republic of Ireland (which will remain an EU member state).

5 Council of the European Union, 'Directives for the negotiation of an agreement with the United Kingdom of Great Britain and Northern Ireland setting out the arrangements for its withdrawal from the European Union', May 2017 – www.data.consilium.europa.eu/doc/document/XT-21016-2017-ADD-1-REV-2/en/pdf.

6 Scottish Government, 'Scotland's Place in Europe', published December 2016 – www.beta.gov.scot/publications/scotlands-place-europe/.

There appears to be widespread political commitment to preserve the existing arrangements covered through the CTA agreement, but there could be challenges in negotiating the details.

UK Government

As outlined earlier, the UK Government has set out a preferred position that would see the UK no longer being part of the Single Market, consequently it would no longer participate in EEA frameworks on free movement of people. The UK Government recently announced that there would be a “temporary implementation period” immediately following the UK’s exit from the EU⁷ but has confirmed that free movement will still end on the date of the UK’s exit. It has also continued to state its policy of reducing net migration to the “tens of thousands”.

In its negotiations with the EU, the UK Government will need to consider the balance of priority given to restricting immigration compared to the economic benefits of access to the Single Market. The Welsh Government believes that this balance must come down in favour of protecting and promoting the needs of the UK economy.

In the absence of confirmed detail or proposals for a future immigration system, there has been speculation about what possible immigration controls could be adopted by the UK Government in its future policy, including sector-based schemes, and quotas and caps along the lines of the current third country immigration system. Analysis of some of these approaches, and their potential effects in Wales, is provided at Annex C, and summarised in this paper.

The UK Government has also made proposals (for negotiation with the EU) in respect of the future rights and status of EU citizens in the UK and UK nationals in the EU⁸, which we also consider later in this paper.

7 This was referred to in the UK Government’s commissioning letter to the Chair of the Migration Advisory Committee on 27th July 2017 – www.gov.uk/government/publications/commissioning-letter-to-the-migration-advisory-committee.

8 UK Government policy document, ‘Safeguarding the Position of EU Citizens in the UK and UK nationals in the EU’, published 26th June 2017 www.gov.uk/government/publications/safeguarding-the-position-of-eu-citizens-in-the-uk-and-uk-nationals-in-the-eu.

5 A Picture of Migration and its Effects in Wales

Introduction

Migration to and from the EEA and Switzerland is an established way of life in the UK and we have not previously needed to identify nationality in relation to our workforce and communities. This historical lack of data capture, as well as relatively small levels of migration into Wales, make it difficult to find detailed data about the people who have chosen to live and work here. Although the Office for National Statistics (ONS) is undertaking work to improve migration data, and the UK Government has recently commissioned the Migration Advisory Committee (MAC) to undertake analysis on EEA migration patterns⁹ to the UK, there is more that needs to be done, quickly, if we are to understand migration in Wales in greater detail.

In 'Securing Wales' Future', a high level evidence review of migration¹⁰ set out some of the key facts and figures about migration in Wales. The Public Policy Institute for Wales (PPIW) analysis at Annex C to this paper, provides further, more in-depth analysis about family circumstances of migrants in Wales, the sectors they work in, and what, based on this analysis, would be

the implications for Wales of potential specific change options to the UK immigration system.

This section presents our understanding of the picture of migration in Wales – based on the above analysis, and the best currently available information from our key sectors, public services and Higher Education (HE) sector, about the people who have moved to Wales from overseas, what work they do, and the potential impact of changes to immigration policy in Wales.

Migration statistics

Based on figures from the APS¹¹, the total migrant population in Wales is 176,600 (5.8% of the Welsh population) of whom 79,100 are from the EU (2.6% of the Welsh population). This is low when compared to the figures in the UK overall which are 8.8 million (13.7%) and 3.4 million (5.2%) respectively, with the greatest concentration in London and the South East of England.

Migration is concentrated in urban areas, such as Cardiff and Swansea, although there are also significant numbers of migrants living in more rural areas such as Carmarthenshire and Ceredigion¹².

EU citizens in Wales

Of the approximately 80,000 EEA and Swiss citizens residing in Wales, about 30,000 arrived less than 5 years ago¹³. This is broadly consistent with the data from the International Passenger Survey, which estimates annual migration flows to Wales from the EU at approximately 7,000 (ONS, 2016)¹⁴.

This suggests that while many, perhaps most, non-UK EU nationals may be entitled to permanent residence under the current rules, a large proportion will not – under EU and EEA law, individuals only currently become entitled to a right of permanent residence after 5 years of legal residence. Further examination of the data also suggests that – in contrast to the general perception that EU migrants are mostly young and single – the vast majority of EU citizens are part of a family unit, and are as likely as UK-born residents to have children. It is estimated that there are more than 20,000 children (of all nationalities) resident in Welsh households where at least one person is an EU citizen; this represents 4% of all Wales-resident children¹⁵.

9 UK Government Commission to Migration Advisory Committee (MAC), 27th July 2017: www.gov.uk/government/publications/commissioning-letter-to-the-migration-advisory-committee, and MAC call for evidence, 4th August 2017: www.gov.uk/government/consultations/call-for-evidence-and-briefing-note-eea-workers-in-the-uk-labour-market.

10 Public Policy Institute for Wales, November 2016, see Annex B of 'Securing Wales' Future'.

11 Source: StatsWales (June 2016) based on data from Labour Force and Annual Population Surveys. This data is based on country of birth.

12 Source: As above.

13 See Table 1 in Annex C to this document.

14 This estimate has, proportionally, a very large margin of error. However, the fact that there are about 30,000 EEA citizens in Wales who arrived in the last 5 years – that is about 6,000 a year – suggests it is probably reasonably accurate.

15 See Table 2 of Annex C to this document.

Welsh people in the EU

According to ONS data¹⁶, around 900,000 UK citizens were long term residents in other EU countries in 2010 and 2011¹⁷. There is no available data about how many of these UK nationals are from Wales, but we have heard from a number of Welsh people living in other countries since the vote to leave, seeking the Welsh Government's support and representation to clarify their future status.

Future Rights and Status of EU citizens in the UK and UK citizens in the EU

In the context of negotiations between the EU and the UK, both the European Commission and the UK Government have published proposals on the rights and status of EU citizens in the UK and UK nationals in the EU after the UK's exit.

The European Commission's proposals¹⁸, published on 12th June, would apply to EU citizens who live, or have lived in the UK (and vice versa for UK citizens in the EU), and would – broadly – guarantee the same rights for those people as is currently the case (Annex A describes these in more detail). The UK's proposals¹⁹, published on 26th June, are based around the proposal of giving EU citizens in the UK the option of applying for 'settled status' and sets out three scenarios:

- EU citizens who have been resident here for at least 5 years would be eligible to be

granted 'settled status' before (and for a period after) the UK's leave date;

- EU citizens who arrived in the UK before a specified date (to be agreed as part of the negotiations) but have not been a resident for 5 years will be able to apply for leave to remain, which would allow them to stay in the UK until they have been resident for 5 years and can apply for settled status;
- EU citizens who arrive in the UK after the specified date would be given a 'grace period' in which to regularise their status but would not be guaranteed settled status when this period ends.

Settled status would give EU citizens access to UK benefits on the same basis as a UK national, but is distinct from UK citizenship which could be applied for separately. The UK Government indicate they will be seeking similar arrangements with Switzerland and the non-EU EEA countries of Iceland, Liechtenstein and Norway on a reciprocal basis.

Family dependants who join qualifying EU citizens before the UK's leave date would be eligible to apply for permission to stay in the UK until they have been resident for 5 years and can apply for settled status. Dependants joining after the leave date would be subject to the same rules which apply to non-EU nationals joining British citizens.

The UK Government has committed to simplifying the application process for settled status compared to the current process for applying for permanent residence (often reported by applicants to be complex and long). Those who are not economically active will no longer need to have comprehensive sickness insurance in order to be eligible. Those with settled status, or working towards it will be issued with a 'residence document' (many reports have referred to this as an 'ID card', but the UK Government has not confirmed the format of this document).

At the time of writing, negotiations over the future arrangements for EU citizens in the UK and UK nationals in the EU are continuing. The implications of the UK's proposals in particular are considered in more detail later in this document.

Migrants in the Welsh Workforce

Our White Paper, 'Securing Wales' Future', highlights the positive contribution that EU citizens make to daily life in Wales; from the academic staff in our universities, to the individuals delivering in our Welsh NHS and public services, and the significant proportion of EU nationals working in our thriving tourism industry and manufacturing sector. A number of the Welsh Government's key business sectors are ones

16 Source: ONS – 'What information is there on British migrants living in Europe?' January 2017 – www.ons.gov.uk/peoplepopulationandcommunity/populationandmigration/internationalmigration/articles/whatinformationisthereonbritishmigrantslivingineurope/jan2017#number-of-british-citizens-living-in-europe-in-2011-by-age.

17 Another estimate by the UN Population Division suggests that the figure is nearer 1.2 billion, but this is calculated on a different basis (country of birth) and is less certain than the ONS data.

18 European Commission position paper, 'Essential principles on citizens' rights', published 12th June 2017 – www.ec.europa.eu/commission/publications/position-paper-essential-principles-citizens-rights_en.

19 UK Government policy document, 'Safeguarding the Position of EU Citizens in the UK and UK nationals in the EU', published 26th June 2017 www.gov.uk/government/publications/safeguarding-the-position-of-eu-citizens-in-the-uk-and-uk-nationals-in-the-eu.

where there is a significant representation of migrant workers – for example tourism, manufacturing (including food and drink production), and construction. EU nationals also make an important contribution to our creative industries and to cultural life in Wales.

Employment rates

EU migrants in Wales have a higher employment rate than the working age population as a whole – 79.0% of working age (16-64) migrants in Wales are in employment compared to 71.3% of the total working age population and 69.3% of all migrants²⁰. This is similar to the pattern in the UK as a whole. We also know that the number of migrants claiming working age benefits in Wales is relatively low. According to data published by the Department for Work and Pensions, 7,921 non-UK nationals claimed working age benefits, of whom 2,817 were from the EU. To put this in context, the number of UK nationals in Wales claiming working age benefits was 290,957²¹.

Skills

The PPIW analysis at Annex C highlights a differing profile of the skill level of occupations occupied by migrant workers in Wales. In summary, working age migrants from the EU are more likely to be employed in middle to elementary level occupations whereas non-EU migrants are more likely to

be in higher skilled jobs than either EU migrants or UK born people²². However, it is important to note that a majority of EU migrants – like UK-born people or non-EU migrants – work in ‘lower middle’ occupations (such as administration, or caring and leisure) or ‘upper middle’ skilled occupations (such as skilled trades for example in the construction industry). This has important implications for policy, which should not be based on a binary ‘high/low’ skills classification.

The reasons for the higher occupational skill profile of third country nationals are not known but it is possible that this reflects the number working in the health sector, higher education, and intra-company transferees for multinational companies. There is also a consideration around the relative ease of access to the UK labour market for EEA and Swiss nationals compared to third country nationals, since the implementation of the Tier 2 visa system for third country nationals is restricted to migrants taking up work with a high skill level and/or salary.

The prospect of increased barriers to recruitment for workers from the EEA and Switzerland has implications for Wales’ current and future labour market and skills needs. We are aware that skills deficiencies and recruitment issues affect key sectors which have significant representation by migrant workers, such as construction,

manufacturing, and hotels and restaurants. This is discussed further in Annex B.

Migration in key economic sectors, public services and Higher Education

In Annex B, we provide a more detail and qualitative evidence about the contribution made by migrants to different sectors in the Welsh economy. In summary:

Migrants account for 11% of the **tourism** workforce in Wales (5% of the workforce is from the EU²³) and the British Hospitality Association believes that, in a scenario of restricted access to the EU workforce, the sector’s future labour market requirements may not be met from the UK resident population in the short to medium term.

9% of the **manufacturing** workforce in Wales is from overseas (7% is from the EU)²⁴. Manufacturing employers, including key employers in sub-sectors such as automotive and aviation have expressed concerns about access to skills in the event of significant changes in the UK’s migration policies and have stressed the importance of rapid and administratively simple intra-company staff transfers between different EU countries.

Although a smaller proportion of the **construction** sector workforce in Wales is from overseas (3% in total, with 2% of the workforce from an EU background²⁵), construction

20 Source: Labour Force Survey estimates, as set out in ‘Securing Wales’ Future’, pg 59.

21 Source: DWP publication August 2017: Nationality at point of National Insurance Number registration of DWP working age benefit recipients: data to Feb 2017: <https://www.gov.uk/government/statistics/nationality-at-point-of-nino-registration-of-dwp-working-age-benefit-recipients-data-to-feb-2017>

22 Data behind this is based on Annual Population Survey, December 2016 – see page 64 of Annex C.

23 Source: Welsh Government data, as set out in ‘Securing Wales’ Future’ – page 61, Figure 9.

24 Source: As above.

25 Source: Annual Population Survey, as outlined in Annex C to this paper. A CITB Observatory paper which provides data based on ONS, CSN, Experian counts 110,740 for total workforce but does not break down by nationality.

is a sector that has particular difficulty with filling vacancies due not only to a lack of skills, qualifications and experience amongst applicants, but also due to other non-skills related issues. The sector is expected to see high growth in the next few years, driven by the strong pipeline of proposed infrastructure projects in Wales, including the Wylfa Newydd nuclear power development, South Wales Metro, M4 relief road and Tidal Lagoon developments.

The **food and drinks** sector is heavily reliant on migrant workers to fill roles in food processing with over a quarter (27%)²⁶ of those employed in food and drink manufacture in Wales born in the EU. Food and drinks manufacturers have reported that they have found it difficult to recruit labour to undertake production line jobs and migrant workers have plugged a gap in labour supply, while there are also reported to be shortages in some skilled roles.

The **veterinary** sector in the UK could face particular problems from potential restrictions to EU migration, with 44% of newly registered veterinary surgeons in the UK having qualified from EU veterinary schools, and 22% of staff at UK veterinary schools being from the EU²⁷. Of particular importance to Wales' agricultural

sector, 90% of meat inspection occupational vets in the UK are non-UK EU citizens²⁸.

The **NHS** in Wales is reliant on EU workers at every level. In September 2016, 1,313 EU nationals were directly employed by the NHS in Wales, with 7% of doctors working in Wales coming from the EU²⁹. Systems in place around the recruitment of staff are also vulnerable to the impact of our withdrawal from the EU, because systems such as the European Professional Card for professions such as general care nurses, pharmacists and physiotherapists provide a quick and reliable system for ensuring correct registration, minimum standards of training and knowledge of languages.

In the **social care** sector, while specific data is not available for Wales, figures for England show that in similar regions, around 3% of local authority and independent sector jobs were held by people with an EU nationality, and a further 5% were held by people with a non-EU nationality³⁰. As with the rest of the UK, the social care sector in Wales is facing a range of challenges which relate to its ability to recruit and retain the best workers, whether from the UK, EU or rest of the world. Any short term impacts from EEA and Swiss nationals deciding to leave the UK, or not to come

and work here could exacerbate recruitment and retention pressures, as would a decision to restrict EEA and Swiss nationals' access to the labour market in the longer term.

12% (2,365) of **Higher Education** (HE) staff are non-UK born (7% or 1,425 are from the EU)³¹ and staff from overseas are key to ensuring the research and teaching quality offered in Wales' HEIs, as well as to facilitating international research collaborations. Around 17%³² of the students in Welsh HE institutions are from overseas (both EU and non EU) and represent a significant source of income for HEIs, helping to sustain a wide range of courses, particularly at postgraduate level. Issues around migration need to be considered alongside a range of other EU exit issues for HEIs, including EU funding for research, ability to undertake international research collaborations, access to Structural Funds, and the future of student mobility programmes, such as Erasmus+.

Possible UK policy approaches to migration and implications for Wales

In his paper for the PPIW (Annex C), Professor Jonathan Portes sets out the likely options being considered by the UK Government in their development

26 Source: Welsh Government analysis of Annual Population Survey (Jan-Dec), Office for National Statistics - www.gov.wales/statistics-and-research/ad-hoc-statistical-requests/?lang=en.

27 Source: RCVS Facts 2015, www.rcvs.org.uk/publications/rcvs-facts-2015/?destination=%2Fpublications%2F%3Ffilter-keyword%3Dfacts%26filter-type%3D%26filter-month%3D%26filter-year%3D%26filter.x%3D0%26filter.y%3D0.

28 Source: Veterinary Policy Research Foundation, 'Brexit - Veterinary Fact File' Oct 2016, www.vprf.files.wordpress.com/2016/10/brexit-impacts-for-website.pdf.

29 Welsh NHS Confederation briefing, 'Our Greatest Asset: The NHS Workforce', March 2017 - www.nhsconfed.org/resources/2017/03/welsh-nhs-confederation-briefing-on-workforce-challenges-and-solutions.

30 Source: National Minimum Data Set for Social Care, March 2017: www.nmds-sc-online.org.uk/Get.aspx?id=/Research/Briefings/Briefing%2028-%20Nationality%20-%20final.pdf.

31 Source: Higher Education Statistics Agency Staff Record, 1st December 2015.

32 Source: Higher Education Student Record, Higher Education Statistics Agency, February 201 - www.stats.wales.gov.wales/Catalogue/Education-and-Skills/Post-16-Education-and-Training/Higher-Education/Students/Enrolments-at-Welsh-HEIs/highereducationenrolments-by-domicile-level-mode.

of a new immigration policy after the UK's withdrawal from the EU, and what the implications and risks of these approaches might be for Wales' economy and public services, taking into account current patterns of migration in the Welsh workforce.

Context

As we have seen earlier, the UK's border controls currently allow short term stays without a visa for a large number of travellers. It is difficult to see a scenario whereby EEA and Swiss nationals would be treated less favourably than citizens from the 'non-free countries' outside the EEA and Switzerland (e.g. US, Australia). Therefore the emphasis on future controls on migration will be on permission to work and live in the UK.

Options

The options that could be considered by the UK Government range from a light-touch registration system at one end of the scale (freedom of movement as currently operated in most EEA countries), to – at the other end of the scale – the replication of the current system for third country migrants, requiring visas for different employment situations prior to entry.

The UK Government will be considering how to respond to the many calls from industry and public service stakeholders to ensure that a future immigration system will meet the needs of businesses and ensure that essential public services can

continue to be delivered – doing so would seem to require some form of compromise compared to the strict levels of control that would be needed to achieve the UK Government's net migration target.

We understand that neither a points-style system (such as the one in Australia and as advocated by the 'Vote Leave' campaign) nor an 'emergency brake' system are likely to be considered³³.

This leaves the UK Government with options for limiting migration through work permits based on economic sectors, skills/salary level (as in the current Tier 2 visa system), or caps/quotas. It also needs to consider the extent to which it will offer some form of preference to EEA and Swiss nationals compared to the rest of the world. These options are described in more detail in Annex C.

Also, although largely rejected in public statements, the UK Government has not definitively ruled out the idea of allowing differential approaches to immigration in specific areas and nations of the UK, as called for by the Scottish Government in its White Paper, and as proposed by other actors, such as the City of London Corporation³⁴ and the All Party Parliamentary Group on Social Integration³⁵.

Administrative/Financial impacts

At present, migration from the EEA and Switzerland places very little administrative burden

on workers, employers, or the Government (at any level) – a passport or identity card suffices to prove EEA/Swiss nationality – and there are no direct costs of immigration (e.g. fees for visas).

Depending on the system that is implemented and the extent of control exerted, there will be additional financial and administrative burdens on a number of levels. This is perhaps best expressed by comparison to the current UK immigration system for third country nationals (details in full can be found in the Visas and Immigration section of the UK Government website³⁶):

Costs and administrative burdens for:

Students and migrant workers:

- Visa fees & application forms – fees range from £335 for a Student Visa to £1200 for a '3 years plus' Tier 2 skilled worker visa;
- Immigration Healthcare charge: Annual charge of £150 for students and £200 for workers.

Employers:

- Application to become a sponsor;
- Resident Labour Market Test (proof of need for overseas worker);
- Certificate of Sponsorship charges: either £536 for small and charitable organisations or £1476 for medium and large organisations;
- Immigration Skills Charge: Annual charge of £364

33 The idea of the 'emergency brake' is where immigration can be limited or stopped, if it is shown to be placing undue pressure on public services.

34 PWC report, 'Regional Visas – a unique immigration solution?', Oct 2016: www.cityoflondon.gov.uk/business/economic-research-and-information/research-publications/Pages/regional-visas.aspx.

35 APPG on Social Integration, 'Integration not Demonisation - The final report of the All-Party Parliamentary Group on Social Integration's inquiry into the integration of immigrants', August 2017: www.socialintegrationappg.org.uk/reports.

36 UK Visas and Immigration official website – www.gov.uk/government/organisations/uk-visas-and-immigration.

for small and charitable organisations or £1000 for medium and large organisations – to note that the Conservative Party outlined a commitment in their manifesto to double these charges.

Government and public services:

- Checking entitlement to access public services/ health service;
- Processing visa applications;
- Ongoing monitoring and enforcement to prevent overstaying, ensure genuine need for overseas worker, compliance with visa conditions, etc.

The costs and administrative burdens outlined above for employers would also apply to public services as employers, placing additional pressure on already stretched budgets and services. An additional impact of restrictions to migration could be the increased costs of hiring staff, either resulting from an increased reliance on agency staff, or increased competition for staff resulting in higher levels of wages needing to be paid to attract staff.

The Migration Advisory Committee (MAC), which advises the UK Government on Immigration Policy, undertook a review³⁷ of the Tier 2 (Skilled Worker) immigration system. Feedback from partners included in this review highlights some of the challenges of the current Tier 2 system and possible

risks with elements of this being extended to include EEA and Swiss nationals, as outlined below:

- Too complicated compared to other countries;
- Creates a significant and costly burden on businesses and is a deterrent to growth within the UK;
- The overall design does not enable the healthcare service to bring in the skilled workers required;
- Needs to be made more accessible to start-ups and small and medium sized enterprises, as a start-up may not have the robust human resources (HR) systems and policies in place to apply for (or maintain) a sponsor licence.

The MAC has recently been commissioned by the UK Government to undertake analysis of the impacts to the UK labour market of the UK's exit from the EU and, more widely, how the UK's immigration system could be better aligned to a modern industrial strategy³⁸.

It is not yet clear what systems will be put in place to manage a future immigration system. However, given that current indications are for stronger controls in order to reduce numbers, it is plausible that a new system could be based – at least in part – on the existing systems which seek to reduce third country migration. If this course of action is followed,

we strongly believe that controls must be proportionate, designed to support the needs of our economy and public services – the risk is that these are, instead, additional burdens and barriers to economic growth and social cohesion.

Public attitudes to Migration

Levels of migration to Wales are relatively low compared to most other parts of the UK, particularly London and the South East (2% of all people in the UK born abroad live in Wales, compared to 36.7% in London, 12.8% in South East England and 4.6% in Scotland³⁹). However, public attitude surveys have suggested that people in Wales seem to have less favourable views about immigration than other parts of UK⁴⁰.

In 'Securing Wales' Future', we cite the British Social Attitudes Survey (2013) which found that 86% of respondents in Wales thought that immigration should be reduced, and that 71% of respondents from Wales thought that EU migrant workers brought more costs than benefits. There have been a number of more recent polls which are broadly consistent with these earlier findings however, these polls must be taken into context, recognising their limitations in exploring a number of complex issues and their varying implications.

37 Migration Advisory Committee review: Tier 2 migration, published January 2016 – www.gov.uk/government/uploads/system/uploads/attachment_data/file/493039/Tier_2_Report_Review_Version_for_Publishing_FINAL.pdf.

38 UK Government's commissioning letter to the Migration Advisory Committee, 27th July 2017 – www.gov.uk/government/publications/commissioning-letter-to-the-migration-advisory-committee and MAC call for evidence, 4th August 2017: www.gov.uk/government/consultations/call-for-evidence-and-briefing-note-eea-workers-in-the-uk-labour-market.

39 Source: ONS (December 2015) based on data from Labour Force and Annual Population surveys – included in 'Securing Wales' Future' Annex B, pg 51. This data is based on country of birth.

40 See narrative and graphs on Public Attitudes to Migration in 'Securing Wales' Future' page 62-63.

This apparent public concern is not necessarily consistent with high level evidence about migration into Wales. Not only is there a relatively low level of migration into Wales, we have also seen that EU migrants of working age (16-64) in particular are more likely to be in employment than the working age population as a whole, and the number of EU citizens claiming benefits is low. There have also not been any correlations identified between growth in migration and the share of 'leave' votes in specific areas⁴¹.

A number of reasons have been highlighted as concerns related to immigration:

- Perceived pressures on housing and on public services such as the NHS and education;
- A worry that greater competition for jobs could lead to reduced employment opportunities, lower wages and poorer working conditions; and
- An overall apprehension about the changes that might result from migration, and the need for effective integration of migrants into workplaces and communities.

Below, we set out a range of high-level evidence about the effects of migration in economic terms, and on public services in Wales. The available evidence presents a different

picture overall from the types of concerns which are highlighted above. We are keen to better understand the broader circumstances which lead people to be concerned about the effects of migration.

Economic and Demographic Effects of Migration

Here, we consider some of the evidence around the wider economic effects of migration, at a UK level.

Wages, Earnings and Productivity

In a recent systematic review of the evidence, published in the Oxford Review of Economic Policy⁴², Jonathan Portes and Giuseppe Forte find that, on wages, there is an emerging consensus that recent migration has had little or no direct impact overall, but possibly some small negative impact on low-skilled workers (and perhaps some positive impact on skilled workers).

In respect of the possible negative impact on low-skilled workers, analysis, by Stephen Nickell and Jumana Saleheen (2015)⁴³, found that a 10 percentage point rise in the immigrant share in the semi/unskilled service sector would lead to approximately a 1.9% reduction in average wages for native workers in that sector over an eight year period.

It should be noted that a 10 percentage point rise is very large – far higher than that seen in Wales. Other things – the level of the minimum wage, public sector pay policy, the decline in trade union power, technological and industrial change – are likely to have had far bigger impacts on pay in low skilled sectors over such a period.

It is also worth stressing that this finding is for the UK as a whole. In Wales we do not have the same levels of migration, nor growth of migration, as the rest of the UK. There are also not the same concentrations of migrant workers in Welsh key sectors as there are more widely in the UK.

Indeed, an evidence review by the Centre for Economic Performance at the London School of Economics (LSE)⁴⁴ also found that there is “little overall adverse effects of immigration to the UK on wages and employment for the UK-born”. On the contrary, the wider evidence base⁴⁵ shows that immigration is associated with higher levels of productivity and higher average wages and incomes for the population as a whole.

Wages should also be seen as part of a wider range of factors affecting income and the cost of living. Since the recession, historically low rates of wage growth have reflected a weak productivity performance across the UK. The real value of wages

41 Source: Welsh Government data in ‘Securing Wales’ Future’, page 64, figure 12.

42 Portes, J and Forte, G, ‘The economic impact of Brexit-induced reductions in migration’, March 2017. in the Oxford Review of Economic Policy – www.academic.oup.com/oxrep/article/33/suppl_1/S31/3066076/The-economic-impact-of-Brexit-induced-reductions.

43 Nickell, Stephen and Saleheen, Jumana, ‘The impact of immigration on occupational wages: evidence from Britain’, December 2015. In: Bank of England, Staff Working Paper No. 574 – www.bankofengland.co.uk/research/Pages/workingpapers/2015/swp574.aspx.

44 LSE Centre for Economic Performance, ‘Brexit and the Impact of Immigration on the UK’, May 2016 – www.cep.lse.ac.uk/pubs/download/brexit05.pdf.

45 National Institute of Economic and Social Research, ‘What’s the link between labour productivity and immigration in the UK?’, November 2013 – www.niesr.ac.uk/blog/what%E2%80%99s-link-between-labour-productivity-and-immigration-uk.

has been further eroded by higher costs of living – in part resulting from weaker sterling over the period since the referendum on leaving the EU. This has raised the costs of imported goods and services. Average real earnings remain about 6% lower than they were approximately six years ago.

Impact on GDP and Public Finances

The Institute for Fiscal Studies⁴⁶ has shown that immigration creates a net benefit for the public finances as, on average, immigrants pay more in taxes and receive less in benefits than the UK born population.

Similarly, the Office for Budget Responsibility⁴⁷ considered the impact of inward migration on net debt as a percentage of Gross Domestic Product (GDP) over a 50 year projection period (to 2066/67) compared to a central net migration projection of 185,000 per year. In their analysis, a higher level of inward migration (265,000 per year) showed reductions to the primary deficit by 0.6% of GDP, and net debt by 26%. A lower level of migration (105,000 per year) showed the primary deficit increasing by 0.8% of GDP and net debt by 31%.

In the recent study for the National Institute for Economic and Social Research referenced earlier⁴⁸, Portes and Forte note that it is well established

that EU immigrants are more educated, younger, more likely to be in work and less likely to claim benefits than the UK-born⁴⁹. Portes and Forte conclude that, in their central scenario, the impact of Brexit-induced reductions in migration could be to reduce annual GDP per capita by between 0.22% and 0.78%. On their more extreme scenario, the reduction in GDP per capita would be up to 1.16%.

Long term demographic considerations

There are arguments for considering migration in the context of addressing longer term population challenges. Annex D to this paper sets out in greater detail some of these considerations but the main issues are summarised below:

- A key feature of demographic change in Wales and the UK is of course that the population is ageing, with increasing numbers of both old and very old people;
- As is the case for the UK as a whole, the total fertility rate in Wales has for a long time been below that needed to replace the population – see Chart 1 of Annex D⁵⁰. Should this persist (and there seems at present no reason to assume otherwise) then over the longer run future, Welsh population would experience a long term trend decline – unless there was a continuing

inflow of people from outside Wales. (Increasing longevity reduces the rate of decline but cannot eliminate it);

- It is self-evident that long term population decline could have profound social, economic and political implications. These implications would however emerge progressively, so might not attract the attention they deserve;
- The trend reduction in the working age population in particular is projected to be sharper in Wales than in many other parts of the UK and may raise particular social, economic and fiscal issues. This decline in the working age population is of course likely to be reinforced by potential reduced population inflows as a result of lower international migration to the UK following Brexit;
- Immigration is not a panacea for an ageing population, but a policy that resulted in a continuing inflow of younger and more educated migrants could have some role to play in ameliorating these adverse trends.

46 Preston, I, 'The Effect of Immigration on Public Finances', published in 'The Economic Journal', April 2015. www.ifs.org.uk/uploads/publications/Preston-2014-The_Economic_Journal.pdf.

47 Office for Budget Responsibility, Fiscal Responsibility Report, January 2017 – www.cdn.budgetresponsibility.org.uk/FSR_Jan17.pdf see page 75-76.

48 Portes, J and Forte, G, 'The economic impact of Brexit-induced reductions in migration', March 2017, in the Oxford Review of Economic Policy www.academic.oup.com/oxrep/article/33/suppl_1/S31/3066076/The-economic-impact-of-Brexit-induced-reductions.

49 For example, according to Portes and Forte, about 44% have some form of higher education compared with only 23% of the UK-born.

50 The increase in fertility seen over the first decade of the new millennium was in part a cohort effect.

Migration, Low Wages and Exploitation of Workers

The Bank of England report highlighted earlier points to the strong public perception that immigration is responsible for downward pressure on wages but, as we have illustrated, this needs to be considered within a wider context and evidence base. In some areas of Wales, combinations of low wages, high poverty and patchy employment create a particular propensity for exploitation of both migrant and non-migrant workers in Wales.

While it is true that migrant workers are particularly vulnerable to exploitation by employers, we also know that workers who are not migrants experience forms of exploitation too. It is important to emphasise that exploitation occurs as a consequence of the behaviour of unscrupulous employers, and is not caused by migration.

The Welsh Government is committed to making Wales a fair work nation where everyone can access better jobs closer to home, where everyone can develop their careers, and where we can all expect decent, life-enhancing work without exploitation or poverty. A key element of our policy position on migration is the need to ensure that legislation and other actions to prevent exploitation of workers should be more strongly enforced, particularly for the low paid. We believe that tackling this exploitation will improve wages and conditions for all workers.

Annex E explores this issue in greater detail, and sets it in the broader context of current protections for workers through EU law and a wider range of

international commitments on human and employment rights.

Protecting workers' rights is one of the Welsh Government's key priorities and we will set out more on our actions in this area at a later stage. For the purposes of this document, the main findings from Annex E are set out here:

- Exploitation can be mapped onto a legislation and enforcement spectrum of violations, which range from extreme exploitation such as forced labour, to more commonplace problems such as underpayment of wages and excessive working hours.
- Gaps in the enforcement of minimum employment standards erode the opportunity of decent work for all, and undermine terms and conditions of work which are above the statutory minimum, for example, as negotiated by trade unions or reflecting sectoral norms.
- When exploitation manifests as employment rights abuse, workers may be denied wages which are at least as high as the statutory minimum, they may be denied paid holiday or the sick pay to which they are entitled, required to enter into false self-employment or may be the victims of unauthorised deductions from wages.
- Exploitation is not only a matter of low hourly pay, it is also present in low-hours work where workers enter into contracts which do not provide them with sufficient hours to secure a sustainable income. For workers contracted on a self-employed basis, this may mean being unaware of the true value of the hourly wage on offer because they lack

information about the costs they are expected to incur personally as a consequence of undertaking the work (e.g. provision of safety equipment).

- Types of exploitation include bullying and economic insecurity, being required to provide unpaid labour, being subject to insufficient notice of work availability, being sent home in the middle of shifts, facing the withholding of work as a form of behavioural control or punishment and potential fear of arbitrary dismissal.
- Exploitation can be prevented by ensuring that low-waged workers, whether migrant or non-migrant, benefit from the availability and enforcement of employment rights. Minimum standards compliance is an essential underpinning of a society in which equality and respect for human rights can be realised. Where workers lack trade union representation and are not covered by collective bargaining, they are at an increased risk of exploitation.
- Current research about poverty in Wales focuses on a different set of indicators from those which are most relevant for studies of low wage working and exploitation. Bespoke research is needed in order to understand better the connections between experiences of work, access to decent work and labour standards compliance in Wales.
- Many migrant workers are particularly vulnerable to exploitation because of language barriers, lack of family/friends support

network, lack of trade union representation and being unaware of their legal rights in the UK. However, experiences of exploitation are not limited to migrants, nor are the wide range of issues which make any worker or employee susceptible to exploitation at work.

Key issues are a worker's awareness and understanding of their rights in a complex framework of employment law, and workers' ability to challenge exploitation when they are experiencing it, their ability to enforce their rights, their access to representation and opportunities to access alternative employment.

- Although it is clear that exploitation can affect all workers (not just migrant workers), certain sectors where extreme forms of exploitation have been identified correlate with sectors that we identify in this document as having high proportions of migrant workers (e.g. hospitality and food processing).
- The enforcement regime in the UK places heavy emphasis on individual action being taken by workers through employment tribunals and the UK has one of the weakest systems of labour inspection in Europe. From 2017 the work of the HMRC National Minimum Wage compliance unit, the Employment Agency Standards Inspectorate and the Gangmasters and Labour Abuse Authority is strategically co-ordinated by a Director of Labour Market Enforcement.

- **HMRC National Minimum Wage compliance unit** issues notices of underpayment of National Minimum wage including a penalty which is paid to HMRC. It investigates reports against employers, operating an anonymous hotline, and visits samples of employers who have not had complaints made against them. Against a backdrop of funding cuts since 2010, the enforcement budget, staffing and number of investigations have risen in recent years. The increase in enforcement activity has occurred in the context of a very large increase in the number of workers covered by minimum wage protection as a consequence of the introduction of the higher rate National Living Wage from 2016.
- **Health and Safety Executive (HSE)** reports to the Department for Work and Pensions. It promotes compliance with health and safety standards at work and is the enforcing authority for relevant regulations; it shares these duties with Local Authorities and the Office of Rail Regulation. Enforcement of working time regulations is further split among other organisations with the HSE primarily leading on industrial sector, agricultural sector, schools and hospitals. The HSE has seen a 46% drop in funding over the last seven years.

- **Employment Agency Standards Inspectorate** seeks to ensure employment agencies are complying with their legal obligations. It inspects employment agencies and investigates complaints about their conduct. It works alongside the HSE in cases where an agency worker has been involved in a serious accident.
- **Gangmasters Licensing Authority (GLA)** (now the **Gangmasters and Labour Abuse Authority**) licenses and regulates gangmasters in agriculture, forestry, horticulture, food processing/packaging and shellfish gathering sectors. Previous budget restrictions had narrowed the GLA's focus to target 'gross abuse' including tax evasion, human trafficking, health and safety negligence. The Immigration Act 2016 broadens the remit of the GLA to be labour-market wide and renames it the Gangmasters and Labour Abuse Authority (GLAA). How the GLAA's regulatory system will be applied to its broader remit, and how it will be resourced to do so, is currently unclear and we await the strategic report of the newly appointed Director of Labour Market enforcement.
- The recent history of some of these agencies signals increased investment and attention to minimum standards inspection. While tight resources are understandably focused on tackling illegal working, there is more that could be done to support general compliance

and to ensure that all workers have effective access to the minimum floor of legal protection. Opportunities to engage in paid work should not come at the price of trading away entitlements to employment rights protection and decent work.

- The introduction of the higher rate National Living Wage is especially important for Wales because it effectively doubles the number of workers entitled to statutory income protection. This will require careful attention to compliance and enforcement issues in Wales in order to strengthen protection against exploitation.
- Having a restricted choice of alternative employment increases the risk of exploitation and those with heavy caring responsibilities are put at a particular disadvantage. Providing support such as accessible childcare and social care for adults with disabilities can help workers to engage in higher quality employment.
- The UK Government's introduction of employment tribunal fees in 2013, combined with reductions to eligibility for legal aid has created an environment which discourages low-paid workers in particular from being able to access advice, and to seek redress. Citizens' Advice services and Trade Unions have been responding to the challenge of the increased

need for their support with labour law enforcement issues. The Supreme Court's ruling that employment tribunal fees are unlawful⁵¹, and the UK Government's consequent decision to cease charging these fees are, however, welcome developments.

In the next section of this document, we set out ways in which exploitation can be tackled more effectively, particularly by the UK Government. The Welsh Government is already making progress on a number of key issues working in social partnership with employers and trade unions through the Workforce Partnership Council. For example:

- **A new Code of Practice for Ethical Employment in Supply Chains** in the Welsh public sector was launched in March 2017⁵². It is focused on guaranteeing good employment practices for the millions of employees involved in public sector supply chains and covers a range of subjects including modern slavery, blacklisting, zero hours contracts, umbrella schemes and false self-employment. The final area relates to the Living Wage and contains a commitment to consider paying all staff a Living Wage as a minimum. On Modern Slavery, the Code goes further than existing UK legislation, by including all sectors and not imposing a

minimum turnover threshold⁵³. All public sector organisations in Wales, businesses and third sector organisations in receipt of Welsh public sector funding will be expected to sign up to the code, and many are already in the process of doing so.

- The Welsh Government has issued the '**Two-Tier Code**' to ensure that where public services are outsourced, the principles of TUPE⁵⁴ will be applied and that new recruits are employed on terms and conditions no less favourable than transferred staff.
- Guidance and principles on the appropriate use of **non guaranteed hours arrangements** (including zero hour contracts) in the devolved public services in Wales was published and issued to public service employers in 2016. It sets out clear expectations on practices which all public sector employers should adopt, in order to ensure non guaranteed hour arrangements, are only used in clearly and narrowly defined circumstances.

It proposes that organisations should ensure staff can request a review of their working arrangements with a view to changing their contractual arrangement if they have been undertaking regular hours over a continuous period of time and they should also have access to the same pay progression

51 Supreme Court judgement in the appeal of Unison v Lord Chancellor – www.supremecourt.uk/cases/uksc-2015-0233.html.

52 Welsh Government: Code of Practice on Ethical Employment in Supply Chains – www.gov.wales/topics/improving-services/better/vfm/code-of-practice/?lang=en.

53 Section 54 of the Modern Slavery Act 2015 is directed at 'commercial organisations' with a turnover of £36m.

See www.gov.uk/government/publications/transparency-in-supply-chains-a-practical-guide.

54 TUPE refers to the 'Transfer of Undertakings (Protection of Employment) Regulations 2006' as amended by the 'Collective Redundancies and Transfer of Undertakings (Protection of Employment) (Amendment) Regulations 2014'. The TUPE rules apply to organisations of all sizes and protect employees' rights when the organisation or service they work for transfers to a new employer.

as full time employees. The guidance says that staff who do not accept work – for whatever reason – should not suffer a detriment as regards being offered work in the future.

The guidance and principles should be adopted across the devolved public sector and applied in local circumstances, through social partnership, based on the type and scope of services. The effect of the guidance and principles will be reviewed in 2018 and if there is evidence that the guidance has not been adopted well, further measures may be taken to address the use of non-guaranteed hours contracts in the public sector.

- The Welsh Government has brought forward legislation to dis-apply parts of the UK Government’s damaging Trade Union Act for devolved public services in Wales. We anticipate that the Trade Union (Wales) Bill will receive Royal Assent this autumn. The UK Government’s Act enables monitoring and restriction of trade union activities to support the workforce, and imposes stringent new strike ballot thresholds in public services.

The Welsh Government will continue to use its influence to drive stronger compliance and good practice among employers in Wales and, through the Fair Work Board, will identify the steps needed to take place for Wales to become a fair work nation.

We also note the recent publication of the Taylor Review of Modern Employment Practices

for the UK Government, which was intended to look at how exploitation of workers can be prevented. The Welsh Government will be considering those findings in more detail, but our early view is that the recommendations do not go far enough to strengthen enforcement of existing legislation to prevent the exploitation of workers.

Impact of Migration on Demand for Welsh Public Services

Meaningful evidence about the impact of immigration on public services in Wales or its local authorities is difficult to find for the reasons that we articulate earlier in the paper about the very limited amount of data that is collected on a nationality basis. However, we can describe areas of policy where there is potential for immigration to have an impact, and where there is Welsh Government policy to support this.

Access to NHS services

Overseas visitors (people who do not normally live in the UK) are not entitled to free NHS services in the same way as ordinarily resident UK citizens – charges will apply in some cases, depending on circumstances and the nationality of the person accessing the service. UK citizens are entitled to health care in other EU Member states on a reciprocal basis. Robust data about the extent to which people from overseas use NHS services in Wales is not available, but is unlikely to place a significant burden on services.

Resident EU citizens are entitled to access NHS services on the same basis as UK nationals; the entitlement of non-EU citizens will depend on their immigration status. Access to NHS services in Wales is the responsibility of the Welsh Government and the rules that apply here may be different from those in other parts of the UK.

Given that migrants make up a significantly lower proportion of the population in Wales than in the UK as a whole, and that their age profile means that they are likely to require substantially less per capita in terms of health spending, the likely additional costs to the Welsh NHS will be relatively small. It is important to reiterate the point made earlier that immigration creates a net benefit for public services as a whole.

Support to pupils who do not speak English or Welsh

In 2015/16 there were over 25,000 pupils in Wales aged 5 and over with a first language other than English or Welsh⁵⁵. This does not necessarily mean that all these children are first generation migrants – in many cases they will have been born in the UK – but the language spoken at home is neither English nor Welsh. Nor does it necessarily mean that they are not fluent in English, but clearly, in some cases, those children will need language support at school to support their learning and attainment. This is consistent with our Well-Being of Future Generations Goal, to “enable people to fulfil their potential no matter what their background or circumstances”, and our wider commitments under the UN Convention on the Rights of the Child.

55 Source: Pupil Level Annual School Census (PLASC), Welsh Government, July 2016.

The Minority Ethnic Achievement Grant (MEAG) provided funding to schools to help remove the additional barriers to learning often experienced by children from a minority ethnic background – predominantly this would mean support for acquiring English or Welsh as an additional language.

Before the MEAG was amalgamated into the wider Pupil Support Grant in 2015/16, funding allocated for the MEAG across Wales in 2014/15 was just under £10m⁵⁶ (compared to an overall schools budget allocation in that year of £2.23bn)⁵⁷.

Housing

Local Authorities in Wales have responsibility for allocation of housing and providing homelessness support services, and the Welsh Government has responsibility for providing guidance on this to Local Authorities. In general terms, housing assistance (apart from information, advice and assistance in accessing help) is not available to people subject to immigration control (i.e. citizens from outside the EEA and Switzerland), although there are exceptions, for example refugees, and former asylum seekers. Generally speaking, EEA and Swiss nationals are eligible for housing assistance as long as they are a 'qualified person' (as described in Annex A to this paper). Exceptions to this include EEA and Swiss nationals

whose only right to reside is as a jobseeker, or in the initial 3 months of arriving to the UK and, Croatian nationals who are not working.

The nationality of someone seeking housing assistance is not a factor for prioritisation, although there are considerations for refugees and asylum seekers, whose circumstances make them more vulnerable.

Our data on access to housing and homelessness services does not specify nationality, but some data on housing tenure in England, recently published by ONS⁵⁸, sets out some useful context:

- Recent migrants to the UK living in England are more likely to live in the private rented sector; 88% of EU born residents arriving between 2014 and 2016 privately rented, compared to 29% of those arriving between 1991 and 2000. By comparison, 80% of non-EU born residents arriving between 2014 and 2016 privately rented. These trends are also influenced by age, as younger people are also more likely to privately rent.
- The percentage of migrants who socially rent in England is 6% for EU and 9% for non-EU (arriving between 2014 and 2016) – for UK born residents, the percentage is 16%. However, the number of UK born residents living in

social housing has decreased slightly since 2001, while the number of residents born outside the UK living in social housing has increased for both EU and non-EU born residents.

Higher Education

As an EU member state, the UK Government is required to provide access to education to non-UK EEA and Swiss nationals on the same basis as UK nationals – similarly, Welsh students can undertake studies in other EU Member states on a reciprocal basis. The Welsh Government therefore provides higher education tuition fee support to EEA and Swiss nationals studying at Welsh Higher Education Institutions (HEIs), on the same basis as Welsh-domiciled students. (The same approach applies in other parts of the UK).

In the 2015/16 academic year, the Welsh Government provided approximately £21m⁵⁹ in tuition fee support to 2,800 EU students on courses in Wales. However this should be seen in the wider context of how overseas students more widely support the diversity and competitiveness of Welsh HEIs, economic contribution of students and our aims around promoting student mobility. Implementation of the Diamond Review will change the overall emphasis of student support grants to focus more on living costs from 2018/19, with loans provided for fees.

56 Welsh Government Cabinet Statement, 2014 – www.gov.wales/about/cabinet/decisions/previous-administration/2014/janmar/education/h14203/?lang=en.

57 Source: Welsh Government Statistical Bulletin 26th June 2014 – Local authority budgeted expenditure on schools: 2014-15.

58 Source: ONS Article, 'International migration and the changing nature of housing in England – what does the available evidence show?' – www.ons.gov.uk/peoplepopulationandcommunity/populationandmigration/internationalmigration/articles/internationalmigrationandthechangingnatureofhousinginenglandwhatdoestheavailableevidenceshow/2017-05-25#more-recent-migrants-are-more-likely-to-privately-rent-than-live-in-social-housing-or-own-their-own-home

59 Source: Student Loans Company: www.slc.co.uk/official-statistics/full-catalogue-of-official-statistics/student-support-for-higher-education-in-wales.aspx Support for tuition fees is currently made up of both loan and grant. With the implementation of reforms to student support from 2018/19, following the Diamond Review, loans will cover the full fee charged. EU students are not eligible for support for living costs.

6 Future policy considerations

Status and Rights of EU Citizens in the UK and UK Citizens in the EU

Since the referendum, the Welsh Government has continually called for the UK Government to assure the rights of EU nationals living in the UK, and has called for those rights to apply reciprocally to UK citizens living elsewhere in the EU. Clearly, we would also want swift assurance of these rights and status in respect of the non-EU EEA countries of Iceland, Liechtenstein and Norway, plus Switzerland.

The UK Government's recent publication of proposals on those rights helps to provide some clarity but we are disappointed that the UK Government chose to await the publication of the EU's detailed proposals on citizens' rights before setting out their own, less generous, proposals, and that there continues to be uncertainty over a number of crucial points, as follows:

- The cut-off date after which EU citizens arriving in the UK will no longer attract an automatic entitlement to work towards 'settled status'. The UK Government's position is that this date will be between 29 March 2017 (the date of the Prime Minister's letter to the European Council notifying the UK's intention to withdraw from the EU) and the UK's putative withdrawal date (29 March 2019). This means

that EU citizens arriving in the UK after 29 March 2017 risk being brought into future, potentially more restrictive, immigration arrangements.

- In particular, given the uncertainty above, there is no guarantee that people arriving in the UK now will have automatic entitlement to work towards settled status. This could act as a significant deterrent to inward migration even before we have left the EU, with significant potential negative implications for our economy, public services and higher education institutions. There have already been reports of significant reductions in the number of EU citizens seeking to work in specific sectors in the UK – indeed, the latest ONS migration statistics⁶⁰ show a statistically significant increase of EU citizens emigrating from the UK. Further consideration of this and additional evidence in respect of these areas, are critical priorities.
- The extent to which 'settled status' will differ from rights of permanent residence and resemble instead the current 'Indefinite Leave to Remain' (ILR) status for which third country nationals may apply. ILR has additional requirements compared to permanent residence, such as the requirement to pass an English language test, and 'Life in the UK' test.

- The difference of views about how these arrangements will be governed in future (whereby the UK firmly rejects the EU's proposal for continued governance by the European Court of Justice (ECJ)) needs to be resolved quickly, through a compromise proposal which provides the necessary independence of view, recognising the expertise of the ECJ in this area.
- We do not yet know what the arrangements will be for citizens of Switzerland and the non-EU EEA countries of Iceland, Liechtenstein and Norway. The UK Government will be pursuing separate discussions on a reciprocal basis, but we do not know whether they intend to make proposals that are consistent with those for EU citizens.
- More generally, until the wider negotiation process over the UK's withdrawal from the EU is concluded, there will not be any certainty over the future rights of EEA (including UK) and Swiss nationals who are exercising their current free movement rights.

The above are what we would consider to be the most significant points of uncertainty at this stage, but we recognise that there are many, more detailed, yet important questions that also remain to be answered – for example on future voting rights, EU citizens are currently entitled to vote in local authority

⁶⁰ Source: ONS Statistical Bulletin, 'Migration Statistics Quarterly Report', August 2017: <https://www.ons.gov.uk/peoplepopulationandcommunity/populationandmigration/internationalmigration/bulletins/igrationstatisticsquarterlyreport/august2017#net-migration-to-the-uk-falls-to-246000>

elections. In July 2017, the Welsh Government launched a consultation on proposed changes to local government elections in Wales, including consideration of the rights of overseas nationals to vote in local government elections in future⁶¹.

The continuing uncertainty around citizens' rights is unwelcome for many reasons. We have seen earlier that the majority of EU nationals living in Wales have been settled here for a number of years and live in a family unit (although we don't have data about their residency status). Not having certainty over future rights no doubt has a negative effect on family life, and is one possible motivating factor for those who are considering leaving the UK. In addition, the UK Government's proposals – unlike those of the EU – would considerably restrict EU citizens' rights to be joined by family members, which would make moving to or remaining in the UK considerably less attractive.

An approach to future migration for Wales

Overall approach to longer-term immigration

Primarily, the Welsh Government believes in an approach to migration that is more closely linked to work, and where exploitation of low paid workers is tackled through strong enforcement of existing legislation – such an approach allows the UK Government to control migration, and to ensure that opportunities, wages and conditions for all workers are not undermined.

To ensure control, a system of this type would, of course, require additional monitoring and record keeping, such as the recording of employee nationality. Job seekers would also need to be registered and monitored in order to ensure that people seeking work do so in a reasonable amount of time – where this is not the case, or if they do not have a genuine prospect of employment, we should be able to ask them to leave the UK.

We understand that this will create some additional administrative burdens on employers and public services but the burdens and costs of a more restrictive system, like that which is already in place for third country nationals, would be far greater.

To illustrate the system that we outline above, it is useful to refer to the example of Norway.

As a member of the EEA, Norway has implemented EU free movement of persons law (as incorporated into the EEA Agreement) into its domestic legislation. This is part and parcel of its involvement in the Single Market, which is underpinned in turn by the 'four freedoms' of the free movement of goods, persons, services and capital.

Relevant for us, however, is the fact that Norway imposes certain specific controls and administrative procedures in relation to immigration of EEA and Swiss nationals. Some are illustrated in the case study below.

Case study: Norway

EEA and Swiss nationals can move to Norway and start working straight away. Jobseekers and workers must **register within 3 months** of arriving in Norway.

Jobseekers must have **found a job within six months**. If they have not found a job within this time they must then leave, but can come back to Norway to search again for six months.

Workers who have worked for more than 1 year in Norway but have then lost their job involuntarily (i.e. not because they have resigned) can stay as long as they wish to seek work but must register as a job seeker with the Norwegian Labour and Welfare Administration.

61 Welsh Government Consultation document, published 18th July 2017: www.consultations.gov.wales/consultations/electoral-reform-local-government-wales.

Unlike Norway, we are not seeking to maintain the current EU system of free movement, and nor do we think that the rules applicable in Norway would meet all of the UK's needs (Norway is also part of the Schengen area of passport-free travel, for example, whereas we believe the current border control system at all ports of entry to the UK should continue).

However, this case study does show that it is possible to develop a managed and controlled immigration system, ensuring that migration is linked to employment, whilst maintaining substantial access to the Single Market. It is for the UK Government to ensure that checks and balances, perhaps building upon the example above, are incorporated in the UK's future immigration model, and to negotiate a new relationship with the EU accordingly.

UK Government Net Migration Target

We do not support the UK Government's approach to reducing migration numbers to an arbitrary target, as this risks the sustainability of our key economic sectors and delivery of our public services.

Achieving the UK Government's net migration target of the "tens of thousands" has so far not been possible in the six years that this has been a UK Government priority. Clearly a different, and more realistic approach is needed.

The risks of adopting such an approach are severe. At best,

if we assume that this is to be shared out on a population basis across the UK, to achieve the UK Government's target, annual flows of net EU migration into Wales would need to fall from around 7,000-10,000⁶², to around 2,500 per year (assuming EU migration continues to be around half of total migration, as currently)⁶³.

More likely though, the very limited amount of immigration permitted would be concentrated in the South East of England, (particularly if there were a sector-based scheme focused on financial services) effectively reducing immigration to other parts of the UK to zero. The effects of this would further be compounded by intra-UK competition for workers.

Businesses in Wales and the UK are engaged in a global competition for talent. Annex B shows how EU migrants are currently represented in the Welsh workforce, as well as future labour market needs, and this evidence shows that such an approach could present a real prospect of severe damage to the Welsh economy and risk to delivery of key public services that are already under pressure.

The level of migration into Wales is low, compared to elsewhere in the UK and it is hard to find evidence to suggest that migration in Wales puts pressure on public services over and above the pressure that has been created by the UK Government's policy of austerity. Indeed, it is easier to find examples of how migration

contributes to our economy and our society.

It would equally be difficult to put a number on how many migrants we would need in future, even if we can estimate our future workforce needs in a range of sectors. This would depend on variables such as the number of existing migrant workers planning to leave, the number of people not currently in work who could take on new job opportunities, the precise timings for some of our major infrastructure projects, and others.

Another factor is longer term demographics, in particular, the decline of the working age population, and extended life expectancy. As set out in Annex D, migrants tend to be younger and have more children than UK born, but uncontrolled migration is not a panacea – those migrants who remain here will also become part of a growing ageing population.

Targeted approaches to Migration

If the UK Government were to pursue a sector based scheme, as has been suggested, this could be particularly disadvantageous for Wales, as the sectors which are most frequently discussed in this context (in particular agriculture, but also financial services) are not those which, in Wales, rely most on migrant workers (e.g. manufacturing, tourism). Manufacturing, in particular, does not seem likely to benefit from a sector-based approach. The risk is therefore that migrants who want to come and

62 Source: ONS International Passenger Survey (IPS) 2016; see also earlier footnote about IPS margin of error.

63 Based on Wales' 5% share of the UK's population (according to ONS population estimates released June 2017 – www.statswales.gov.wales/Catalogue/Population-and-Migration/Population/Estimate).

work in key sectors in Wales would not be able to if the sectors in Wales with vacancies are not part of a sector-based work permit scheme.

The Scottish Government has called for the UK Government to provide for differentiated approaches to immigration in different parts of the UK. In Scotland, the demographic challenges are very different from elsewhere in the UK. Over the next 10 years, 90%⁶⁴ of Scotland's projected population growth is accounted for by immigration (of which 57% is from international migration), and is set against a policy context of addressing concern about depopulation. Wales does not have the same population challenges in the immediate future, but these challenges will become more apparent in the longer term.

Overall, a spatially-differentiated approach to migration is not what the Welsh Government is seeking. There is a trade off between creating a system which would avoid abuses but which would be complex to administer, potentially placing a significant burden on employers and/or government (local or national) in Wales or, otherwise, a system with light-touch controls that could be easy to circumvent.

However we need to consider how best to manage the risks, if a sector based approach to immigration were to be adopted by the UK Government. It would seem that a spatially-differentiated level of control would have fewer disadvantages than a sector-based approach

which does not include our key sectors and does not provide employers and businesses in Wales with any assurance that they will be able to continue to access the workers that they need.

In this scenario where the UK Government's proposed immigration system could, in our view, disadvantage Wales, we would be minded to call for the UK Government to allow for a spatially-differentiated approach, to ensure that Wales' key sectors, public services and universities can continue to recruit from overseas, given the risks outlined earlier of restrictions to immigration.

There are a range of mechanisms by which this approach could be delivered:

- We would expect the system adequately to reflect Wales' needs and demographic profile both in the short and long-term;
- The system would continue to be based on our high level policy position which requires migrants to either have a job or able to find one quickly;
- The system would have to balance the need for enforcement and the need to prevent unfeasible administrative burdens to businesses, local government or the Welsh Government.

In the longer term, after we have negotiated our future relationship with the EU, we would like to discuss with the UK Government a reform of wider UK migration policy which would recognise that the distinct needs of Wales

and indeed other nations and regions within the UK cannot easily be met through the blunt and resource-intensive UK-wide approach currently in place. This again might best be based on a spatially-differentiated approach, with significant input from the nations and regions of the UK, as recommended by the All Party Parliamentary Group on Social Integration in its Interim Report into the Integration of Immigrants. Such a policy would recognise the distinct needs of the Welsh economy and might provide a Welsh quantitative allocation of Tier 2 visas, which could then be managed to respond to labour and skills shortages within the Welsh economy.

Self-Employed people

We believe that the approach to migration that we have set out for people with jobs, or seeking work, should also be available for people seeking to be self-employed. However, we recognise that there will need to be careful controls to ensure that people coming to the UK with a view to being self employed are doing so on a genuine basis, in order to prevent abuse and exploitation.

The Welsh Government has been proactive in attempting to tackle the issue of 'false self-employment', whereby large companies seek to engage workers in a way that undermines wages and conditions, by enforcing self employment. Our Procurement Advice Note on Employment Practices on Publicly Funded Projects⁶⁵, published in

64 Source: National Records of Scotland, Projected Population of Scotland, published October 2015 – www.nrscotland.gov.uk/files//statistics/population-projections/2014-based/pp14.pdf.

65 Welsh Government Procurement Advice Note, 'Employment Practices on publicly funded projects', March 2016 – www.prp.gov.wales/docs/prp/toolkit/20160324employmentpractisespanenglish.pdf.

March 2016, sets out expectations in that regard for companies engaged in projects funded by the Welsh Government and public authorities in Wales, but we know that this issue is also prevalent in the private sector. We discuss later in the paper the ways in which we think that exploitation of workers should be prevented and tackled.

There will need to be a way to ensure that people coming the UK for self-employment are not doing so as a means of circumventing the controls intended to link migration to work. However we would not want to see criteria implemented which deter people who are genuinely intending to undertake self-employment, for example, the current requirement for third country nationals applying for an 'entrepreneurship' visa (Tier 1) to have at least £50,000 to invest, plus proof of additional income to support themselves.

Family Members

As explained earlier, third country direct family members of EEA and Swiss nationals have derived rights which enable them to accompany EEA/Swiss nationals exercising free movement rights. If their family members did not have these derived rights, this could deter many EEA/Swiss nationals otherwise from moving to other EEA countries or Switzerland to take up jobs, and undermine the functioning of the Single Market.

Even if the UK leaves the Single Market (as is currently the UK Government's stated policy position), this principle does not change. If we want to continue to have EEA and Swiss nationals coming to the UK to undertake

vital roles in our public services, key economic sectors and higher education institutions, there needs to be an approach which continues to enable accompanying family members to travel to the UK. We recognise that the approach set out by the UK Government seeks to bring family members of EU citizens in the UK on an equal footing as those of UK citizens. However, the system which is already in place for third country nationals to reunite with their UK family members is extremely restrictive, expensive and applied in a way that all too often separates family members.

We believe that the UK Government should make changes to the current system to make it easier for third country nationals with genuine family connections to join their UK, EEA or Swiss family members in the UK, in a way that will allow those who have genuine family connections to come to the UK.

Recognising Wales and the UK's distinct relationship with the EEA

Given our current ties, there is a clear argument for ensuring that migration to the UK from EEA countries and Switzerland is as easy as possible – certainly easier than it is from other countries outside Europe. It would be difficult to imagine a scenario where the immigration system for EEA/Swiss nationals should be as difficult as it currently is for third country nationals to come to the UK. We believe that adopting such an approach would be detrimental to the UK's future relationship with Europe.

Skills for Work in Wales

Clearly we want to ensure that Welsh people are able to access high quality jobs. Where there are skills shortages and gaps, we will of course look for ways to address these, in the longer term, through focused skills development but, in the shorter term, will need to be able to recruit staff from overseas to fill key vacancies.

Over the lifetime of this administration, Welsh Ministers will deliver an ambitious programme of work aimed at building a Wales that is more confident, more equal, better skilled and more resilient. Post-16 learning has a critical part in delivering the commitments made as part of the Programme for Government – 'Taking Wales Forward' and the overarching aim will be to deliver more and better jobs through a stronger, fairer economy, improve and reform our public services, and build a united, connected and sustainable Wales.

Skills priorities, as set out in 'Taking Wales Forward' 2016-21, are:

- To support people seeking the employability skills needed to get quality jobs;
- Creating a minimum of 100,000 apprenticeship opportunities to support individuals and to help employers in growing their businesses;
- Promoting, encouraging and enabling innovation and connectivity – our key drivers for economic growth and job creation, across the whole economy.

Overseas students and Post Study Work

Overseas students contribute positively to Wales. In ‘Securing Wales’ Future’, we said that we do not believe that students should be counted in net migration targets – students come to the UK to study and the majority returns home after their course is complete. Our HEIs provide a globally competitive exported service, and any restrictions to our ability to deliver this are effectively a restriction to trade.

In terms of the future immigration system, we believe that continued free mobility across Europe is in the best interests of Wales and the UK as a whole. Consequently we do not wish to see additional immigration restrictions for EEA/Swiss students, in the way that is currently in place for third country students through the Tier 4 visa system.

Part of the wider picture is the previous UK Government’s narrative around overseas students and potential future changes to the current Tier 4 system for third country nationals, which raised concerns for the HE sector. International students are valued by their institutions, contributing to the diversity of the student body, generating income and securing the viability of their courses. It is important that UK Government policy and the messages that it sends out do not significantly undermine the ability of universities to attract international students, and

that there is a level playing field across the UK.

This is also an example of changes being considered to a non-devolved area of policy (immigration), which would have significant effect on a devolved area of policy (higher education). In the Welsh Government’s paper ‘Brexit and Devolution’⁶⁶, we call for a new approach to competence that recognises the reality of inter-connected responsibilities, like these, ensuring that the UK and Welsh Government’s powers are exercised in the interests of better governance and delivery for citizens – this interplay between immigration policy and HE policy is a clear example of where this new approach should be put in place.

The Home Office is currently running a pilot scheme to allow third country Masters’ students to benefit from a streamlined visa process and 6 months additional time on their student visa to seek work. Students applying for this do not need to include financial documentation, or evidence of previous academic qualifications. This pilot scheme is currently limited to four universities – all in England.

This type of scheme has the potential to increase the attractiveness of HEIs to overseas students. In 2005-2008, in a scheme administered by the Home Office, third country nationals who had graduated from Scottish institutions could apply to remain in Scotland to

seek work. During this scheme, there was a marked increase in the number of overseas students applying to Scottish universities⁶⁷. The scheme was subsequently mainstreamed across the UK and subsumed into the UK Points Based system as the Tier 1 (Post-study Work) visa. A report to Scottish Ministers⁶⁸ highlighted that since the UK Government announced the closure of the post study work route in March 2011, there has been a substantial decline in enrolments of international students at Scottish universities from key overseas markets.

The Welsh Government wants to ensure that any post-study visa flexibilities on offer elsewhere in the UK can be offered to overseas students at Welsh universities, and calls for the current pilot scheme to be extended to all parts of the UK.

Access to public services and benefits

The entitlement of migrants to access public services and welfare benefits is described in Annex A of this document. In summary, migrants from countries outside the EEA and Switzerland are generally not entitled to welfare benefits (with the exception of those that are linked to National Insurance contributions), as a condition of their visa will be ‘no recourse to public funds’. For nationals of the EEA and Switzerland, access to welfare benefits and public services depends on length and purpose of stay and, in some cases, ‘habitual residence’ status⁶⁹.

66 Welsh Government, ‘Brexit and Devolution’, published June 2017 <https://beta.gov.wales/brexit>

67 Scottish Government: Fresh Talent: Working in Scotland Scheme – an Evidence Review – September 2008 – www.gov.scot/Publications/2008/08/15155422/0.

68 Post study work working group, Report to Scottish Ministers, March 2015 – www.gov.scot/Publications/2015/03/7684.

69 The Habitual Residence Test (HRT) applies to applications for means-tested welfare benefits and local authority housing services, and its conditions, principally that applicants are resident and settled in the UK, must be met in order to be entitled to apply for those benefits. More information at www.wrc.wales/migration-information/legal-briefings/migrants%E2%80%99-entitlements-to-welfare-benefits-in-wales

We believe that our proposed system of migration connected to work should largely ensure that those who are moving to the UK are able to support themselves – as we have seen earlier, almost 80% of EU migrants in Wales of working age are in work – but we need to ensure that those who come here to work can do so in the knowledge that there will be a safety net for unforeseen circumstances. We therefore believe that future EEA and Swiss migrants should be able to continue to access benefits and public services in a broadly similar way as currently.

As we have outlined earlier in the document, there will need to be a process of monitoring the status of those who have come to seek work, to ensure that their receipt of benefits does not continue beyond the period where they can reasonably be expected to have found work.

However, we believe that, more generally, the risks of more stringent restrictions on access to public funds, housing and healthcare could have a range of negative consequences, including impact on community cohesion, increased homelessness and ill health.

Border Control

Our border controls should continue to be enforced, as currently, at all ports of entry to the UK. We believe that it serves no purpose to impose needless barriers to short-term travel for tourists, students and ordinary business travellers

from European countries, and consider that it is important to allow those who can already travel without visas to continue to do so. The right of citizens to travel freely and without visas among European countries is a benefit worth preserving. Equally, we would regret any such barriers being imposed in other European countries which would inhibit ordinary travel by people from Wales and other UK citizens.

European Co-operation Programmes

Wales benefits enormously from its current ability to participate in cross-border and pan-European programmes and partnerships, enhancing and strengthening academic research, economic development, student mobility and cultural and creative collaborations. Our approach to immigration underpins our ambition to continue our participation in these programmes, as we outlined in ‘Securing Wales’ Future’.

Tackling Exploitation of Low-Paid Workers

As set out earlier, migrants are particularly, but not exclusively vulnerable to exploitation in the workplace. Tackling exploitation will benefit the whole workforce, by ensuring that, at a minimum, all workers are paid the National Living Wage, work in a safe environment, and are able to enjoy the protection of statutory minimum employment standards.

Annex E outlines more fully the way in which the UK Government focuses on more extreme forms of exploitation. Individuals are otherwise responsible themselves for identifying and taking action against exploitation that they are experiencing, and their ability to do so has been diminished by reduced access to Legal Aid, and pressures on advisory services. There is therefore an opportunity to do more to tackle exploitation in its wider forms. Employment rights and duties are largely a reserved matter to the UK Government (with some exceptions as we will see below) – therefore it is to be expected that the bulk of responsibility should fall to them.

However, as we have also seen, the Welsh Government has been proactive in using its influence to drive stronger compliance and best practice amongst employers in Wales, working with Trade Union social partners.

UK Government Action

The UK Government should do more to ensure that workers and employees are more aware of their rights. The recent nationwide campaign to highlight low-paid workers rights, such as being paid for travel time, and not including tips as part of minimum wage, was a very positive step and can be built on further with more innovative ways to engage with workers. For example, the ‘Check My Pay’ calculator on gov.uk could potentially be developed into a smartphone app, with additional features, such as calculating holiday entitlement, for example.

Projections provided by the Low Pay Commission⁷⁰ suggest that Wales will be one part of the UK where the National Living Wage (NLW) will have the greatest impact – i.e. it will have one of the highest proportions of all areas of the UK of workers covered by the NLW. Therefore, failure to enforce the legislation protecting this will have a severe impact on people in Wales. The UK Government must continue to put resources into enforcing the National Living Wage and consider focusing their efforts on the nations and regions which have the greatest proportion of workers covered by the NLW. It should also be more transparent and provide more detail about investigations and prosecutions in Wales related to non-payment of the NLW.

The EU Posted Workers Directive⁷¹ was adopted in 1996 to ensure that EU workers who are sent by their employers to undertake work in another EU country are able to access minimum rates of pay, working time entitlements, health and safety and anti-discrimination rights. By doing so, the intention is to prevent situations where employers could use posting arrangements to under-cut national employment standards and pay rates. The reality is that the provisions of the Directive are limited; in the UK, for example, posted workers can receive the National Living Wage, but not necessarily a comparable wage and rights that the local workforce would

receive for the same job, which may have been agreed through collective bargaining.

A recent review⁷² of the Directive has been undertaken by the European Commission, but we do not believe that the new proposals go far enough to ensure that posted workers across the EU will get the equal pay for equal work that they should be entitled to, and creates a situation that still leaves posted workers open to ‘wage competition’ and exploitation. Whilst we are still a full member of the EU, the UK Government should do more to press the European Commission to tighten up the provisions of this revised Directive. Crucially, it must ensure that the principle of equal pay for equal work is reflected in domestic law in the future, and in any new arrangements between the UK and the EU going forward.

A great deal of the UK’s employment’s law has EU law at its source – Annex E highlights a number of EU laws which protect the rights of workers to a safe working environment, parental leave and equal treatment, amongst others. The European Commission’s proposal for a ‘European Pillar of Social Rights’ sets out a number of key principles and rights to support fair and well-functioning labour markets and welfare systems, aiming for better working and living conditions among participating Member States⁷³. These are valuable employment

and social protections. Once the UK has left the EU, these should be preserved as far as possible within domestic law, and developed and enhanced to keep pace with similar improvements at an EU level.

Welsh Government action

As described earlier, the Welsh Government has used its powers in procurement to influence better employment practices by employers who supply goods and services to the Welsh Government and public authorities. In particular, and as highlighted earlier:

- The Code of Practice on Ethical Employment in Supply Chains;
- Procurement advice notes to eradicate blacklisting and false self employment;
- The Two Tier Workforce code;
- Guidance on non-guaranteed hours.

The most effective way to strengthen protection of statutory rights is to improve and support trade union representation of low waged workers at the level of their workplace and across sectors. The Welsh Government will work with Trade Unions as well as core funded advisory services, so that they have sufficient support to provide advice to workers who need it. We can also consider how the Wales Union Learning Fund could help, providing courses targeted either directly at workers, or at those who might provide advice and support to workers.

70 National Minimum Wage Low Pay Commission Report Autumn 2016, Figure 2.5 – www.gov.uk/government/uploads/system/uploads/attachment_data/file/575634/10583-LPC-National_Living_Wage_WEB.pdf.

71 European Commission website – ‘Posted Workers’ – www.ec.europa.eu/social/main.jsp?catId=471.

72 European Commission news release, March 2016 – www.ec.europa.eu/social/main.jsp?langId=en&catId=89&newsId=2488&furtherNews=yes.

73 European Commission website, European Pillar of Social Rights: www.ec.europa.eu/commission/priorities/deeper-and-fairer-economic-and-monetary-union/european-pillar-social-rights_en.

The Welsh Government is exploring ways of using its influence to drive further compliance and good practice amongst employers in Wales, including through the range of business support it provides. For example, in our consultation on Small Business Rate Relief, we consider the extent to which we could prioritise the provision of rate relief to businesses which can demonstrate alignment with key Welsh Government policies, such as Trade Union recognition and working towards payment of the Living Wage. The Fair Work Board will identify the steps needed for Wales to become a fair work nation. We will also consider how new powers granted through the ‘Wales Act 2017’ to bring Section 1 of the Equality Act⁷⁴ into force could enable public authorities to have a stronger role in driving compliant employment practices.

The Welsh Government will also seek ways to influence employer behaviour through the Workforce Partnership Council and the Council for Economic Development (which bring together the Welsh Government with employers and Trade Unions) and through its engagement with other employer and business networks. We will also raise these issues in our discussions with Governments across the UK – for example through the regular Finance Ministers Quadrilateral with the Chief Secretary to the Treasury and Finance Ministers of the other devolved administrations, and the British-Irish Council.

Engaging with Communities and People

As we have seen earlier, the relatively low levels of migration in Wales are contrasted with public attitude surveys that show unfavourable attitudes towards immigration, in a higher proportion than other parts of the UK. We understand that these attitudes may result from perceived pressures of migration on public services and employment, and apprehension over possible changes to communities resulting from migration.

We believe that our proposed approach to migration as set out here and in our White Paper, provides a framework that controls migration whilst at the same time meeting Wales’ future needs.

There is a need to find different and better ways of talking to people across communities in Wales to understand what their needs and concerns are, as well as explaining our policies, including around migration. The UK’s exit from the EU means that the Welsh Government needs to rethink a number of our devolved policies, and we need to engage meaningfully with communities to ensure that revised policies work for people across Wales.

Increasing social tensions and concerns around immigration and around social marginalisation will continue to be a challenge. The Valleys Task Force is working to

understand and address the concerns of people in some of our most deprived communities. Through our Community Cohesion National Plan we are working to ensure that cohesion happens in all communities across Wales to enable different groups of people to get on well together, as our communities in Wales become increasingly diverse. We are also working to break down barriers to inclusion across socially marginalised groups, and to reduce discrimination and victimisation. This will help us to deliver our ‘Taking Wales Forward’ commitments around being ‘United and Connected’ and ‘Prosperous and Secure’, and also supports the ‘Well-being of Future Generations (Wales) Act 2015’ goals of more cohesive and more equal communities.

The Welsh Government will consider additional ways of communicating and engaging with communities to help inform the discussion and debate around migration in Welsh communities.

⁷⁴ See section 45 of the Wales Act 2017 which provides a power for the Welsh Ministers to bring the socio-economic duty into force.

7 Conclusion

The current picture

Migration has been good for Wales' economy and for people in Wales. We will continue to welcome and need citizens of other countries to live and work here in future, and Welsh people will want to continue to be able to study and work overseas. However, we recognise that some people in Wales have been concerned about the extent and speed of migration into Wales. That is why we have set out a managed approach that connects migration to employment, and also seeks to prevent the exploitation of workers, particularly the low-paid.

The Welsh Government believes that a strong economy, through continued full and unfettered access to the Single Market, is in Wales' best interests after EU exit. The UK Government has signalled that it wishes to pursue a comprehensive free trade agreement with the EU. Depending upon the scope and ambition for this agreement, in order for the UK Government realistically to secure such an outcome in its negotiations with the EU, this agreement would need to be underpinned by a flexible approach to migration.

Although the overall number of migrants in Wales is comparatively low, certain services and sectors in Wales can be particularly reliant on migrant workers, such as the Welsh NHS, social care, food production, tourism, construction and our Higher Education Institutions.

Immigration overall has a positive effect on the economy: it is shown to increase productivity and is connected to projected increases in the UK's GDP. Studies show a broadly positive impact of immigration in the UK, although some studies have seen limited negative impacts on wages, in areas where there is a rapid increase in immigration. We believe that wages are only part of a much wider picture in relation to reduced real earnings – driven by inflation, low productivity and austerity policies. Exploitation of workers is part of this: here, immigration is not the issue, but unscrupulous employers.

Immigration can, of course, lead to some increased demands on public services. Overall however, immigration creates a net benefit for public finances, due to the increased tax revenues of migrant workers. In the longer term, migration can play an important role in helping to address issues related to our ageing population in Wales.

The future

Following EU exit, securing the rights and status of EEA and Swiss nationals in Wales and of Welsh people in Europe is of critical importance, particularly as the majority of these people are settled, with families. Uncertainty over their future status is detrimental to family life and creates knock on effects in the sectors where EEA and Swiss migrants are most likely to work.

The UK Government's recent proposals for safeguarding the rights and status of EU citizens in the UK and UK nationals in the EU provide a belated indication of the future direction, but do not go far enough to provide any certainty, and continue to treat EU citizens in the UK as bargaining chips, which is unacceptable. Furthermore, there is insufficient detail about how the rights and status of nationals from Switzerland, and the non-EU EEA countries of Iceland, Liechtenstein and Norway, will be protected.

The Welsh Government believes that Wales' future prosperity is intrinsically linked with our ability to secure full and unfettered access to the Single Market. To give us the best chance of achieving this, we propose a flexible, but managed, approach to migration, which is linked more closely to employment.

The UK Government's future system for immigration for EEA and Swiss nationals to the UK after Brexit is not yet known, but previous signals from the UK Government have focused on reductions in numbers, whilst speculation over a future system has included reference to sector based schemes and salary thresholds. We do not believe that these sorts of restrictive approaches would be in Wales' best interests. Should the UK Government pursue a restrictive immigration policy which would be detrimental to

Wales, we would explore options for a spatially-differentiated approach that would be more fitting to Wales' needs and interests.

We know that some people have been concerned about the extent and speed of immigration in their communities, and have been apprehensive about the change that immigration might bring, and that, in part, this concern is underlined by perceptions that immigration causes wages and conditions of employment to be undermined. This type of exploitation does exist, but it is not confined to migrant workers. Migrant workers are particularly, but not exclusively vulnerable to exploitation by unscrupulous employers. Tackling exploitation of workers will, we believe, improve wages and conditions for all workers. We believe that more can, and must be done to tackle all exploitation of workers, particularly the low-paid.

The Welsh Government is committed to making Wales a fair work nation, and will use whatever levers and powers it can to prevent exploitation and support low-paid workers who are being exploited. We will work with our partners in the Trade Unions in order to identify abuses and exploitative practices and to drive greater compliance. We will also work closely with third sector and employer stakeholders in this area.

Responsibility for employment rights and duties is a reserved matter for the UK Government, and it needs to step up enforcement against all types of worker exploitation.

We recognise that some public attitudes towards immigration in Wales are negative, and we need to understand better the reasons for this, particularly when contrasted with the relatively low levels of migration, and significant contributions of migrants in Wales. The Welsh Government is committed to finding new and better ways to engage with people and communities across Wales in order to understand people's needs and concerns.

Our vision for Wales is an inclusive country in which people from all backgrounds are welcomed and where there is no room for xenophobia, racism or bigotry; the Welsh Government will continue to show leadership here, but this is an action for all.

8 Annex A – Migration Processes, Definitions and Circumstances

Who are we talking about?

For the purpose of this paper, we reflect on the role of migrants of all nationalities in Wales, but with a focus on changes to the UK's immigration system for EEA and Swiss nationals. We believe these changes will predominantly affect the following groups of people:

- Jobseekers;
- Workers (i.e. the employed) and self employed people;
- Family members;
- Students;
- 'Self sufficient' people (not working, self employed, job seeking or studying, but who have sufficient resources to support themselves and any family members).

Discussions about migration and immigration can also include:

- Short term visitors (generally less than 3 months) for tourism or business travel;
- Refugees and asylum seekers;
- Illegal and irregular immigrants (e.g. expired visas, people who have been trafficked).

It is also interesting to note that the UK's official net migration figures include UK nationals returning to the UK after a period of more than one year overseas, or having been born overseas.

Where are we talking about?

The Common Travel Area (CTA) (UK, Republic of Ireland (RoI), Isle of Man, Channel Islands).

CTA arrangements have existed in various forms since 1922. The arrangements were therefore in place before the UK and RoI joined the EU, and are indeed referenced in the EU Treaties themselves¹.

Individuals from the above countries of the CTA can move freely between the countries of the CTA without requiring a passport (although photo ID is required). Irish nationals have a special status in UK law which is separate to and pre-dates the rights they have as EU citizens.

The EU, European Economic Area and Switzerland

The European Economic Area (EEA) describes the 28 Member States which currently make up the European Union, plus Iceland, Liechtenstein and Norway – 31 states in total.

Switzerland is part of the European Free Trade Area (EFTA), but not the EEA. Iceland, Liechtenstein and Norway are also members of EFTA. It is important to distinguish between these groupings because although nationals of all these countries have free movement rights, the legal basis for free movement differs.

Free movement of good, persons, services and capital are the 'four freedoms' which underpin the European Union and the Single Market it creates.

There are two fundamental concepts which lie underneath the term 'free movement of persons' in EU law – free movement of workers, and free movement of citizens.

Free movement of workers:

This aims to ensure that human resources can be deployed wherever needed, and does this by ensuring that individuals can take up an offer of employment, work, and then reside after working, in another Member State and on a non-discriminatory basis².

Free movement of citizens:

EU citizenship rights – established in the Maastricht Treaty, and now found in Part Two of the Treaty on the Functioning of the European Union (TFEU) – include rights to move and reside freely around the EU and represent a departure from a purely economy-focused 'workers' approach to free movement of persons.

The EEA Agreement provides for the inclusion of EU legislation covering the four freedoms throughout the 31 EEA states. As a result, the non-EU EEA countries of Iceland, Liechtenstein and Norway have implemented EU free movement

1 Protocol No 20 to the Treaties on the application of certain aspects of Article 26 of the Treaty on the Functioning of the European Union to the United Kingdom and to Ireland.

2 There is no definition of the term 'worker' in the treaties; the CJEU has therefore been required to interpret it and has done so broadly – any person who pursues an activity which is effective and genuine, to the exclusion of activities on such a small scale as to be regarded as purely marginal and ancillary, is to be treated as a worker (C-337/97 Meeusen, para 13, for example). The case law indicates that it can include, for example, former workers/work-seekers in some circumstances.

of persons law into their domestic legislation as part and parcel of their involvement in the Single Market.

Switzerland implements the EU legislation on free movement through one of its bilateral agreements with the EU, the Agreement on Free Movement of People (AFMP).

EEA and Swiss nationals are entitled to travel to any other EEA country and Switzerland without restriction for stays of up to 3 months. After 3 months, EEA and Swiss nationals can only remain in the UK if they come under the category of a 'qualified person', within the meaning of the 'Immigration (European Economic Area) Regulations 2016'.

A qualified person includes:

- A jobseeker (subject to being able to provide evidence that they are continuously seeking employment and have a genuine chance of being engaged);
- A worker;
- A self-employed person;
- A self-sufficient person;
- A student.

Qualified people also have the right to be accompanied by their direct family members (spouse, dependant children, dependant parents), who may be from countries from outside the EEA and Switzerland (e.g. someone from France, coming to work in the UK could bring their spouse if they are from a third country – such as the United States). There

are additional provisions for this specific group of people in the applicable EU/EEA legislation.

This right is known as a 'derived' right because the family member does not have this right themselves, it is derived from their relationship with the EEA/Swiss national. The intent behind this right is to enable EEA and Swiss nationals to be able to fully exercise their free movement rights. If their third country family members were not able to accompany them, this is likely to deter EEA and Swiss nationals from exercising those rights, undermining the contribution of free movement to the effective functioning of the Single Market.

Third Countries:

Third country nationals are required to have a visa to travel to the UK for any purpose, unless they are a 'non-visa national', in which case they are permitted short stays without a visa for up to 6 months³ or if, as described above, they are accompanying a direct family member who is an EEA or Swiss national.

Beyond this, different types of visa (divided into 'tiers') apply depending on the individual's circumstances. Visas are available for high value workers (tier 1); skilled workers (tier 2); student visas (tier 4) and temporary workers (tier 5). Tier 3 visas had previously been considered for seasonal workers but were not introduced, due to the availability of workers from within the EEA and Switzerland.

What are the key processes and frameworks?

Border control is enforced at all entry points to the UK – air, sea and rail – and under all circumstances. All people entering the UK, whether or not from the EEA and Switzerland, are subject to passport and – where applicable – visa checks, apart from where this travel is within the Common Travel Area (as described earlier).

Elsewhere in the EEA and Switzerland, the **Schengen Agreement** has, since 1995, allowed passport free travel between the majority of EEA countries and Switzerland. Only six countries from this area are outside the Schengen zone – Bulgaria, Croatia, Cyprus, Ireland, Romania and the UK.

Visas are a pre-requisite for third country nationals wishing to enter the UK, except for:

- non-visa nationals staying in the UK for short visits of up to 6 months;
- spouses and dependants of EEA and Swiss nationals who have a derived right to accompany without a visa, but may be subject to other requirements.

New visa applications are generally only possible before someone has entered the UK, unless the person is switching from one category to another (e.g. a student with a Tier 4 visa switching to a Tier 2 skilled work visa).

³ The UK Government's guidance sets out the list of country nationals which DO require a visa even for short stays. www.gov.uk/guidance/immigration-rules/immigration-rules-appendix-v-visitor-rules. There are 56 countries whose nationals are 'non-visa nationals' including the USA, Australia and Canada.

Sponsorship refers to two processes – firstly, where the Home Office licenses an employer or educational institution; secondly, where the licensed employer or educational institution provides a ‘certificate of sponsorship’ to a student or to an employee (where a suitable job exists).

Work permits are another means of expressing the ‘certificate of sponsorship’ issued by employers which, combined with a Home Office issued Visa, permits a third country national to live and work in the UK.

The **Immigration Skills Charge** is levied on employers that hire workers from third countries. The charge is currently £1000 per annum (£364 for charities and small organisations) but, under proposals in the Conservative Party’s manifesto, would double.

The **Immigration Health surcharge** is levied on visa applicants as part of the visa application process. The charge is currently £150 per year for students and £200 per year for other visa applicants.

Permanent residence refers to a right to reside in the UK indefinitely. Under EU and EEA rules, EEA and Swiss nationals are currently eligible for permanent residence in the UK if they have continuously been in the UK for a period of 5 years and meet a range of conditions. The UK Government recently outlined proposals that EU citizens without permanent residence status would, in future,

be able to either apply for or work towards ‘settled status’. This is considered in more detail in the main part of the paper.

Indefinite Leave to Remain is broadly the same status as permanent residence but is currently largely used in the context of third country nationals. The conditions for eligibility vary depending on circumstance but, in general, require the person to have lived in the UK for 5 years legally, to pass an English language test and ‘Life in the UK’ test.

Access to benefits

CTA

British and Irish citizens who have lived within the CTA have the right to reside and claim benefits in other parts of the CTA, unless they are moving back from a country outside the CTA – in which case they will need to satisfy a UK Government habitual residence test to demonstrate their right to reside and intent to settle in the UK ⁴.

The habitual residence test applies to the following benefits:

- Attendance Allowance;
- Disability Living Allowance;
- Personal Independence Payment;
- Carer’s Allowance;
- Income-based Jobseeker’s Allowance;
- Income-related Employment and Support Allowance;
- Income Support;
- Pension Credit;
- Universal Credit;

- Housing Benefit;
- Council Tax reduction.

EEA and Switzerland

Under current rules, ‘qualified people’ (as described earlier) who are workers or self employed – and their family members – are able to claim welfare benefits if they meet the conditions of the habitual residence test as described above. Jobseekers are also entitled to claim benefits (excluding housing benefit) if they meet the same conditions. However, their entitlement to income-related jobseeker’s allowance is limited to 91 days. After this time, they are required to satisfy a ‘Genuine Prospect of Work’ assessment.

Students and other non working ‘self-sufficient’ people must have comprehensive sickness insurance and do not have access to welfare benefits, except – in certain circumstances – child benefit, child tax credit and housing services. UK citizens in other EU Member States currently have rights to access equivalent benefits (‘social assistance’) on a reciprocal basis.

Third Country Nationals

Most third country nationals⁵ coming to the UK will not be eligible for the majority of benefits, as a condition of their visa will be ‘No Recourse to Public Funds’ (NRPF). The benefits and services that are classed as public funds are listed on the UK Government website⁶. However, publicly funded services such as some NHS treatment, education, legal aid and social services

⁴ UK Government news release December 2013 <https://www.gov.uk/government/news/improved-benefit-test-for-migrants-launched>

⁵ Some exceptions apply, for example, some refugees, people with humanitarian protection, and those with indefinite leave to remain (ILR).

⁶ www.gov.uk/government/publications/public-funds-2/public-funds.

or benefits that are based on National Insurance contributions do not count as public funds and are therefore available.

Access to NHS Services

Some NHS services provided in NHS trusts are free to everyone regardless of the nationality or residency status of the patient. These include (for example – not exhaustive):

- treatment given in an accident and emergency department or casualty department (this exemption from charges ceases once the patient is admitted to a ward or given an out patient appointment);
- family planning services;
- certain diseases where treatment is necessary to protect the wider public health (e.g. Tuberculosis);
- Mental health treatment, in certain circumstances.

EEA and Swiss Nationals

Visitors from the EEA and Switzerland are exempt from charges for all necessary treatment. Here, ‘necessary’ means:

- diagnosis of symptoms or signs occurring for the first time after the visitor’s arrival in the UK; and
- any other treatment which, in the opinion of a medical or dental practitioner employed by or under contract with a Local Health Board (LHB), is required promptly for a condition which:

- arose after the visitor’s arrival; or
- became acutely exacerbated after his/her arrival; or
- would be likely to become acutely exacerbated without treatment;
- the treatment of chronic conditions, including routine monitoring;
- maternity services, including antenatal and post natal services for up to fifteen weeks after the birth of the child, providing the reason for visiting the UK was not specifically to give birth. To visit the UK specifically to access maternity services requires referral via an E112 form.

The European Health Insurance Card (EHIC) entitles the holder to all necessary treatment but not to elective treatment. It is not a requirement to be in possession of the card to receive necessary treatment. The EHIC confers the right to access state-provided healthcare across the EU at a reduced cost, or sometimes for free, on the same basis as a resident of that country.

Third Country Nationals

Third country nationals are generally required to pay for their secondary (i.e. elective) healthcare except for the exemptions outlined earlier or where there is a UK reciprocal healthcare agreement in place.

Third country overseas visitors who are staying in the UK for a period of longer than 6 months for specific purposes (e.g. study) are required to pay the UK health surcharge (annual charge of £150 for students, £200 for others) as part of their visa application. Payment of the health surcharge means that the individual will receive secondary (i.e. elective) healthcare free of charge on the same basis as a UK resident for the duration of their leave to remain in the UK.

9 Annex B – Skills and Key Sector Considerations

Labour Market and Skills Requirements in Wales

Skill shortage vacancies¹ (SSVs) affect the construction and manufacturing sectors heavily – 40% of vacancies in construction are SSVs and 31% of vacancies in manufacturing are SSVs, with construction the sector most affected by SSVs. Whilst SSVs are skills deficiencies amongst applicants, skills gaps are skills deficiencies within employers' existing staff².

Skills gaps affect manufacturing most heavily (8.8% of staff have skills gaps), followed by hotels and restaurants (6.9%).

In addition, employers are affected by non-skills related reasons for having difficulty filling vacancies³. Whilst across Wales 9% of vacancies were difficult to fill exclusively for reasons not related to skills, qualifications or experience, this was higher in construction at 16%, just behind 18% in arts and other services. In hotels and restaurants and manufacturing this was 9% and 8%.

Employment projections from Working Futures 2014-24⁴ suggest that there will be a continued movement towards higher qualifications and higher skilled occupations. However, some lower skilled occupations are projected to show growth (with customer service occupations and caring personal services showing particularly high growth) and there will be a need to replace those who have left the labour market across all sectors, occupations and qualification levels.

The fastest growing sectors in Wales on a percentage basis are expected to be finance and insurance (projected growth of 17.9% between 2014 and 2024), water and sewerage (16.5%) and professional services (13.2%). However, the combined growth for these sectors (16,200) is still less than that projected for wholesale and retail trade due to their relatively smaller size. Wholesale and retail has the largest projected increase in employment numbers of 19,700 (9.6%).

This is followed by accommodation and food (10,100/11.8%) and support services (9,100/10.3%). Declines in employment are projected across a number of sectors including agriculture (-10,700), rest of manufacturing (-10,000), and engineering (-5,100). Due to the need to replace workers who have left the labour market, there will still be considerable demand from these sectors between 2014 and 2024.

At the same time, we are also aware of growing demand for workers both in the construction and tourism sectors, as set out below, and pressure on recruitment and retention in public services, particularly the NHS and social care.

¹ Employer Skills Survey 2015, UK Commission for Employment and Skills (2016). SSVs are vacancies which an employer is finding hard to fill due to a lack of applicants with the required skills, qualifications or experience. These only affect 6% of establishments in Wales, but nearly a quarter of vacancies (24%) are SSVs.

² Skills gaps exist when staff are deemed not fully proficient. 14% of establishments in Wales have skills gaps and they affect 4.5% of staff.

³ Nine per cent of all vacancies in Wales were reported to be hard-to-fill exclusively for reasons not related to skills, qualifications or experience. The main causes were not enough people were interested in doing this type of work, low number of applicants generally, low number of applicants with the required attitude/motivation, poor terms and conditions offered, and shift work/unsociable hours.

⁴ Working Futures 2014-24, UK Commission for Employment and Skills (2016). As with all projections and forecasts, the results presented in Working Futures should be regarded as indicative of likely trends and orders of magnitude given a continuation of past patterns of behaviour and performance, rather than precise forecasts of the future.

Migration in Key Economic Sectors, Public Services and Higher Education

Tourism

Migrants make up 11% of the Tourism workforce in Wales (5% of the workforce are from the EU)⁵. The British Hospitality Association (BHA) recently published a report, prepared by KPMG⁶, which looked at the hospitality industry's reliance on EU workers and sought to quantify the resourcing challenge it would face in the event that free movement ended and no arrangements were put in place for continued access to EU workers (the 'cliff-edge' scenario).

The report shows a range of scenario-based figures for future labour market requirements in the sector, driven by sector level turnover and employment growth, and how these could potentially be increased by the impact of the end of free movement. At a time of low unemployment and a very high level of participation in the labour market by people of working age, the BHA believes these requirements could potentially not be met – especially given the competing resourcing requirements of other sectors, and the challenge of attracting the resident population to careers in the sector.

The BHA report suggests that, long term, it may be possible to recruit some more unemployed or inactive workers into the hospitality sector through efforts to attract more people to work in the sector and investment in related skills development, and to reduce head count requirement through productivity gains and increased retention. However, in the short to medium term, the recruitment gap is unlikely to be met through these routes.

Although as stated above, the proportion of EU nationals in the Tourism workforce in Wales is 5%, we understand from talking to tourism businesses in Wales that the figure can be much higher in some individual businesses. Other factors that will need to be considered in Wales are the concentration of workers in this sector in urban areas, and the extent to which recruitment difficulties may be more strongly felt by the small and medium sized enterprises who make up the majority of the tourism sector in Wales, and by tourism businesses in rural areas.

Manufacturing

9% of the Manufacturing workforce in Wales is from overseas (7% is from the EU)⁷. We consider below in more detail

about the food production sector, which is a significant part of the manufacturing sector. According to the Engineering UK 2017 report⁸, it is predicted that the UK will need 101,000 people with level 4+ skills in engineering per annum and estimated that the UK will provide 41,000 of these and the EU some 40,000, leaving a gap of 20,000. If there are future issues with EU graduates working here, then the gap widens to 60,000 across the manufacturing, ICT, and Construction sectors.

Key businesses and sub-sectors from the Advanced Materials and Manufacturing sector have expressed views about future immigration policy for EEA and Swiss nationals mainly at a UK level, but there are also considerations for Wales:

- Most of the sub-sectors highlight the importance of rapid and administratively simple intra-company staff transfers between different EU countries, and express concern about how this might be affected by future changes.
- The Automotive Council estimates that between 5-10% of their workforce is comprised of EU migrants⁹, and this has helped overcome an identified skills gap of around 5000 people.

⁵ Source: Welsh Government data, as set out in 'Securing Wales' Future' – page 61, Figure 9.

⁶ KPMG Report for the British Hospitality Association, 'Labour migration in the hospitality sector', March 2017 www.bha.org.uk/wordpress/wp-content/uploads/2017/03/BHA-KPMG-Labour-migration-in-the-hospitality-sector-report.pdf

⁷ Source: Welsh Government data, as set out in 'Securing Wales' Future' – page 61, Figure 9.

⁸ Source: Engineering UK Annual Report 2017 – www.engineeringuk.com/report-2017

⁹ Unpublished data provided by the Automotive Council to the Welsh Government, November 2016.

- Over 20,000 aerospace sector jobs are based in Wales¹⁰ and 1 in 3 aerospace businesses have raised concerns about access to skills¹¹. For example, Airbus, which employs 600 EU workers in the UK and 1,800 UK workers in Europe, has raised concerns over any restrictions which would prevent them attracting high skilled workers or from being able to move workers around Europe, including at short notice and without restrictions¹².
 - The Defence sector highlights concern about the attractiveness of the UK as a destination for investment and for highly-skilled workers if additional barriers to movement are put in place.
 - Some individual manufacturing businesses in Wales have told us that they employ between 30-40% of staff from the EU due to the lack of availability of staff in the local area, and this can be for both lower and highly skilled jobs. This reflects specific and isolated examples but, in cases such as these, the viability of the business as a whole could be reliant on this section of the workforce.
- plumbing, etc). Around 3% of the workforce is from overseas (2% of the workforce is from an EU background). This is a smaller proportion of the workforce than other sectors but as we have seen above, construction is a sector that has difficulty with filling vacancies due not only to a lack of skills, qualifications and experience amongst applicants, but also due to other non-skills related issues. The 'UK Commission for Employment and Skills Employer Skills Survey 2015'¹⁴ highlights the most common non-skills reasons for hard to fill vacancies in construction – to note that due to small sample size (39), this data should be treated with caution:
- Not enough people interested in doing the type of job (the cause, at least in part, of 40% of construction hard-to-fill vacancies);
 - Low number of applicants generally (17%);
 - Low number of applicants with the required attitude, motivation or personality (14%);
 - Too much competition from other employers (6%);
 - Poor terms and conditions (e.g. pay) offered for post (4%).

Construction

The construction sector in Wales comprises over 103,000 people in its workforce¹³, in a wide range of occupations which vary in skill level – labourers, architects, project managers, and specific crafts and skills (bricklaying, roofing,

Adding to the recruitment pressure is the anticipated reduction in workforce due to retirement (19% over 5-10 years¹⁵), as well as growth in demand due to future construction needs in Wales.

According to the 2017-2021 Construction Skills Network Report¹⁶, Wales is projected to see annual average output growth of 6.2% over the five years to 2021, the strongest of any of the English regions and devolved nations (the next highest growth is 3.1% in the South West with the UK average being 1.7%). This growth is driven by the strong pipeline of proposed infrastructure projects in Wales, including the Wylfa Newydd nuclear power development, South Wales Metro, M4 relief road and Tidal Lagoon developments. Infrastructure projects elsewhere (e.g. Hinkley Point nuclear power plant in Somerset) will also drive competition for qualified and experienced workers as construction workers are historically very mobile.

Food manufacturing and Farming

The Food and Drinks sector is heavily reliant on migrant workers to fill roles in food processing:

- In 2015 over a quarter (27%) of those employed in food and drink manufacture in Wales were born in the EU.
- Since 2011 we have seen a 63% increase in the number of people born in the EU employed in food and drink manufacturing sector in Wales compared with 3% increase from the rest of the UK and 2% decline in those employed from Wales in the same period.

¹⁰ Source: Aerospace Wales – www.aerospacewalesforum.com/welsh-aerospace-industry

¹¹ Source: ADS, UK Aerospace Outlook 2017

¹² From The Independent, 24th January 2017 – www.independent.co.uk/news/business/news/brexit-latest-news-airbus-boss-tom-williams-aircraft-manufacturer-dangerous-phase-free-movement-a7543946.html

¹³ Source: Annual Population Survey, as outlined in Annex C to this paper. A CITB Observatory paper which provides data based on ONS, CSN, Experian counts 110,740 for total workforce but does not break down by nationality.

¹⁴ Source: UK Commission for Employment and Skills: Employer Skills Survey 2015

¹⁵ Source: CITB, 2013 www.citb.co.uk/news-events/uk-construction-skills-time-bomb/

¹⁶ www.citb.co.uk/research/construction-skills-network/wales/

- For all manufacture in Wales the percentage of people in employment born in the EU is much lower at around 7% of the total.
- However there is a similar growth, between 2011-2015, in the number of those employed in the total manufacturing sector from the EU at 57% (as the total also includes Food and drink manufacturing)¹⁷.

Anecdotal evidence from food and drinks manufacturers suggests that they have found it difficult to recruit local labour to undertake production line jobs and migrant workers have plugged a gap in labour supply.

In the UK the majority of EU migrants who work in agriculture tend to work in the horticulture sub-sector, which is highly labour-intensive and reliant on a seasonal workforce. However, horticulture makes up a relatively small part of the Welsh agricultural sector – livestock farming is far more significant¹⁸ – which means that Wales has fewer seasonal workers than the UK as a whole. Work in meat processing is not seasonal as workers tend to be employed all year round on a permanent basis. Thus the reintroduction of a seasonal workers scheme would not be sufficient to preserve access to labour in these industries.

Welsh jobs in the food and farming sector have been subject to lower wages when compared with the UK and any policy to set a threshold of wage or salary as part of future immigration policy should be mindful of the difference¹⁹.

As noted above, there is also no easy distinction to be made between skilled and unskilled labour. For instance, in the red meat industry, butchers and meat packers are highly skilled at sector specific tasks but are relatively low-paid, and will be recorded in official statistics as unskilled. Continued access to labour will therefore need to be based on an assessment of the needs of industry rather than this binary distinction.

Some universities in Wales have reported that they have struggled to recruit students to study for advanced qualifications leading to quality roles in food such as technicians or food technology. This has resulted in some of these highly-skilled and well-paid jobs being filled by migrant workers.

Although direct employment in the food production sector is a major concern, it is not the only one. For example, according to the Freight Transport Association²⁰, it is estimated that only 12% of trucks that come across the Dover straight are registered in Britain. The use

of ‘just in time’ production techniques for foodstuffs with a short shelf life is therefore likely to make the food supply chain particularly vulnerable to any changes to border arrangements and the free movement of people.

Veterinary Sector

The veterinary sector in the UK faces particular problems with recruiting skilled and experienced staff. A 2015 survey by the British Veterinary Association found that two thirds of vet practices took over three months to fill a vacancy; of these 10% took over 6 months and 7% were forced to withdraw the role because of a lack of suitable candidates²¹. According to 2015 data from the Royal College of Veterinary Surgeons (RCVS)²², 44% of newly registered veterinary surgeons in the UK qualified from EU veterinary schools and 22% of staff at UK veterinary schools are from the EU.

Some parts of the veterinary sector are particularly reliant on EU workers, for example, according to the Veterinary Policy Research Foundation (VPRF) 90% of meat inspection occupational vets are non-UK EU citizens²³. These positions utilise specific skills which do not transfer directly to other clinical veterinary professions.

¹⁷ Source: Welsh Government analysis of Annual Population Survey (Jan-Dec), Office for National Statistics – www.gov.wales/statistics-and-research/ad-hoc-statistical-requests/?lang=en

¹⁸ Wales has a 2% share of the land area in the UK dedicated to horticulture and crops, but a far greater share of UK livestock (e.g. 29% share of sheep). Source: Welsh Government statistics, ‘Farming Facts and Figures, Wales 2017’ – www.gov.wales/docs/statistics/2017/170620-farming-facts-figures-2017-en.pdf

¹⁹ Source: Welsh Government Priority Sector Statistics 2016: www.gov.wales/statistics-and-research/priority-sector-statistics/?lang=en

²⁰ Source: Freight Transport Association Logistics Report 2016: www.fta.co.uk/export/sites/fta/_galleries/downloads/logistics_report/lr16-web-030616.pdf

²¹ Source: BVA Voice of the Veterinary Profession Survey, www.bva.co.uk/News-campaigns-and-policy/Newsroom/News-releases/Struggling-to-recruit-you-are-not-alone/

²² Source: RCVS Facts 2015, www.rcvs.org.uk/publications/rcvs-facts-2015/?destination=%2Fpublications%2F%3Ffilter-keyword%3Dfacts%26filter-type%3D%26filter-month%3D%26filter-year%3D%26filter.x%3D0%26filter.y%3D0

²³ Source: VPRF Brexit – Veterinary Fact File Oct 2016, www.vprf.files.wordpress.com/2016/10/brexit-impacts-for-website.pdf

In June 2017, the RCVS published the outcome of a survey²⁴ of EU veterinary surgeons (VS) in the UK, conducted by the Institute for Employment Studies. It found that, although there is evidence that many European VS have settled in the UK (the majority has family ties here), many respondents believe strongly that Brexit could have a significant impact on the veterinary profession if European VS and veterinary nurses can no longer work in the UK, and that European veterinary workers would be less likely to come to the UK.

Other economic sectors

Restrictions to freedom of movement would also impact on the ability of businesses in other sectors in Wales to attract talent from the EU.

Welsh based life science companies and universities rely to an extent on the availability of skilled labour, academics and scientists moving across from the EU. Although there are no firm figures for the number of EU workers in the life sciences sector in Wales, restrictions to freedom of movement could make it more difficult for businesses to recruit and retain talent from the EU, impacting more broadly on their ability to manufacture and develop new products for export.

In addition to the need, referred to earlier, for the Wylfa Newydd project to access skilled construction workers, Horizon Nuclear Power (who will build and operate Wylfa Newydd) will need to access skilled nuclear industry operators to commission, operate and eventually decommission Wylfa Newydd. Horizon are likely to need to seek such specialist staff on the world market as well as within the EEA and Switzerland. Although the numbers needed are likely to be small compared with other industrial areas they will be crucial to the success of this major project.

Businesses in the creative sector also currently attract international talent to Wales. Film and TV in particular, rely heavily on mobile, freelance crew to staff productions and any barriers to the movement of people across European borders would therefore impact on this sector. A shortage in digital skills across the UK means that businesses in this sector are also reliant to some extent on the ability to recruit from the EU.

Implications for Rural Areas

Employment opportunities for EU migrants in rural-linked sectors have led to the concentration of migrant workers in a number of relatively small rural communities²⁵

and have made some sectors particularly dependent on the skills of migrants from the EU, particularly food production and tourism (we have seen earlier the importance of migrant workers to both these sectors). The potential negative effects of future restrictions to migration are likely therefore to be magnified in some rural areas, and this needs to be taken into account.

Public Services

NHS workforce

The NHS across the UK has recently seen a trend of increasingly difficult staffing pressures, rising demand for services, changing work patterns and an ageing workforce. Each region and professional area is facing unique and varying pressures, for example in November 2016, 25% of General Practitioners (GP) had reached retirement age, which is already creating pressures on service delivery²⁶.

The NHS in Wales is reliant on EU workers at every level. In September 2016, 1,313 EU Nationals were directly employed by the NHS in Wales. At this time the electronic staff record showed that the percentage of doctors working in Wales who were recorded as being from the EU was 7% (compared to 10% in England)²⁷. These are substantial numbers considering the tight margins in which NHS

²⁴ Source: RCVS 'European Veterinary Surgeons working in the UK: The Impact of Brexit', June 2017 -

www.rcvs.org.uk/document-library/european-veterinary-surgeons-working-in-the-uk-the-impact-of/?preview=true

²⁵ For example, 9.6% of all EU migrants in Wales are living in Carmarthenshire local authority area. See 'Securing Wales' Future' pg 53, Table 3. Source: StatsWales (June 2016) based on data from Labour Force and Annual Population Surveys.

²⁶ www.nhsconfed.org/resources/2016/11/welsh-nhs-confederation-and-nhs-wales-employers-response-to-inquiry-into-medical-recruitment

²⁷ www.nhsconfed.org/resources/2017/03/welsh-nhs-confederation-briefing-on-workforce-challenges-and-solutions

recruitment works and the cost of using locum and agency staff to fill any long term gaps. Another point to consider is that, whilst the Welsh NHS is comparatively less dependent on overseas staff than in England, restrictions to migration at a UK level create a risk of staff displacement from Wales to England.

Substantial work is underway in the Welsh NHS to ensure staff training, recruitment and retention can be bolstered. However, work force planning, recruitment and education schemes only provide solutions for the long term and require planning many years ahead. Shortages and changes in demand can develop in a fraction of that time; it is in these circumstances that overseas recruitment becomes an important tool to meet demand.

The current pressures make the health and social care sector even more of a priority for overseas recruitment than it normally would be. It is important the NHS in Wales remains capable of attracting the staff it needs to fill essential posts while workforce planning adjusts to meet the demand domestically.

The systems in place around the recruitment of staff are also important. While the mutual recognition of qualifications is not unique to the EU, systems such as the European Professional Card for professions such as general care nurses, pharmacists and

physiotherapists provide a quick and reliable system for ensuring correct registration, minimum standards of training and knowledge of languages. Alongside this operate important EU-wide warning systems which require regulatory bodies to alert each other within three calendar days about any professional who has been banned from practising, even temporarily.

Social Care

As with the rest of the UK, the social care sector in Wales is facing a range of challenges which relate to its ability to recruit and retain workers, whether from the UK, EU or rest of the world. These factors include attracting people to certain occupations within the sector, staff turnover, and terms and conditions which may be unfavourable such as zero hours contracts (the Welsh Government has recently launched a consultation on social care workforce matters, including the use of zero-hours contracts²⁸). The implications of changes to the migration system resulting from the UK's exit from the EU are a concern to the sector, but not the primary one.

The social care workforce includes significant numbers of workers from across the EU. There is a potential for the supply of such workers to be affected by Brexit and changes to migration policy in the future. Data for Wales is not currently available but figures from England show that in areas generally

more comparable with Wales, around 3% of local authority and independent sector jobs were held by people with an EU nationality, and a further 5% were held by people with a non-EU nationality²⁹.

There could be some short term impacts if individuals from the EEA and Switzerland decide to leave Wales or not to come and work here at all. We could see an increase in recruitment and retention pressures across social care and in particular in relation to:

- Nurses in care homes – particularly in specialty areas where there are already recruitment challenges, such as provision for the Elderly Mentally Infirm
- Social Care worker recruitment and retention in care homes and domiciliary care in entry level and management level jobs, where there are already recruitment challenges.

In the longer term, were migration controls to impact adversely upon the ability of individuals from the EEA and Switzerland to work in Wales, we could see an increase in the already extant recruitment and retention pressures across social care described above.

An article by the Kings Fund³⁰ highlights another scenario of increased pressure on services resulting from the return of UK citizens who have retired elsewhere in the EU and return to the UK.

²⁸ www.consultations.gov.wales/consultations/phase-2-implementation-regulation-and-inspection-social-care-wales-act-2016-workforce

²⁹ Source: National Minimum Data Set for Social Care, March 2017:

www.nmds-sc-online.org.uk/Get.aspx?id=/Research/Briefings/Briefing%2028-%20Nationality%20-%20final.pdf

³⁰ The Kings Fund, 'Five big issues for health and social care after the Brexit vote', June 2016 – www.kingsfund.org.uk/publications/articles/brexit-and-nhs

Teachers

The Education Workforce Council (EWC) provided evidence to the Migration Advisory Committee³¹ in respect of shortage occupations. Nationality of teachers is not recorded, but as a potential indicator of the number of teachers from an overseas background, the EWC highlights 1.1% of teachers in Wales would class their national identity as 'other' (as opposed to British, Irish, English, Scottish or Welsh). In that evidence they highlight that, in general, Wales does not have the same level of problems relating to teacher recruitment as in England, although it is recognised that there are challenges in Wales relating to the recruitment of head teachers, and in certain subjects (e.g. Science, Technology, Engineering and Mathematics); the increasing demand for Welsh Language ability also makes it more challenging to recruit teachers who are from other parts of the UK or from overseas.

Another factor to consider is that, as Wales has completely permeable borders with Scotland and England, depending on the extent to which immigration changes might affect recruitment and retention in England, this could have the effect of more competitive recruitment for teachers, resulting in teachers moving away from Wales to vacant posts in England.

Higher Education

Staff

Higher Education is an internationally competitive market, and staff from overseas are an important part of ensuring the research and teaching quality offered in Wales' higher education institutions (HEIs). 12% (2,365) of HE staff are non-UK born (7% or 1,425 are from the EU)³². International collaborations are vital to research projects within higher education and the Institute of Welsh Affairs report 'The Single Market of the Mind' includes four personal profiles which illustrate the important contributions made by academic staff from other EU countries to research and academia in Wales³³.

The HE sector in Wales has raised concerns about uncertainty regarding the position of EU staff and the potential impact on recruitment and retention – with a consequent risk to international collaborations, quality of provision, and the sector's international reputation. An overarching issue is about how any impact on universities' ability to recruit and retain EU and international staff will affect their international competitiveness and their ability to attract students.

Both the European Commission and the UK Government have published proposals in respect of the rights and status of EU citizens in the UK and UK

citizens in the EU. However, there remains a large number of questions about the details behind the UK Government's proposals in particular and, even if these details become clearer, full certainty over rights and status won't be possible until the conclusion of negotiations over the UK's withdrawal from the EU.

Overseas Students

Around 17%³⁴ of the students in Welsh HE institutions are either from the EEA and Switzerland or the rest of the world. The percentage of post-graduate students in Wales who come from outside the EEA and Switzerland is higher than the UK average³⁵, with particularly significant implications for certain institutions and courses.

Discussions involving various stakeholders have highlighted the following principal issues linked to migration following EU exit and how this may impact on student numbers:

- The UK Government's proposed limit on overall migration numbers and whether students are included in this limit;
- The operation of the Tier 4 immigration system for overseas students and the risk of the way it is operated contributing to a narrative about the UK not being open and welcoming to overseas students;
- Currently EEA and Swiss students have the same rights as home students in relation to the tuition fees charged by institutions, the support

³¹ Education Workforce Council, Migration Advisory Committee Call for Evidence, June 2016 – www.ewc.wales/site/index.php/en/documents/research-and-statistics/research-reports/published-research/455-migration-advisory-committee-mac-call-for-evidence-partial-review-shortage-occupation-list-teachers

³² Source: Higher Education Statistics Agency Staff Record, 1st December 2015

³³ IWA 'Single Market of the Mind': www.iwa.wales/news/2017/03/single-market-mind/

³⁴ Source: Higher Education Student Record, Higher Education Statistics Agency, February 2017 – www.stats.wales.gov.wales/Catalogue/Education-and-Skills/Post-16-Education-and-Training/Higher-Education/Students/Enrolments-at-Welsh-HEIs/highereducationenrolments-by-domicile-level-mode

³⁵ IWA 'Single Market of the Mind'. Page 33 figure 24 shows 35% in Wales compared to 29% UK average. www.iwa.wales/news/2017/03/single-market-mind/

provided by government, and their ability to study in the UK; as do Welsh students studying in the EEA and Switzerland. Removing those rights from EEA and Switzerland students will make the UK a less attractive study destination than universities in other EEA countries or Switzerland;

- Those courses or institutions with a higher number or proportion of overseas students risk being particularly affected by any detrimental changes resulting from changes to the immigration system, although it is anticipated that all universities will be affected by reducing student numbers.

Issues around migration need to be considered alongside a range of other EU exit issues for HEIs, including EU funding for research, ability to undertake international research collaborations, access to Structural Funds, and the future of student mobility programmes, such as Erasmus+. In ‘Securing Wales’ Future’ the Welsh Government stated that it wishes to see reciprocal arrangements regarding student tuition fees so that Welsh students studying in the EEA and Switzerland pay local student fee levels and EEA and Swiss students studying in Wales are treated as UK students for the purpose of fees and the costs of study.

The UK Government’s proposed approach to eligibility for “home fee status”³⁶ for EU students falls short of our stated position, in that it will not be available to EU students beyond the UK’s departure from the EU unless they had already arrived in the UK before the (yet to be determined) ‘specified date’ at some point between March 2017 and the date of the UK’s withdrawal from the EU (March 2019).

³⁶ UK Government policy document: “Safeguarding the Position of EU Citizens Living in the UK and UK nationals Living in the EU” – paras 50-54 www.gov.uk/government/publications/safeguarding-the-position-of-eu-citizens-in-the-uk-and-uk-nationals-in-the-eu

10 Annex C – Immigration Policy after Brexit

Prepared by Public Policy Institute for Wales (PPIW) for the Welsh Government , May 2017

- The Brexit process will be complex and multi-levelled, with the Article 50 discussions covering EEA nationals resident in UK, and domestic policy development and legislation required for a new post-Brexit immigration system.
- It is unclear whether negotiations on a new ‘deep and comprehensive free trade agreement’ between the UK and the EU will cover migration issues.
- There is little doubt that currently resident EEA nationals (of which there are about 80,000 in Wales) will be granted permanent residence; but there are numerous complex legal and administrative issues to resolve.
- Key issues relating to a post-Brexit immigration system are whether it will retain ‘European preference’; whether it includes sectoral and regional elements; and how it addresses needs for ‘medium-skilled’ workers.
- Wales is less dependent than the UK as a whole on migrant workers, but vulnerable sectors potentially include manufacturing, hotels and catering, health and social care, and higher education.
- Risks to the Welsh economy and labour market (as well as to EEA nationals currently resident in Wales) would be minimised by:
 - (i) A simple, streamlined system to establish permanent residence status for EEA nationals.
 - (ii) The continuation of free movement for a defined period after Brexit.
 - (iii) Carefully phased implementation and enforcement of the new immigration system.
 - (iv) Avoiding the widespread use of sector-based schemes, caps and quotas, although there is a case for special arrangements in the health and education sectors.
 - (v) Making the case for any regional scheme by reference to Wales’ longer-term demographics and skills needs; and
 - (vi) Greater openness to non-EU nationals.

Introduction

The First Minister asked PPIW to provide advice and support to the European Advisory Group (EAG). In particular, to explore migration patterns in Wales (particularly of EEA citizens), and the implications of likely changes to freedom of movement and immigration policy after Brexit. Note that we refer to EEA nationals throughout this report, on the assumption that, as now, EU nationals and nationals of other non-EU EEA Member States (Norway, Iceland, and Liechtenstein) and Swiss nationals are treated essentially identically. The overwhelming majority of EEA nationals in Wales are EU nationals, and the numerical analysis reported here generally relates to EU nationals.

This paper builds on the PPIW's previous report to the EAG (PPIW, 2016). It sets out the current state of play on future immigration policy for the UK, the potential impacts on Wales, and possible policy options for the Welsh Government.

There are three key issues:

- 1) the future status of EEA nationals currently resident in the UK and UK nationals resident elsewhere in the EEA;
- 2) the shape of a new, post-Brexit UK immigration system; and
- 3) the transition to such a system.

In what follows, we set out where matters stand after Article 50 notification and the implications of the UK Government's current position on each of these, and we assess the potential impacts on the Welsh economy and labour market.

The Article 50 notification signals the beginning of a complex, multi-level process, and there is uncertainty about the timetable, process and outcomes in relation to immigration policy, although significant change is inevitable. We discuss the interaction between the Article 50 negotiations, negotiations on the future EU-UK trading relationship, and domestic policy development. We discuss, more speculatively, the likely outcomes and key risks of this process; and finally, and the implications for the Welsh Government's policy approach.

The status of EEA and UK citizens currently living elsewhere

The three most important issues for the Article 50 negotiations, covering the terms of the UK's separation from the EU, are the UK's 'divorce bill', issues relating to the relationship between Northern Ireland and the Republic of Ireland, and the status of EEA citizens in the UK and UK citizens elsewhere in the EEA. At present, as citizens of one Member State resident in another, they have most if not all of the rights of UK citizens; that will change after Brexit.

On the face of it, this issue should clearly be the easiest of the three. Both sides have made it clear that this is the first priority for the negotiations; and their positions appear to be broadly consistent. In its recent White Paper, the UK Government (Department for Exiting the European Union, 2017) said:

'Securing the status of, and providing certainty to, EU nationals already in the UK and to UK nationals in the EU is one of this Government's early priorities for the forthcoming negotiations.'

UK Ministers have repeatedly given assurances that they wish to provide some form of permanent residence for people in this position. The EU's lead negotiator, Michel Barnier has used similar, and equally positive, language (European Commission, 2017b):

'But we can and we should agree, as soon as possible, on the principles of continuity, reciprocity and non-discrimination so as not to leave these citizens in a situation of uncertainty.'

The EU's negotiation guidelines elaborate (European Commission, 2017a):

'The right for every EU citizen, and of his or her family members, to live, to work or to study in any EU Member State is a fundamental aspect of the European Union. [...] Agreeing reciprocal guarantees to settle the status and situations at the date of withdrawal of EU and UK citizens, and their families, affected by the United Kingdom's withdrawal from the Union will be the first priority for the negotiations. Such guarantees must be enforceable and non-discriminatory'

It would therefore appear to be relatively straightforward to conclude a political agreement incorporating the above principles. This would have some significant advantages: it would reassure people currently in this position (and their families and employers) that there was a shared desire to secure their residence rights on an ongoing basis, as well as generating goodwill that might have positive spillovers for other aspects of the negotiations, including discussions on a future system.

However, such a declaration in principle would leave a number of questions unanswered:

- **Eligibility.** What will the 'cut-off date' be for entitlement to permanent residency? While there were some indications that the UK Government intended to propose that the Article 50 date should be the cut-off date, there have been no official statements on this. Meanwhile, EU policymakers have suggested that any cut-off date should be the date of Brexit (that is, March 2019). The qualifying period for permanent residence (currently five years) may also be problematic. If it were enforced immediately, then a large number of people who came to the UK in good faith before Brexit could in principle be forced to leave; equally, simply offering the eventual prospect of permanent residence to anyone who comes even a week before the date seems unlikely. Some intermediate position seems likely.
- **Continuity.** Beyond simply qualifying for residency, there are difficult questions as to the meaning of M. Barnier's principle of 'continuity'. Reports suggest that the UK Government has accepted that EU nationals resident in the UK will be able to continue to claim benefits under the current rules, including child benefit for children living elsewhere in the EU (Sunday Times, March 26, 2017). If this were not agreed, the risk is that UK nationals abroad might lose access to healthcare and

other services. So, ironically, some EU nationals in the UK might actually be better off financially as a result of Brexit – since if we had voted to Remain then David Cameron’s renegotiation would have allowed the UK to phase out some of their entitlements. This is only one of the many thorny legal issues that will have to be resolved. Family rights, in particular, are likely to be an issue; at the moment there are almost no restrictions on the rights of EU nationals resident in the UK to be joined by their spouse (indeed, in some respects they have more rights than UK nationals do). M. Barnier’s comments suggest that the EU is likely to argue that EU nationals should continue to have the right to be joined by family members from their home countries. This obviously presents problems for the UK Government’s desire for complete domestic control of future migration policy.

- **Administrative issues.**

Whatever criteria are chosen, there will be significant administrative issues, given the UK’s lack of a population register (Portes, 2016a). A new, more efficient and lighter touch system will be required to allow individuals to demonstrate residency. At present, for example, the Home Office’s interpretation is that residents who are

not workers (for example students or stay-at-home parents) are required to have had comprehensive sickness insurance during the period of qualifying residence; since few have, a number of applicants who have been resident in the UK for well over the five year period have been rejected. For a new system to both to be acceptable to the EU (which does not accept the validity of the Home Office’s interpretation) and to be workable in practice, the requirements will have to be eased and simplified.

The negotiations are also likely to be complicated by the very different interests of the other 27 EU member states. Some – most obviously Poland – will be under strong domestic political pressure to preserve their nationals’ existing rights. Others, from Latvia to France, might secretly not be too unhappy if some of their young, skilled diaspora were to decide that the UK is a less attractive place to live and were to return home. And others, most obviously Spain, may not wish to give indefinite guarantees to treating UK citizens as generously as they do now.

Nevertheless, the optimistic perspective is that no-one has an interest in publicly blocking an agreement on this issue; and there are no obvious reasons why a broad deal that all countries will respect

M. Barnier’s basic principles should not be achievable. Early progress on this would provide considerable comfort to those affected, even if uncertainty on many of the details will take a lot longer to resolve.

EU citizens in Wales

There are currently approximately about 80,000 EEA citizens residing in Wales. Classifying them by time of arrival in the UK, about 30,000 arrived less than 5 years ago (see Table 1). This is broadly consistent with the data from the International Passenger Survey, which estimates that annual migration flows to Wales from the EU are currently running at about 7,000 (ONS, 2016)¹.

¹ This estimate has, proportionally, a very large margin of error. However, the fact that there are about 30,000 EEA citizens in Wales who arrived in the last 5 years – that is about 6,000 a year – suggests it is probably reasonably accurate.

**Table 1:
Estimated number of non-UK
residents by date of arrival in UK**

| | EU | Non-EU | Total |
|------------------------|---------------|---------------|----------------|
| 0 to 5 years ago | 30,300 | 21,400 | 51,700 |
| 5 to 10 years ago | 18,000 | 10,800 | 28,800 |
| More than 10 years ago | 23,300 | 11,000 | 34,200 |
| Unknown | 7,700 | 4,300 | 12,000 |
| Total | 79,300 | 47,400 | 126,800 |

Source: Welsh Government Analysis of the Annual Population Survey, December 2016

Notes: Figures are rounded to the nearest hundred and so there may be some apparent slight discrepancies between the sum of constituent items and the totals as shown. The analysis in this and subsequent tables related to country of nationality not country of birth.

**Table 2:
Estimated number of non-UK
residents by household status**

| | UK | EU | Non-EU | Total |
|-----------------------------------|------------------|---------------|---------------|------------------|
| Household status | | | | |
| Single: | 716,000 | 10,700 | 7,900 | 734,700 |
| with dependent children | 219,200 | 3,200 | - | 226,700 |
| Couple: | 1,984,300 | 45,500 | 31,200 | 2,061,000 |
| with dependent children | 917,400 | 27,000 | 21,800 | 966,200 |
| More than one family unit: | 121,800 | 5,600 | 8,200 | 135,600 |
| with dependent children | 39,400 | 1,700 | - | 41,500 |
| Total | 2,822,100 | 61,800 | 47,400 | 2,931,300 |

Source: Welsh Government Analysis of the Annual Population Survey household dataset 2015

Notes: 1) Figures are rounded to the nearest hundred and so there may be some apparent slight discrepancies between the sum of constituent items and the totals as shown. 2) The year and coverage of this table differs slightly from Table 1. 3) Because nationality is no longer imputed into the household data set, nationality is unknown for a larger number of people in this dataset compared with the person level dataset. Therefore, totals will differ to those obtained from the person level dataset.

- The data item is either zero, potentially disclosive or is not sufficiently robust for publication due to being based on less than 10 survey responses.

This suggests that while many, perhaps most, resident EU citizens will be entitled to permanent residence under the current rules, a large proportion will not. Further examination of the data also suggests that – in contrast to the general perception that EU migrants are mostly young and single – the vast majority of EU citizens are part of a family unit, and many have children. Indeed, EU nationals are just as likely as UK-born residents to have children. It is estimated that there are more than 20,000 children (of all nationalities) resident in Welsh households where at least one member is an EEA national; this represents 4% of all Wales-resident children (Welsh Government analysis, not shown in table).

This has a number of implications:

- in human terms, it is obviously more problematic to deny permanent residence to families than to single people;
- people with children (particularly mothers) are less likely to be able to demonstrate permanent residence under the current rules; and
- those with children will also have legitimate concerns not just about their right to remain but access to public services and other complex issues.

As set out above, this is likely to be an early priority in the negotiations between the UK and EU. In the short term, highlighting to the UK government the importance of resolving this issue quickly and efficiently should be a key priority for the Welsh Government.

At the same time as the Article 50 negotiations are in progress, the UK Government will also be taking steps towards introducing a new immigration system. The timeline appears to be the following:

- The UK Government has published a White Paper (Department for Exiting the European Union, 2017) setting out its proposals for the ‘Great Repeal Bill’, which will incorporate EU legislation into UK law, so that there is, as far as possible, no step change on the date of Brexit;
- The Bill will allow the UK Government to make some changes through secondary legislation. However, crucially, on immigration, the White Paper commits the UK Government to implement any new system through a separate Immigration Bill:

‘Similarly, we will introduce an immigration bill so nothing will change for any EU citizen, whether already resident in the UK or moving from the EU, without Parliament’s approval.’

- The UK Government had committed to publishing a White Paper on immigration in the summer of 2017, although the recent announcement of a general election makes this unlikely. Regardless, the timing of any subsequent legislation, and its implementation, remain unclear, and at least in part may depend on the outcome of negotiations (see below).

Note that there is no explicit statement that the new system will be part of the negotiations with the EU-27;

the interaction between domestic policy development and these negotiations is discussed below.

The key overriding issue, as has been the case for immigration policy for much of the past decade, will be the tension between the economic need for a relatively flexible and liberal immigration system; and the political desire to be seen to be both controlling and reducing immigration. There appears to be an increasing realisation in UK Government that the introduction of a new system will have significant economic costs and will impose a substantial administrative burden on both the Home Office and employers. Looking at the raw immigration statistics would suggest that EU migration and non-EU migration are roughly equal in magnitude – annual gross inflows of about 260,000 (ONS, 2017). So it might appear that extending the current system would double the volumes – itself quite a challenge for a Home Office already struggling with significant resource pressures.

However, this is misleading – it omits short-term flows, and covers all (long-term) immigrants. If we look instead at National Insurance Number (NINo) registrations – a better measure of people moving here to work – then the number of EU nationals registering is more than 600,000 annually, more than three times the number of non-EU nationals (Department for Work and Pensions, 2017). Not surprising then that multiple sectors (including, but not limited to, agriculture, higher education, health, finance and construction) have been warning government of the impact of cutting off the supply of EU migrant workers; and that senior Whitehall officials do not think the Home Office is remotely ready to cope with the potential additional burden.

A post-Brexit system

What might we expect the UK Government's consultation to say?

It appears likely that, at least in part, we will move to some form of 'work permit' system, similar to that currently operating for non-EEA migration for work purposes². The main route for non-EEA migrants at present is known as 'Tier 2'; this is open to those who have a job offer and fulfil various other criteria (relating to skills, occupations, salaries, etc.). There is a cap on overall numbers (currently set at 20,700 per year). The other main route is the 'intra-company transfer' route, for those being transferred to the UK by their employer – this has a higher salary threshold, but is significantly less restrictive in other respects, and there is no numerical limit. The basic structure of this system could, in principle, be extended to EEA migrants. However, this still leaves a number of key questions on which the UK Government has not yet taken a firm view, and which are therefore likely to be raised during the consultation. These include:

i) **European preference.**

Will the new system give a considerable degree of preference to EEA citizens, even if not full free movement, compared to those outside the EEA, or will it treat all non-UK citizens equally³; and how will this be

operationalized? The latter is the position advocated before the referendum by Vote Leave, and by some elements of the ongoing Leave Campaign ('Leave Means Leave'). Both argue that after leaving the EU, the UK should adopt a 'non-discriminatory' system, under which non-UK nationals seeking to migrate to the UK would be treated the same, regardless of their country of origin.

The argument in favour of this is simply that the UK Government has stated clearly that we will no longer be part of the Single Market, since free movement is one of the 'four freedoms'. The broader economic and political rationale – from both the UK and the EU perspective – for very different immigration arrangements for EU and non-EU migrants to the UK (and UK migrants to the rest of the EU) will therefore disappear, at least in part. Given this, the principle of the original Vote Leave position – that we should have a system that selects migrants according to skills, qualifications, family ties, etc. – seems compelling.

However, given the practicalities set out above – in particular the dependence of the UK economy on EU workers, the existence of business links and recruitment links built up over the last decade by a number

of industries, and the possible interaction with the negotiations with the EU-27 (see below) – the UK Government has not ruled out maintaining a degree of European preference. The Immigration Minister's recent testimony to the Lords Economic Affairs Committee strongly hinted at this (Lords Economic Affairs Committee, 2017):

'The negotiations will need to take into account people who may wish to travel and work here and British people who may want to work there. [...] I hope that the negotiations will result in a bespoke system between ourselves and the European Union. I think that that is unlikely to be identical to any of the other systems that we have with countries around the world.'

ii) **Individual versus sector based system.**

The current system for non-EU workers is primarily based on individual and job-related characteristics (salary, qualifications, skill level for the job in question) although there are a number of 'shortage occupations' which are largely sector-specific. However, there has been considerable speculation that the UK Government is considering schemes for individual sectors, such as agriculture (which used to have such a scheme for seasonal workers from

2 The two main alternatives that the UK Government could have pursued, but appears to have rejected are: some form of points-based system (as used in Australia); or a modified free movement system, which introduced, for example, an 'emergency brake' on overall numbers, or restricted access to benefits. More detail on these issues is set out in Portes, 2016b.

3 With the possible exception of Irish citizens, not discussed here, who have a special status in the UK which predates the UK's membership of the EU.

outside the EEA). Sector-specific schemes, while they may appear attractive to Ministers faced with lobbying from industry or trade groups, are likely to be significantly more difficult to implement and enforce in sectors which are considerably more diverse (geographically and in terms of the number and nature of businesses operating in them) than agriculture, which is a well-defined sector where peak demand is highly seasonal. It is not obvious how a sectoral scheme would work in catering and hospitality, where the definition of the sector is much less clear, and where labour demand is continuous rather than seasonal; the potential for complexity and abuse would be substantial. Nevertheless, they may have a role to play.

iii) **Targets, quotas and caps.**

Currently, although the UK Government has an overall immigration target of reducing net migration to the tens of thousands, most immigration categories have no actual overall limits (caps), except for Tier 2 skilled workers (the main work permit route for non-EU migrants). If the objective of a new system is to take the opportunity of Brexit to exert greater control over numbers, will it incorporate more such caps, in particular for any sector-specific schemes? If so, how will they be set?

Any cap will create an inevitable tension between a top-down approach (setting caps that

are designed to be consistent with an overall migration target) and a bottom-up one (setting caps that reflect the labour market needs of individual sectors). The UK Government has signalled that it would like to extend the role of the Migration Advisory Committee (MAC), which provides the Government with independent advice on immigration policy issues, in particularly as they relate to work-related migration and the economic impacts of migration. However, it seems unlikely it would be willing to abdicate control over the migration system to the extent that would be required; equally, the MAC members are themselves likely to be sceptical about their ability to ‘manage’ the UK labour market in this way.

iv) **Regionalisation** There has been considerable interest from London and Scotland in the possibility of some degree of regionalization of the immigration system. This would not, of course, involve any regionalisation of border controls, either external or internal, but rather would relate to the conditions required for a migrant worker to obtain a work permit, which would be differentiated by the geographical location of the workplace. Two broad approaches are possible. One would be simply to retain free movement of workers, in something more or less like its current form, in some nations or regions. In other words, employers in some regions could continue to hire EEA nationals as now, with an EEA passport being

acceptable as proof of entitlement to work. This would not preclude other changes to the rights of EEA nationals (for example as regards access to benefits and public services). The second would be a system analogous to a sector-based scheme, but restricted by region rather than sector, presumably subject to a cap, with the cap to be determined and administered by central government, but with input from and consultation with the nation or region in question. This would be more difficult administratively, as differential, looser, eligibility conditions for the relevant geographies (by skill level or salary) would have to be determined and administered, although this would arguably be less complex than an array of sectoral schemes. The Home Office has always been very resistant to any devolution of immigration policy, and Ministers have maintained this line, but it has not been entirely ruled out: it remains open as to whether this will be included in the White Paper.

v) **Administrative and enforcement aspects.**

It does not seem likely or feasible that we would restrict EEA nationals’ right to enter the UK without a visa, given that we do not do so for most other developed countries⁴. A fully-fledged visa regime for EEA nationals would be hugely disruptive to trade, travel and tourism, even leaving aside the

4 Although it is possible that some sort of electronic pre-entry system, like ESTA in the US, will eventually be introduced for movements to and from the remaining EU. This does not, however, constitute a visa system.

obvious point that this would mean UK nationals would require visas to travel to continental Europe. Moreover, it would mean that they were treated materially worse than, for example, Americans or Australians, who do not need a visa to enter the UK.

This does not in itself directly affect immigration policy. Americans or Australians have no automatic right to work or settle in the UK, nor to claim benefits or access public services. However, it does mean that control over how many and which EEA nationals are allowed to work in the UK will not, in practice, be applied at the border in the vast majority of cases. As with other non-visa nationals, like Americans, it will be applied in the workplace. Employers will have to verify that EEA nationals are entitled to work in the UK, just as they currently do for non-EEA nationals (similarly, landlords and administrators of public services will have to perform similar checks). This will no longer be simply a matter of showing a passport. Depending on the system, the right to work would likely to be limited to a specific employer and occupation and be time-limited. Experience with non-EEA nationals suggests that such a system is far from straightforward.

Beyond all these specific questions, perhaps the most important issue from a broad economic perspective is the overall objective. Will the new system be relatively liberal, accepting perhaps an increase in skilled migration from outside the EEA at the same time as reducing EU migration? Or will it be restrictive, with

the overarching objective still being to hit the target, set out in the Conservative manifestos of 2010 and 2015, to reduce net migration to the tens of thousands? Early indications from the UK Government were that the latter would very much be the priority. However, a measure of (economic) realism appears to have crept in (as a result of advice from civil servants, and lobbying from business, on the consequences of an overly restrictive policy) and the current tone is somewhat more balanced.

Implications for Wales

Any new immigration system would only apply to new entrants (as set out above, from the date of Brexit or later). Here we explore what the key issues would be for Wales.

Overall Impacts

An indicative sense of the relative impact of reductions in immigration on labour market flows (as opposed to stocks) can be gained by comparing annual National Insurance Number (NINo) registrations by overseas nationals with the size of the current labour force. This is the best available proxy measure of new migrant entrants to the labour market, and hence of the impact of migration on labour market flows. However, it will not record migrants who have registered in previous years, either in Wales or elsewhere in the UK, and only moved or returned to Wales in the current year; equally not all those registering for NINos will take up employment. Nevertheless, it gives a reasonable sense of the scale of the importance of new migrants to the Welsh labour market.

**Table 3:
National Insurance
Registrations as % of
Population in employment**

| | | United Kingdom | Englnd, N.Ireland and Scotland | Wales |
|--|---------------------|---------------------------|---|------------------|
| In Employment (16-64) | Central Estimate | 30,299,400 | 28,940,800 | 1,358,600 |
| | (95% C. I.) | (162,900) | (167,200) | (22,500) |
| Annual NI No Registrations | EU | 622,845 | 603,238 | 11,040 |
| | non-EU | 198,850 | 192,940 | 4,371 |
| | Total | 821,696 | 796,178 | 15,411 |
| Annual NI No Registrations as % of employed (16-64) | EU | 2.11% | 2.08% | 0.81% |
| | non-EU | 0.67% | 0.67% | 0.32% |
| | Total | 2.79% | 2.75% | 1.13% |

Sources: Authors' elaboration of Stat-Xplore and Nomis data. Nomis figures of people in employment are based on the Annual Population Survey, December 2016. The total for Wales differs slightly from Tables 4 and 5 as the latter are based on Male 16-64 and Female 16-59 population.

Notes: Figures are rounded to the nearest hundred and so there may be some apparent slight discrepancies between the sum of constituent items and the totals as shown.

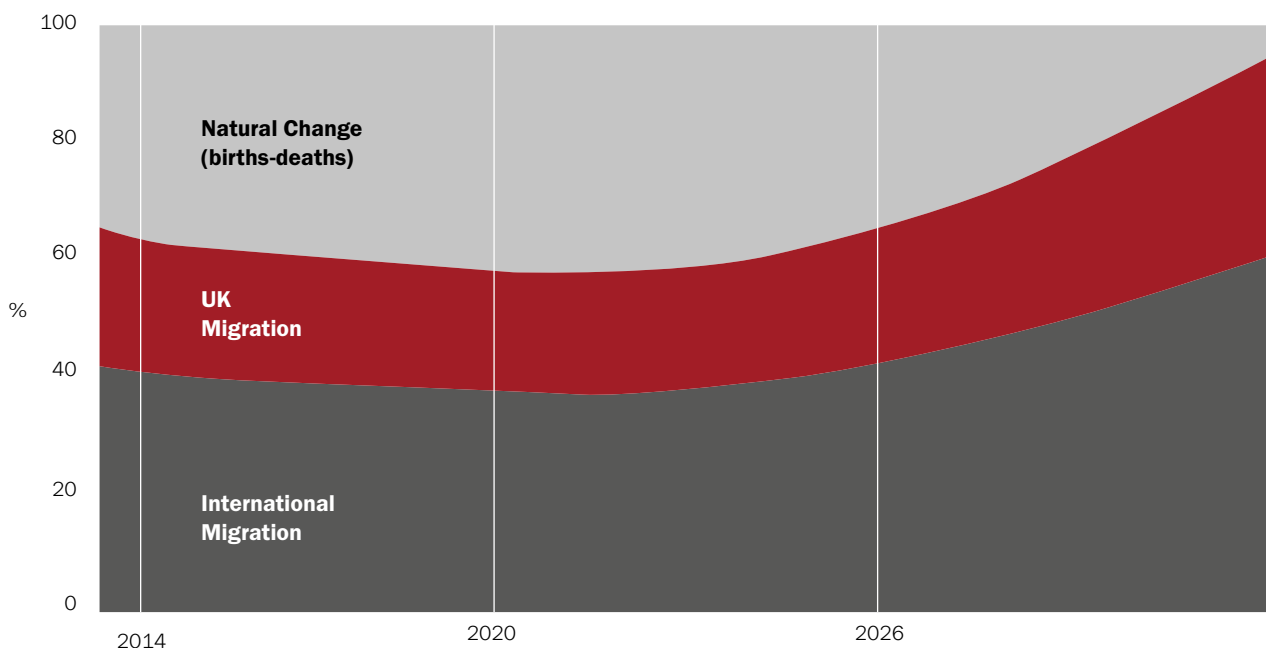
This suggests that as well as having lower numbers of migrants currently in the labour force, Wales is considerably less dependent on EU migration for labour market flows than the UK average (although London is of course an outlier here). New NI No registrations from the EU are running at an annual rate of only about 0.8% of the Welsh labour force. Since turnover (job moves) in the UK is generally about 15-20% – implying that there are 300-400,000 job entries or job moves in Wales

every year – this suggests that, overall, the degree of disruption to the Welsh labour market resulting from reductions to migration will be smaller than for the UK as a whole. This does not, however, exclude significant disruption in some occupations or sectors, as set out below.

Likely impacts on the Welsh labour market overall (and indeed economy and society more broadly) are therefore more long-term. Wales, like the rest of the UK, faces the challenge

of demographic change, with an ageing population. However, the challenges are significantly more acute in Wales than elsewhere, with slower growth in the overall population but faster growth in the over-65s; meanwhile, the 16-64 population is projected to shrink by 5% by 2039 (ONS, 2015). Lower than projected migration will exacerbate these impacts, as figure 1 shows.

Figure 1: Components of projected population change



Source: Welsh Government analysis of national population projections

Sectoral impacts

Overall, EU migrants in Wales in the private sector are particularly concentrated in manufacturing (Table 4), although the highest absolute number work in hotels, distribution and catering. This is also true of the rest of the UK, however, elsewhere in the UK there are also high concentrations in agriculture and finance (especially in London). This has some important implications for Wales; it suggests that sectoral schemes, which would be likely to focus on sectors with high dependence on migrants at the national level, would be likely to disadvantage Wales. If, for example, there are sectoral schemes for agriculture and financial services, both of which have been mentioned in this

context, it seems unlikely that many migrants entering under such schemes would come to Wales. Manufacturing – where it is not obvious that a sectoral scheme would be workable – might be at particular risk.

Looking at the broader public sector, higher education (HE) and health appear particularly vulnerable⁵. In both, EU nationals make up a relatively low proportion of the workforce overall, but a high proportion of skilled professional staff – more than 1 in 10 in HE, and 5% of health professionals (Welsh Government analysis of Higher Education staffing statistics; Table 5). These numbers have risen significantly in recent years, suggesting that they are likely to represent a significantly greater fraction of new recruits. The

same is likely to be the case for social care, although the data are less reliable. Wales and the Welsh government would benefit from preferences for these sectors.

An important point is that any widespread use of caps or quotas in the new system on a national or sectoral basis (as opposed to a regional basis) would be likely to damage Wales. Wales is not overall a priority destination for migrants, either from the EU or outside, relative to other parts of the UK. If there are caps on various categories of migrants, limiting the total number, but without any regional element to the new system, it seems likely Wales would have difficulty in attracting a proportionate share, since it appears that other parts of the UK (in particular London) are more attractive at present.

⁵ Higher education is technically classified to the private sector, but for these purposes it is convenient to group higher education and health, which face broadly similar challenges.

Table 4: Welsh Residents in Employment by industry sector, section and nationality

Industry by Sector, Section and Nationality, 2016, estimated number^{1,2}

| | UK | EU | Non-EU | Total |
|---|----------------|---------------|---------------|----------------|
| A - Agriculture, forestry and fishing | 30,900 | - | - | 31,600 |
| A: Agriculture, forestry and fishing | 30,900 | - | - | 31,600 |
| B,D,E - Energy and water | 26,500 | - | - | 27,700 |
| B: Mining and quarrying | 3,100 | - | - | 3,100 |
| D: Electricity, gas, steam and air conditioning supply | 10,700 | - | - | 11,300 |
| E: Water supply, sewerage, waste management and remediation activities | 12,600 | - | - | 13,200 |
| C -Manufacturing | 144,200 | 9,800 | 1,800 | 155,800 |
| C: Manufacturing | 144,200 | 9,800 | 1,800 | 155,800 |
| F - Construction | 100,800 | 1,900 | - | 103,400 |
| F: Construction | 100,800 | 1,900 | - | 103,400 |
| G,I -Distribution, hotels and restaurants | 262,300 | 11,500 | 5,400 | 279,100 |
| G: Wholesale and retail trade; repair of motor vehicles and motorcycles | 179,400 | 6,800 | 1,700 | 188,000 |
| I: Accommodation and food service activities | 82,900 | 4,600 | 3,700 | 91,100 |
| H,J -Transport and communication | 80,900 | 3,900 | - | 85,500 |
| H: Transportation and storage | 50,800 | 2,000 | - | 52,900 |
| J: Information and communication | 30,100 | 1,900 | - | 32,600 |
| K,L,M,N - Banking and finance | 172,100 | 7,300 | 2,200 | 181,700 |
| K: Financial and insurance activities | 36,000 | - | - | 37,500 |
| L: Real estate activities | 11,100 | - | - | 11,400 |
| M: Professional, scientific and technical activities | 68,400 | 3,300 | - | 72,600 |

| | UK | EU | Non-EU | Total |
|--|------------------|---------------|---------------|------------------|
| N: Administrative and support service activities | 56,600 | 2,800 | - | 60,200 |
| O,P,Q - Public admin, education and health | 449,800 | 9,100 | 7,800 | 466,800 |
| O: Public administration and defence | 105,700 | - | - | 107,500 |
| P: Education | 139,700 | 3,600 | 2,200 | 145,500 |
| Q: Human health and social work activities | 204,500 | 4,600 | 4,700 | 213,800 |
| R,S,T,U - Other services | 72,900 | 1,000 | - | 74,800 |
| R: Arts, entertainment and recreation | 33,000 | - | - | 33,700 |
| S: Other service activities | 37,600 | - | - | 38,700 |
| T: Activities of households as employers | - | - | - | 1,200 |
| U: Activities of extraterritorial organisations and bodies | - | - | - | 1,200 |
| Unknown | 12,100 | - | - | 12,500 |
| Total | 1,352,600 | 46,800 | 19,400 | 1,418,800 |

Source: Welsh Government Analysis of the Annual Population Survey, December 2016

1. Figures are rounded to the nearest hundred and so there may be some apparent slight discrepancies between the sum of constituent items and the totals as shown.
- The data item is either zero, potentially disclosive or is not sufficiently robust for publication due to being based on less than 10 survey responses.

Table 5: Welsh residents in employment by occupation and nationality

Occupation by Major, Submajor Groups and Nationality, 2016, estimated number^{1,2}

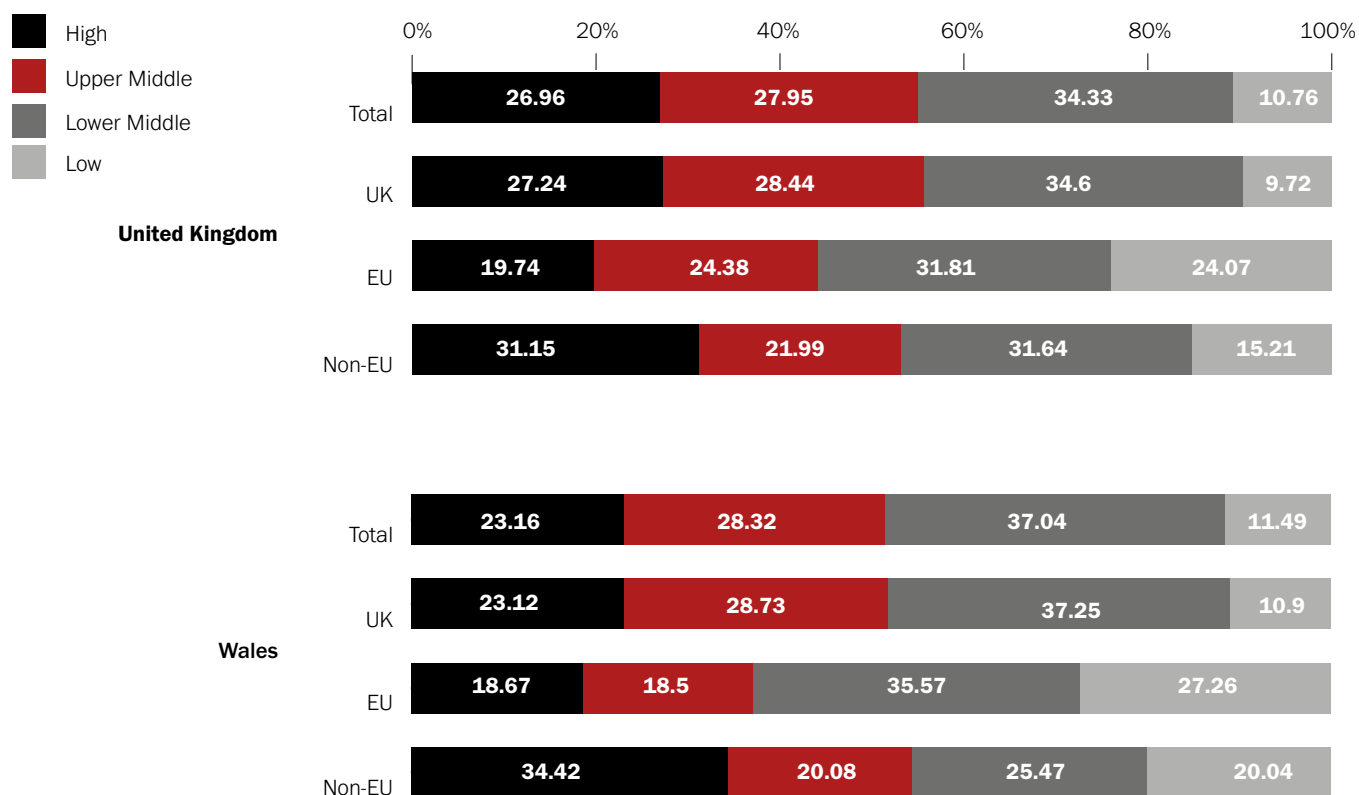
| | UK | EU | Non-EU | Total |
|---|----------------|---------------|---------------|----------------|
| Administrative And Secretarial Occupations | 141,400 | 2,000 | 1,300 | 144,700 |
| administrative occupations | 114,800 | 1,700 | - | 117,100 |
| secretarial and related occupations | 26,600 | - | - | 27,500 |
| Associate Professional And Technical Occupations | 166,600 | 3,500 | 1,900 | 172,000 |
| business and public service associate professionals | 79,700 | 2,700 | - | 83,500 |
| culture, media and sports occupations | 24,200 | - | - | 24,400 |
| health and social care associate professionals | 24,600 | - | - | 24,900 |
| protective service occupations | 15,400 | - | - | 15,700 |
| science, engineering and technology associate professionals | 22,700 | - | - | 23,400 |
| Caring, Leisure And Other Service Occupations | 142,500 | 3,000 | 2,900 | 148,500 |
| caring personal service occupations | 116,700 | 2,300 | 2,600 | 121,600 |
| leisure, travel and related personal service occupations | 25,800 | - | - | 26,900 |
| Elementary Occupations | 143,600 | 10,600 | 2,500 | 156,700 |
| elementary administration and service occupations | 116,900 | 7,900 | 2,400 | 127,100 |
| elementary trades and related occupations | 26,700 | 2,800 | - | 29,600 |
| Managers, Directors And Senior Officials | 132,800 | 1,800 | 2,000 | 136,600 |
| corporate managers and directors | 89,600 | 1,100 | 1,200 | 91,900 |
| other managers and proprietors | 43,100 | - | - | 44,600 |

| | UK | EU | Non-EU | Total |
|---|------------------|---------------|---------------|------------------|
| Process, Plant And Machine Operatives | 93,400 | 8,100 | - | 102,200 |
| process, plant and machine operatives | 44,000 | 6,000 | - | 50,500 |
| transport and mobile machine drivers and operatives | 49,500 | 2,100 | - | 51,700 |
| Professional Occupations | 244,400 | 9,800 | 4,600 | 258,900 |
| business, media and public service professionals | 56,200 | 1,800 | - | 58,700 |
| health professionals | 69,100 | 3,600 | 2,200 | 74,900 |
| science, research, engineering and technology professionals | 55,200 | 2,100 | - | 57,800 |
| teaching and educational professionals | 64,000 | 2,400 | 1,200 | 67,600 |
| Sales And Customer Service Occupations | 110,500 | 2,200 | 1,900 | 114,600 |
| customer service occupations | 26,400 | - | - | 27,300 |
| sales occupations | 84,100 | 2,000 | - | 87,200 |
| Skilled Trades Occupations | 170,900 | 5,300 | 1,700 | 177,900 |
| skilled agricultural and related trades | 26,700 | - | - | 26,800 |
| skilled construction and building trades | 50,000 | - | - | 51,200 |
| skilled metal, electrical and electronic trades | 64,100 | 1,100 | - | 65,900 |
| textiles, printing and other skilled trades | 30,100 | 3,200 | - | 34,100 |
| Unknown | - | - | - | 6,800 |
| Total | 1,352,600 | 46,800 | 19,400 | 1,418,800 |

Source: Welsh Government Analysis of the Annual Population Survey, December 2016

1. Figures are rounded to the nearest hundred and so there may be some apparent slight discrepancies between the sum of constituent items and the totals as shown.
 2. Number includes those aged 16+ who are in employment.
- The data item is either zero, potentially disclosive or is not sufficiently robust for publication due to being based on less than 10 survey responses.

Figure 2:
% of workers in each skill level by
nationality and region



Source: Authors' elaboration of Nomis data based on Annual Population Survey, December 2016. Skill classifications are taken from Office of National Statistics and are follows (see Table 5). High skilled: professional and managerial occupations. Upper middle: associate professionals, skilled trades. Lower middle: administrative, secretarial, caring and leisure, sales, process and plant, transport. Lower: elementary occupations.

Skills mix

As in the rest of the UK, the most important point here is that the majority of EU migrants in Wales – like the majority of the UK born – work neither in ‘low-skilled’ or ‘high-skilled’ jobs, but in middle skill jobs. This matters in particular because migrants entering the UK to do such jobs would not be eligible for work permits under the current system for non-EEA nationals, which is intended only for relatively highly skilled jobs.

There are some, but not dramatic, differences between the UK and Wales in terms of the skill composition of migrants. The most notable difference is perhaps in respect of non-EU migrants in Wales (although the numbers are relatively small, compared both to the overall population and to non-EU migration elsewhere in the UK), where non-EU migrants are disproportionately likely to be working in high-skill jobs. Indeed, while overall the Welsh workforce is somewhat less likely to be in skilled jobs – 23% of UK born workers in Wales, compared to 27% in the rest of the UK – the opposite is true for the non-EU born, who are more likely to be in high skilled jobs than their counterparts in the rest of the UK (34% as compared to 31%). With the data available, it is difficult to say why that is the case; it may

(but this is speculative) reflect non-EU nationals working in the health sector, further and higher education, and perhaps some intra-company transferees working for multinational companies. It does however suggest that, despite relatively low overall levels of migration, Wales can attract skilled migrants; the Welsh labour market and economy could benefit from higher skilled migration from outside the EU in future.

Geographical spread

As elsewhere in the UK, EU migrants to Wales are more concentrated in urban areas, in particular Cardiff, Swansea and Wrexham; it is employers in these areas that are likely to be most impacted⁶.

6 2002-2016 Cumulative National Insurance Registrations, by constituency. Source: Authors' elaboration of Stat-Explore data

Negotiations on the future relationship between the UK and Europe

How will the decisions on the post-Brexit system interact with negotiations with the EU-27? As noted above, the Article 50 negotiations will cover only issues relating to the UK's separation from the EU, including the status of EU citizens currently resident; it will not cover immigration and free movement issues after Brexit.

The EU has stated that after 'sufficient progress' has been made in the Article 50 negotiations, discussions could begin on the 'framework for the future relationship' (European Commission, 2017a):

'an overall understanding on the framework for the future relationship should be identified during a second phase of the negotiations under Article 50 TEU. We stand ready to engage in preliminary and preparatory discussions to this end in the context of negotiations under Article 50 TEU, as soon as the European Council decides that sufficient progress has been made in the first phase towards reaching a satisfactory agreement on the arrangements for an orderly withdrawal.'

The UK Government has said that it wants 'a new strategic partnership with the EU, including an ambitious and comprehensive Free Trade Agreement.' (Department for Exiting the EU, 2017). It is generally assumed that these discussions would focus on the future trading relationship – broadly defined, so including non-tariff barriers, regulatory issues, and so on.

What is far less clear is whether, and when, there will be any substantive discussion about the UK's post-Brexit immigration policy. A Free Trade Agreement (FTA) – even a comprehensive one – does not in itself, require special immigration rules for EU nationals; the EU already has comprehensive FTAs with other countries (South Korea, Ukraine, Canada) that contain little or nothing in terms of immigration. However, the UK government has stated that it wants a significantly deeper FTA than any of these, in particular covering non-tariff barriers and the UK's major service sectors. Some provisions on migration flows – particularly with respect to intra-company transfers, students, extended business visits and so on – would probably have to be incorporated in any such agreement.

However, this would not necessarily impinge on the main elements of post-Brexit immigration policy set out above. Moreover, from the point of view of the EU-27, it is not clear that they will wish to negotiate over immigration. While free movement within the Single Market is a clear EU principle, governed by EU law and Directives, immigration policy between Member States and third countries (other than EEA/Switzerland) is largely a national competence. If we are, as the UK government has stated, clearly excluding ourselves from the Single Market and the jurisdiction of the ECJ, then free movement – or even a modified version of free movement

– is not likely to be under discussion. Nor is it necessarily in the interests of the EU-27 for us, once outside the EU, to give preferential access to skilled European workers, even if the arrangements were reciprocal. We would be saying that we'd be happy to take their skilled workers, but not lower skilled ones; this will not necessarily be attractive, particularly to those countries that have seen significant flows of young, skilled workers to the UK in recent years.

Perhaps most importantly, it appears increasingly likely that the negotiations will be extremely complex and politically fraught, and working to an extremely demanding (some say impossible) deadline. Introducing major elements of migration policy into this process seems unlikely to make the task an easier; so it is at least possible that both sides will decide that immigration should largely be excluded from the substantive discussions. If the negotiations proceed constructively, with rapid progress towards a relatively comprehensive agreement, it is possible that migration policies will be an important component, but it would be unwise and premature to assume that this is likely.

Transitional issues

However, one area where domestic policy development and the UK's negotiations with the EU-27 are likely to overlap is in the nature of any 'transitional arrangements' or 'implementation phase'. This issue is likely to be extremely complex.

The UK Government's stated policy is that it wants the nature of the UK's trading relationship with the EU to be agreed before Brexit; any 'implementation phase' would then be a matter of implementing this new relationship. In an interview with Andrew Neil on March 29, the Prime Minister stated (Sunday Times, 2017):

'We want to make sure that we are ending the jurisdiction of the European court of justice and that we are able to control movement of people coming from the EU. We want to have the agreements done in two years. There may then be a period in which we are implementing those arrangements. If there are different visa arrangements that need to be put in place, the government here and the government elsewhere will have to have their systems working so that it can operate. So there may be a period where we have got to implement the decisions that have been taken.'

However, there is deep scepticism among almost all external experts as to whether agreement is feasible within the Article 50 period. If there is no such clear blueprint for the new relationship, then it is unclear what an 'implementation phase' would look like, since it would be unclear what was being implemented.

The EU-27 has also made clear that there could be no 'cherry-picking' during any such phase; in other words, the UK would likely have to accept continued ECJ jurisdiction and free movement if it wished to continue membership of the customs union and Single Market during this phase.

The issue is further complicated by the administrative issues relating to the new system discussed above. Even leaving the negotiations aside, it is implausible that the legislative timetable described above would allow the introduction of a new immigration system by Brexit day.

There are therefore several options for the transitional period:

- simply continuing free movement, more or less as now, for a defined period (this would, however, raise the question of the ongoing rights of those who arrived during the 'transitional' period). From both a legal and negotiating point of view, this would obviously be the simplest approach, representing as it would the status quo;
- some sort of 'free movement minus' period (where a work permit might not be required, but some other conditions – a job offer, restrictions on benefits or access to public services – were imposed), and there would be few or no ongoing rights (for example, to permanent residence after the transitional period).
- phased implementation of a new immigration system (as was the case with the current 'tiered' system). This would represent a clear break with free movement, but would be administratively complex.

Scenarios and implications

As this discussion above suggests, Brexit and the transition to a new system raise a large number of complex issues, as well as a tricky interaction between UK domestic policy and the negotiations between the UK and the EU-27. Government policy on a number of these issues has yet to be formulated, and in any case will depend on future events. However, it is possible to identify some possible scenarios and key risks.

Under the most benign likely scenario (in process terms), the sequence of events would be the following:

- The UK and EU would quickly reach an agreement on the status of EU nationals in the UK and UK nationals elsewhere in the EU; this would give sufficient clarity to allow national governments, including the UK, to design and implement administrative systems to grant permanent residence.
- An agreement on this and other issues (the ‘divorce bill’) would allow negotiations to proceed on the future UK-EU relationship; meanwhile, the UK government would devise and legislate (but not implement) a new, post-Brexit immigration system.
- Sufficient progress would be made on the longer-term relationship to allow for an ‘implementation phase’ of 2 to 3 years post-Brexit; during this period free movement would continue largely as now, possibly with some modifications, particularly in respect of benefit entitlement;

some aspects of the new post-Brexit system would be phased in.

- At the end of the implementation phase the new system would be introduced, with or without any element of ‘European preference’.
- Such an outcome, which broadly appears to be the objective of the UK government, would represent a relatively benign outcome from the perspective of immigration policy. However, there are a number of significant risks:
 - Breakdown in the Article 50 negotiations, leading to continued uncertainty about the status of resident EU nationals. This would lead to considerable hardship for individuals and families, and might result in some current residents returning to their home countries. In the worst case, if no agreement on the terms of withdrawal is reached within two years, the UK would leave the EU without a clear legal framework, and the status of those in question would become highly uncertain (although other issues, such as customs controls, air transport, and nuclear safety might well raise more immediate concerns).
 - Even if there is reasonable progress on the Article 50 negotiations, there may be slow progress on negotiating the terms of the future relationship. Even if these negotiations do not break down, they may not be sufficiently advanced to formulate an ‘implementation phase’. If the UK were to leave without an agreement either

on the future relationship or the ‘implementation phase’, the relationship with the EU would default to that of a third country (‘WTO rules’ for trade).

- In this case, the UK would be free to set its own immigration rules; it could if it wished maintain a version of free movement in order to avoid disruption, particularly since by then the Great Repeal Bill should in theory have incorporated free movement fully into UK law, to the extent it is not already. However, given the political constraints, it would be very difficult for the UK government to sustain a policy of free movement with the EU at the same time as trade and customs barriers had been reintroduced. There would be considerably political pressure to reintroduce immigration controls. However, given the administrative constraints described above, there is a serious risk UK Government would not be in a position to do so efficiently or effectively.
- More broadly, there are a whole series of risks relating to the administration, implementation, and enforcement of any new system, particularly if it is obliged to operate to a timetable driven by wider political or negotiating considerations. Employers would have to implement controls on EEA workers, and distinguish between EEA workers with different resident statuses; similarly, those administering public services might have to introduce new systems to distinguish between those with entitlement to access services and those without.

Implications and risks for Wales

Based on the above analysis, what are the implications for Wales and the Welsh labour market? In particular, what are the risks (and opportunities) raised by the UK Government's approach to negotiations with the EU-27, and in response to the Immigration White Paper? At this early stage, with a wide range of possible outcomes, it is difficult to be precise. Nor will we reiterate here at length the obvious considerations that apply to the UK just as much as for Wales (for example, the need for a smooth transition to any new system, the need to avoid imposing burdensome requirements on employers, etc.). However, the following would appear to be of central importance:

- (i) **Negative impacts on both the labour market and households will be minimised if the UK Government devises and implements a simple, streamlined system to establish permanent residence status for EEA nationals currently resident.** This system should have a cut-off date at some point in the future (perhaps Brexit date) and a relatively short qualifying period (perhaps two years); it should drop the requirement for comprehensive medical insurance with particular focus on couples/families; and the Welsh Government and local authorities should be fully involved in the design and implementation of such a system.
- (ii) Irrespective of the progress or outcome of negotiations on the future trading relationship between the UK and EU, **disruption will be minimised if the UK Government make clear that free movement will continue for a defined period after Brexit**, either as part of the 'implementation phase' or as a unilateral move by the UK. This would not necessarily mean that those arriving after Brexit day would have all the current privileges attached to free movement (for example access to benefits and public services) but it would mean that there would be no question of a work permit system being introduced immediately.
- (iii) **It will be important that the implementation and enforcement of a new immigration system is carefully phased**, perhaps beginning with larger employers and/or sectors that are already accustomed to interacting with the immigration system.
- (iv) **The widespread use of sector-based schemes in any post-Brexit immigration system would pose significant risks for Wales.** Given the different sectoral distribution of migrants in Wales compared to the UK as a whole, it is likely that the widespread use of such schemes would disadvantage Wales. Similarly, **any widespread use of caps or quotas would be likely to disadvantage Wales.**
- (v) It would be difficult to make the case for a regional migration system on the basis of the short-term impact on the overall Welsh labour market, which is not overly dependent on migration flows. However, some specific sectors and/or localities may experience some disruption, for example the health and education sector. **The case for any broader regional scheme, and the potential benefits for Wales, would therefore have to be made (as it has been in Scotland) by reference to Wales' longer-term demographics and skills needs, where there is a strong case.**
- (vi) **A regional scheme would almost certainly be preferable for Wales to a national scheme with a sector-based approach.** In particular, assuming the Welsh government had a significant input into both any overall cap or quota, and the targeting and administration of a regional scheme, it would

Migration to Wales is well below the UK average, and any quantitative restrictions might mean that an even greater proportion of a smaller total number of migrants went to destinations such as London. However, as elsewhere in the UK, there is a strong case for special arrangements in the health and education sectors, where a sudden halt or reversal of EU migration could cause significant disruption.

be possible to tailor any such scheme more closely to Wales' economic, labour market and demographic needs; it would also make it easier to 'market' Wales to new migrants. By contrast, as noted above, a national scheme based wholly or largely on a sector-based approach would not necessarily target all the

sectors of concern to Wales; and would not necessarily result in migrants in those sectors coming to Wales.

(vii) Under almost any plausible scenario, there will be some additional restrictions on EU migration to Wales after Brexit. Over the longer term, therefore, in addition to the considerations discussed here with respect to EU

nationals, **Wales might benefit from a system that was more open to non-EU nationals. As well as potentially filling the gap left by any reduction in EU migration, non-EU migrants to Wales (a significant proportion of whom work in relatively skilled occupations) could help meet Wales' longer-term economic and demographic challenges.**

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11 Annex D – Migration and Demographic Change – the Welsh Context

Prepared by Chief Economist, Welsh Government,
May 2017

This Annex is intended to provide an overview of the longer run Welsh demographic context within which the role of migration can be considered. A number of issues are raised, but the approach is introductory and exploratory – much further work would be required to fully analyse the issues and to develop possible policy responses.

Demographic change, population ageing and migration

A key feature of demographic change in Wales and the UK is of course that the population is ageing, with increasing numbers of both old and very old¹ people. This story is well known and not rehearsed here².

The social and economic implications of increasing longevity also depend critically on the other factors driving population change, particularly the fertility rate and patterns of migration, since these factors are co-determinants of overall population size and structure.

Forecasting population size and structure is extremely challenging – indeed, official figures are explicitly described as projections, not forecasts, and variant

projections are routinely produced.

At the present time, particular difficulties are of course associated with projecting international migration levels since these levels are subject to negotiations in the context of the decision to leave the EU.

At the Welsh level, assumptions about UK internal migration levels are crucial to forecasting future Welsh population size and structure, and are also very difficult to predict. One reason for this is the interdependence of international and internal migration. For example, if there are high levels of international in-migration to parts of England, this will have consequences for land and property prices, which would in turn be expected to have consequential effects on internal migration between England and other parts of the UK (including Wales).

In recent years, internal migration within the UK has played a major role in the demography of Wales and the Welsh social context. For example, at the time of the 2011 Census, over one-fifth of the Welsh population had been born in England (and of course of the remaining adults, a significant proportion will be married to someone born in England).

The Welsh total fertility rate has for a long time been below that needed to replace the population - see Figure 1³. Should this persist (and there seems at present no reason to assume otherwise) then over the longer run future, Welsh population would experience **continuous trend decline** – unless there was a continuing inflow of people from outside Wales.

Increasing longevity can only partially offset this decline - and of course is simultaneously reflected in an ageing of the population

While all the elements needed to forecast population are subject to uncertainty, fertility below replacement appears a very well established phenomenon and is almost universal across developed countries (albeit to a varying extent).

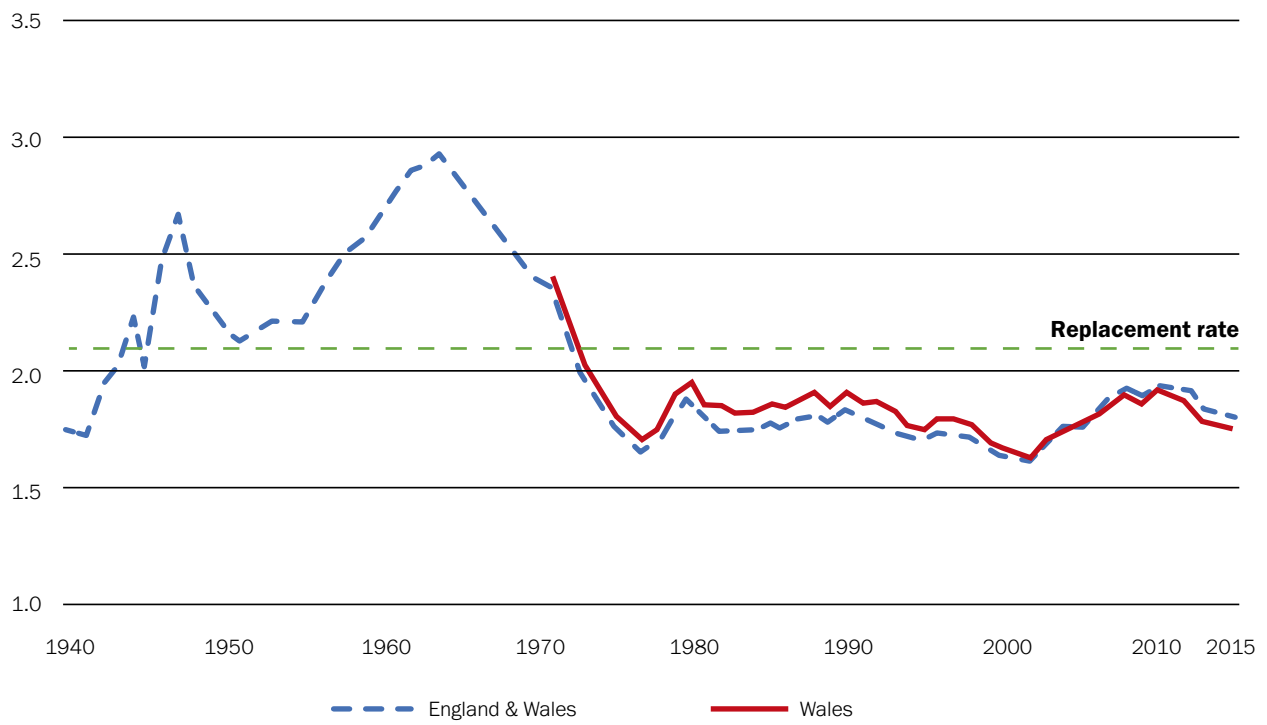
The components of Welsh population change over recent years are shown in Figure 2. Natural population change is positive despite fertility below replacement. This reflects a cohort effect (a temporarily large cohort of women of child bearing age) and is thus not reflective of the longer-run trend. The overall net flow is positive – this shows the combined effects of all the other flows, and implies that total population has been increasing.

1 ONS defines the 'very old' as those aged 90 plus.

2 Perhaps less well known are the facts that, on current projections, in Wales the number of expected deaths each year is not anticipated to increase markedly and that the proportion of the population that is in the last few years of life (however defined) is actually expected to decrease. This is also a reflection of increasing longevity, and means that the social and economic effects of ageing are particularly challenging to assess. These effects will depend on how, in future, the impacts of illness and disability are felt over the life course, and particularly on which impacts are most associated with the latter years of life (whenever they occur) rather than with age in itself. Quite different views of the extent of old age dependency can be formed depending on the assumptions made about such factors and, in particular, about the progress made in preventing or treating major disabling illnesses such as dementia.

3 The increase in fertility seen over the first decade of the new millennium was in part a cohort effect.

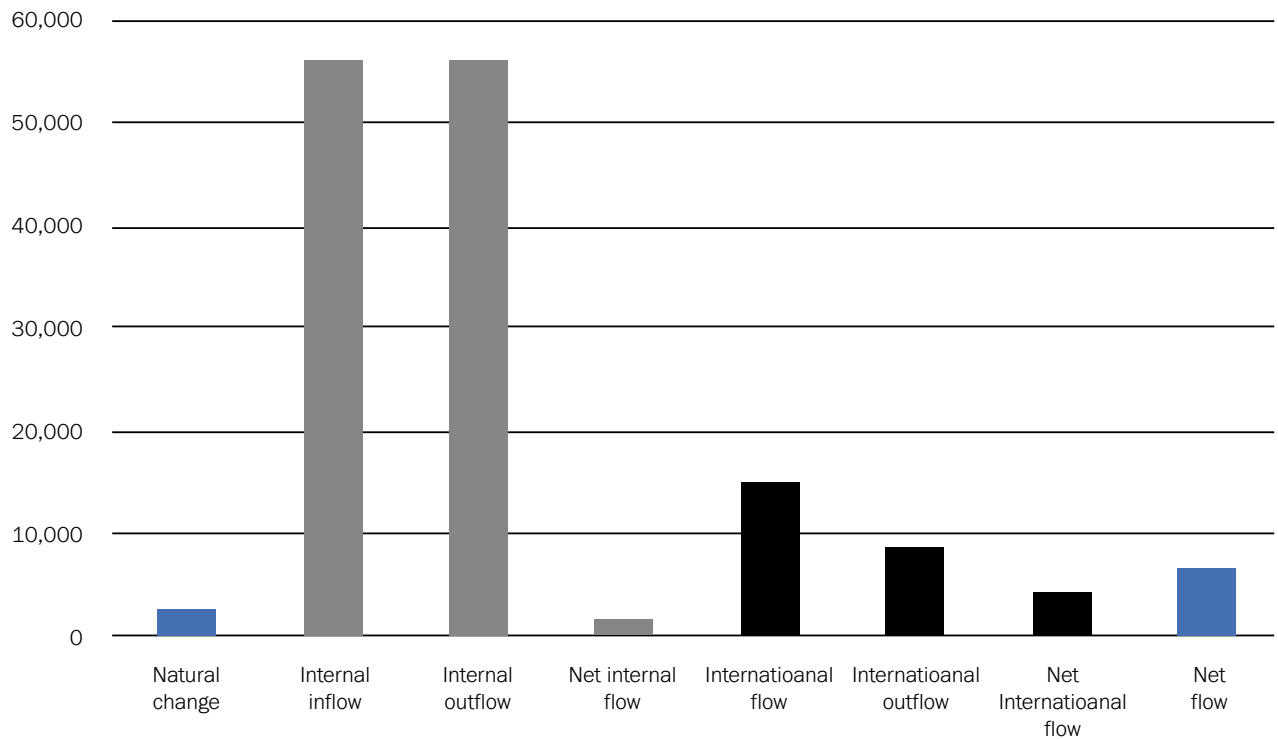
Figure 1: Total Fertility Rate



Source: ONS

Figure 2: Components of Population Change, Wales

Annual average 2010-15



Source: StatsWales

Note: Due to data limitations, average gross flow figures are for period 2010-15.

The influence of such factors is also reflected in the official population projections for Wales. Figure 3 shows the contribution of the various components of future population change under the 'principal projection'. This projection is, in broad terms, based on the assumption of a continuation of recent trends as experienced prior to the vote to leave the European Union⁴.

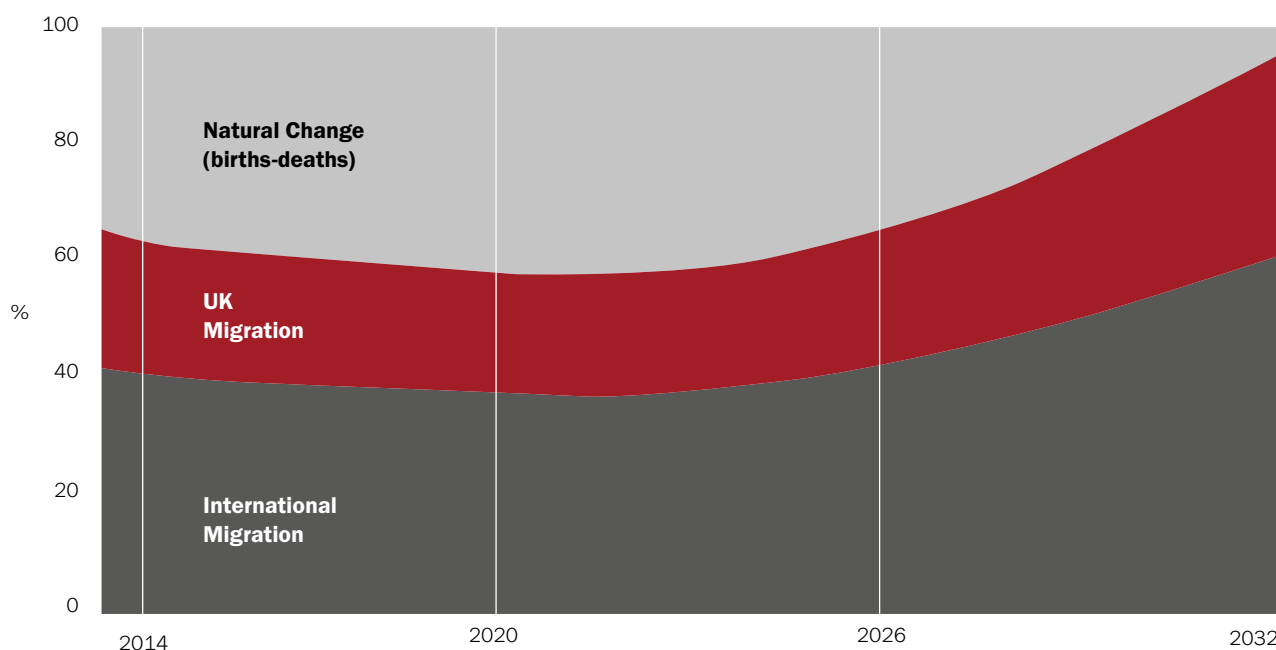
Over the medium term, natural change (that is, births minus deaths) is projected to account for around 40% of population change in Wales, international migration 40%, and UK migration 20%. Over the longer term, international migration projected to be the biggest driver of population change.

Figure 4 compares the projections for Welsh population size and structure under both the principal and 'zero migration' assumptions. The latter projection is based on the assumption of no migration, either international or internal to the UK. This projection is intended to illustrate the impact of migration on population size and structure, rather than to present a plausible forecast.

The cohort effects described above, and population ageing, together mean that, even in the 'zero' projection, total population rises before the trend decline sets in. But under both projections, the working age population declines continuously, with the absence of net population inflows to Wales accelerating this reduction.

A continuing decline in the size of the working age population would have a range of potentially important economic and social implications for Wales. These are not considered in detail in this introductory note. However, a sustained decline in the size of the working age population is likely to be reflected in an economic performance that is relatively weak and in a reducing tax base.

Figure 3: Components of future population change



Source: Welsh Government

⁴ ONS has yet to produce population projections that reflect the consequences of the referendum result. The implications of the referendum result for migration will depend on future migration policy which is as yet unclear.

This results, first, because the size of the working age population directly impacts on economic output. Despite some trend growth in people working past retirement age the vast majority of economic activity is undertaken by people of working age. Second, there is an indication from international studies that the ageing of the population, which accompanies the decline in the working age population, is itself likely to be associated with lower growth⁵.

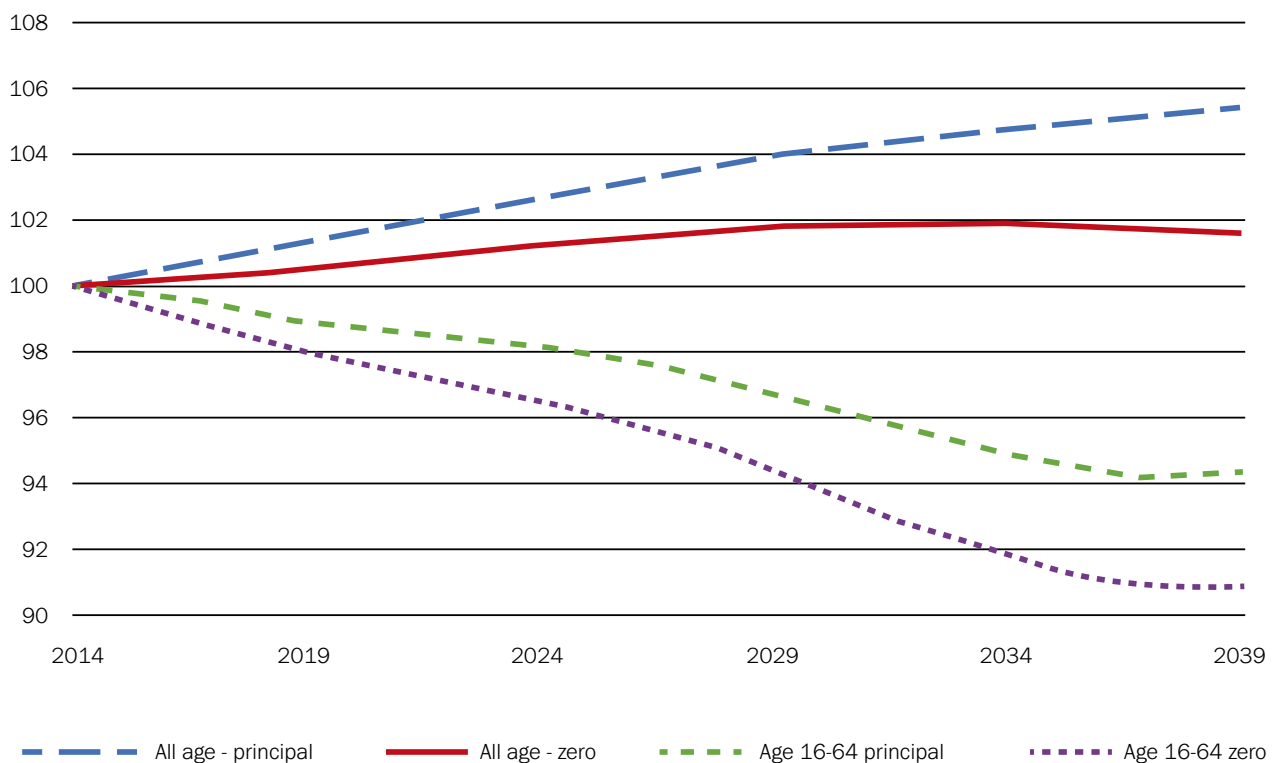
This is a consequence both of the lower levels of saving (and thus lower levels of investment) associated with a higher proportion of older people in the population, and of the potential for new skills to be introduced to the workforce at a slower rate as a result of lower inflows of young people.

Figure 4 indicates that moving from the 'principal' to the 'zero' projection (i.e. removing both internal and external population inflows and outflows) has a broadly similar proportionate, negative, impact on both total and working age populations.

This in turn reflects similar proportionate reductions in the population aged 65 plus and the population aged under 16 (not shown).

These similar proportionate changes across age groups reflect recent trends and are unsurprising given the age profile of the population flowing across the Welsh border. For example, over recent years net inflows have been concentrated in the under 15 and 40-69 age groups (many of whom of course subsequently move into older age groups).

Figure 4: Population Projections, Wales



Source: ONS

⁵ For example: <http://www.nber.org/papers/w16705>

There are no official population projections which examine the impact on Wales of reducing international migration to zero while retaining internal migration within the UK (and, as noted above, there are interdependencies between international and internal migration). However, analysis carried out by the Welsh

Government purely for illustrative purposes indicates that, on such a scenario, over the long term (after around 2035), the decline in the Welsh working age population would be even greater than were both external and internal migration to cease. This reflects the preponderance of older age groups in internal migration, with younger age groups being more represented in international migration⁶.

The available evidence suggests that on the basis of the principal projections, Wales faces a more marked decline in the working age population than many other parts of the UK. Table 1 shows some near term population projections on this basis.

Table 1: Percentage change in population, mid-2015 to mid-2025, by broad age group

| City Regions | Age | | | | All ages |
|----------------------------|------------|-------------|-------------|-------------|------------|
| | 0-15 | 16-44 | 45-64 | 65+ | |
| Bristol | 12.8 | 6.1 | 3.8 | 18.4 | 8.9 |
| West Midlands | 9.4 | 5.5 | 5.0 | 13.5 | 7.5 |
| Greater Manchester | 6.8 | 2.4 | 3.5 | 17.6 | 5.9 |
| Edinburgh | 9.6 | 3.4 | 0.8 | 23.1 | 7.3 |
| West Yorkshire | 5.7 | 1.5 | 2.8 | 19.1 | 5.5 |
| Sheffield | 4.8 | 2.6 | -0.4 | 17.0 | 4.8 |
| Cardiff city region | 4.0 | -0.1 | -1.8 | 18.5 | 3.6 |
| North East | 3.8 | 0.4 | -5.0 | 19.9 | 3.3 |
| Liverpool | 6.2 | -0.8 | -4.9 | 17.9 | 2.8 |
| Glasgow | 3.9 | -2.1 | -4.0 | 20.4 | 2.2 |
| Wales | 2.2 | -0.6 | -3.6 | 17.5 | 2.2 |
| UK | 7.3 | 1.9 | 3.4 | 20.7 | 6.7 |

Source: ONS

⁶ The projection assumes that the age-structure of internal migration remains similar to that which has been observed in the recent past

It follows from the projections in Figure 4 that migration is not a panacea for a declining working age population or an ageing population as, even if migration increases the **numbers** of those of working age, it may leave the **share** relatively unaffected. The age structure of the migrant population is therefore crucial to assessing its demographic impact.

In summary, if addressing the issues associated with a declining working age population is a policy goal an **age-targeted** migration policy would seem to be most appropriate.

Wider economic effects of migration

Aside from the direct effects on the economy from the scale of the working age population, the wider evidence suggests that in-migration can have beneficial effects for average productivity levels - and hence for GDP per head and for income per head of the pre-existing resident population. This reflects in part the higher education level of typical migrants, but also potentially other characteristics such as attitudes to entrepreneurship. These characteristics are associated with 'spill-over' impacts on the productivity of others.

For example, in a recent study⁷, Portes and Forte note that it is well established that EU immigrants are more educated, younger, more likely to be in work and less likely to claim benefits than the UK-born⁸. Portes and Forte conclude that, in their central scenario, the impact of Brexit-induced reductions migration could be to reduce annual GDP per capita would be between about 0.22% and 0.78%. On their more extreme scenario, the 'hit' to GDP per capita would be up to 1.16%.

Conclusion

In the absence of population inflows, a fertility rate below the replacement rate, as appears well-established in Wales, eventually implies continuing population decline – reversing only if, and when, the fertility rate recovers. It is self-evident that this could have the most profound social, economic political implications over the longer term. These implications would include the progressive loss of viability for a range of services in smaller centres (including health and educational facilities), with - eventually - whole settlements ceasing to be viable. Such consequences would however emerge progressively, so might not attract the attention they deserve.

Over the medium term, Wales (like the rest of the UK) is experiencing an ageing of the population and a decline in the numbers of working age people. The latter decline is projected to be sharper in Wales than in many other parts of the UK and may raise particular social, economic and fiscal issues. This decline in the working age population is likely to be reinforced by potential reduced population inflows as resulted of lower international in-migration to the UK following Brexit.

In-migration is not a panacea for an aging population, but a policy that effectively targeted younger and more educated in-migrants could have some role to play in ameliorating adverse trends.

7 <http://www.niesr.ac.uk/sites/default/files/publications/The%20Economic%20Impact%20of%20Brexit-induced%20Reductions%20in%20Migration%20-%20Dec%2016.pdf>

8 For example, according to Portes and Forte, about 44% have some form of higher education compared with only 23% of the UK-born

12 Annex E – Tackling Exploitation in Low-waged Work: Labour Standards Regulation for Wales

Prepared by Public Policy Institute for Wales (PPIW)
for the Welsh Government, August 2017

Summary

Worker exploitation happens because of shoddy employment practice, non-compliance with employment law, breaches of human rights and criminal behaviour. Migrant workers are by no means the only workers who are at risk of exploitation and neither are all migrant workers at such a risk.

Non-enforcement of minimum labour standards puts migrants and non-migrant workers at risk of exploitation and this risk is enhanced where workers have few alternative employment options and are unclear about their rights or are practically unable to enforce them.

Exploitation is the product of a wide spectrum of abusive labour practice. At one end are extreme violations of human rights such as forced labour and slavery. At the other end of the spectrum, workers are denied the benefits of effective employment rights.

Exploitation is associated with serious criminality but that is not the whole picture. Exploitation also flows from injustices which are experienced as everyday wrongs (such as being paid less than minimum wage or being bullied to work excessive hours, even though these abuses may themselves attract criminal sanctions). Without effective labour standards enforcement, the conditions which give rise to

exploitation can be ‘normalised’ in communities and across industries. In all its forms, exploitation undermines the Welsh goal of ‘decent work’ as per section 4 of the ‘Well-being of Future Generations Act (Wales) 2015’.

The enforcement of employment law in the UK is heavily dependent on the lodging of individual claims at employment tribunals. In the face of worker exploitation and wide-spread employment rights violations, it is ineffective. A step-change in labour standards compliance is required, as well as action on enforcement which specifically addresses the needs of workers in Wales. For example, in Wales the higher rate National Living Wage (NLW) is especially important and there is a need for future UK-wide compliance strategies to be suitably resourced and focused in Wales.

Legal responsibility for ‘employment rights and duties’ lies with the UK Government and it is of critical importance that Brexit does not entail a watering down of employment rights. Equality and human rights law makes an increasingly vital contribution to the protection of rights at work and is an integral part of the fight against exploitation. Achieving the well-being goal of decent work in Wales requires

a post-Brexit framework of employment law that accords with the international treaties and human rights conventions that establish minimum labour standards globally. In several key areas, including labour standards inspections and trade union freedoms, UK provisions currently fall short.

This report makes four policy observations:

- A. The need for new research which compares the experiences of both migrant and non-migrant workers in Wales. There is a strong evidence-base about poverty in Wales but less is known about labour standards in low-waged work from the perspective of workers. Future research could usefully elucidate and compare the employment options, coping strategies and experiences of both migrant and non-migrant workers in Wales.
- B. The need to widen trade union access to workplaces, support strategic litigation and fund advice and advocacy for minimum labour standards claims to be adjudicated in Wales. Working positively with trade unions, the Welsh Government could explore ways to widen trade union access to all workplaces in Wales (building on section 9.4

of its 'Code of Practice on Ethical Employment in Supply Chains'). It could look to increase the capacity of trade unions to raise awareness of employment rights and promote good practice across Wales. Workers' access to justice would be enhanced by support for strategic litigation initiatives and targeted additional resources for advice and advocacy organisations to support individuals bringing Welsh claims about minimum standards so that minimum labour standards disputes are advanced through employment tribunals in Wales.

C. The need to develop expertise about how UK employment law aligns with standards set out in international treaties and human rights conventions. The Welsh Government could pursue legal improvements and consolidation of employment rights in the UK based on legal instruments that the UK has already ratified.

D. The opportunity to address exploitation via equality law. The 'Wales Act 2017' gives Welsh Ministers new powers to bring into force the socio-economic duty set out at s.1 'Equality Act 2010'. The Welsh Government could investigate how to galvanise action on minimum labour standards compliance through harnessing new duties on devolved Welsh authorities to give due regard to the desirability of reducing socio-economic disadvantage. It would be useful to build a detailed, up-to-date picture of the day-to-day interactions between Welsh authorities and private sector employers in Wales. This would help to identify scope to build regard for socio-economic disadvantage into their functions in ways that focus attention on minimum labour standards compliance.

Introduction

The field of UK employment law and labour standards enforcement is fast-moving and the impact of recent legislation such as the ‘Wales Act 2017’ and the ‘Immigration Act 2016’ is yet to be fully understood. In Wales, there are new initiatives introduced by Welsh Government such as the ‘Fair Work Board’ and the ‘Code of Practice on Ethical Employment in Supply Chains’. This report provides an overview of UK minimum labour standards compliance and is set in the context of concerns about exploitation in low-waged work in Wales and the Welsh Government’s work on European Transition as set out in ‘Securing Wales’ Future’. That policy paper sets out a vision for Wales in which there is:

A strong culture of enforcement of legislation to prevent the exploitation of workers by unscrupulous employers seeking to undercut locally established wage rates and appropriate industry regulation. All workers in Wales and the UK, whatever their country of origin, must be treated equally and fairly according to law. (2017:17).

Accordingly, enforcement gaps expose workers to the risk of exploitation and undermine terms and conditions for workers in good quality jobs. Workers in low-wage employment have few options of alternative work and this puts them at particular risk of exploitation where minimum labour standards are not in force. Tackling exploitation through stronger enforcement of the minimum protections set out in employment and equality law is a strategy which also respects industry norms of good employment practice and the integrity of trade union negotiated agreements. In commissioning this report, Welsh Government had four main questions:

1. What is meant by the term ‘exploitation’ in relation to low-waged work?
2. What is known about exploitation in Wales?
3. What are the rights of workers in low-waged work which protect them against exploitation and how are these enforced?
4. What needs to be done for existing legislative approaches to be more successful and what are the other policy options which could be considered?

This report is structured by those questions. Section one discusses the meaning of the term ‘exploitation’. The second section sets in a Welsh context information about risks and indicators of exploitation. In section three, a discussion of employment rights focuses on low-waged workers and provides an overview of enforcement agencies and activities. Section four considers ways in which existing legislation and the policy framework could be more effective. Four policy observations are summarised in conclusion.

Understanding 'Exploitation'

There is no single definition of labour exploitation in international law. The International Labour Organisation regards 'exploitation' as a purpose which is pursued by various means. For example, a crucial element in the legal identification of trafficking is its purpose, namely exploitation, which includes forced labour, slavery and servitude (International Labour Office, 2009:7). There are estimated to be 13,000 slaves in the UK and slavery practices are known to have infiltrated supply chains in retail, construction, care homes, hotels and hospitality. The term 'labour abuse' has wide meaning and is used to identify breaches of national or international employment law. There is evidence of strong causal links between labour abuse and the purposes of exploitation (France, 2016; FLEX, 2015).

Exploitation is prevalent in unacceptable forms of work. These are denoted by conditions which deny fundamental rights at work, put lives at risk, pose a threat to health, violate human freedom and dignity, threaten personal security and keep households in conditions of poverty (ILO, 2013: para 49). Unacceptable working relationships are those which do not respect work-related rights, exclude workers from social protections such as sick pay and do not offer opportunities for workers to be represented by trade unions (Fudge and McCann, 2015:5).

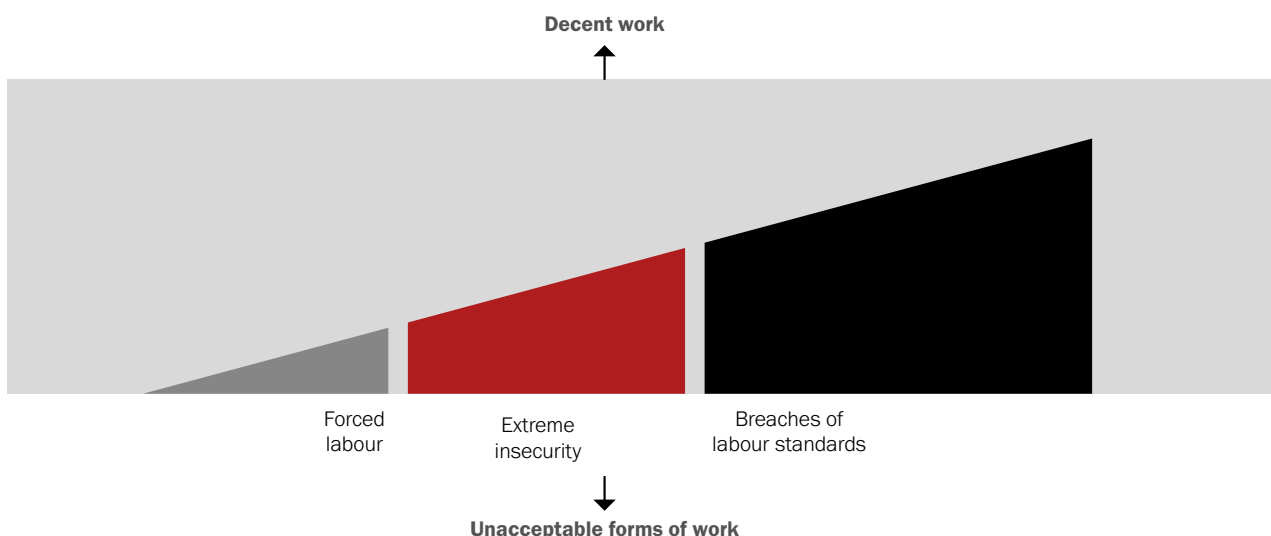
By way of contrast, 'decent work' is the guiding contemporary image of an acceptable working life and embodies a commitment to 'promote opportunities for women and men to obtain decent and productive work, in conditions of freedom, equality,

security and human dignity (ILO, 1999). Forms of work that are profoundly adrift from understandings of decent work are centrally experienced by groups already at an increased risk of social and economic disadvantage – particularly women, migrants, ethnic minorities and young people.

Exploitation can be mapped onto a spectrum that spans a conceptual (and legal) space between 'unacceptable forms of work' and 'decent work' (see Figure 1). At various points on the spectrum are minor and major employment law violations and breaches of human rights. Where such abuses go unchecked and unresolved the labour market develops in ways that make severe exploitation more likely. By locating breaches of labour standards within a spectrum of exploitation the experiences of

Figure 1: A spectrum of exploitation

Action on exploitation is of relevance to large numbers of workers where more prevalent breaches of labour standards are recognised as abusive labour practices in a spectrum of exploitation which separates decent from unacceptable forms of work.



large numbers of workers are recognised as unacceptable. A study by Pollert and Charlwood (2008) found half of workers had experienced problems at work in the previous three years and another, by Casebourne et al for the Department of Trade and Industry (2006) found 42% had at least one problem in the previous 5 years. We do not know the proportion of these workers who were experiencing problems with minimum labour standards violations. However, labour abuses such as the non-payment of national minimum wage, denial of paid holiday entitlements, withholding of sick pay and unauthorised deductions from wages appear to be increasingly prevalent (Beels, 2017).

From an industrial relations perspective, the term 'labour exploitation' defines situations that involve one or more of the following kinds of practice: Low or no pay, long hours, insufficient breaks, broken promises, bullying or contravention of labour rights (for example Smith and Dwyer, 2015). This is exploitation as it is often experienced: embedded within a complex mix of social and political inequality, uncertainties of legal status, the regulation of migration, hierarchies of gender and economic pressures (see also box 1).

Exploitation is not synonymous with poverty. Poverty is frequently analysed at the level of households, meaning that research identifies the factors and circumstances which contribute to people living in households in poverty. Exploitation is collective in the sense that it is a workplace phenomenon, yet it is experienced at an individual level and it should not be reduced to issues of low-pay. Exploitation might also be experienced as 'unfair treatment', for example allegations of bullying frequently accompany some workers' recollections of exploitative employment on a zero hours contract. In these instances, it is not the contract itself which is regarded as unfair but the resultant insecurity of income and hours which make the worker vulnerable. Furthermore, harms of exploitation can manifest in poor mental health.

Knowledge gained via enforcement activity reveals that workers are more easily exploited if they regard poor treatment as being no more than they 'deserve' and mental health is a key factor here (Beels, 2017; GLAA, 2017). Nevertheless, low pay is a major cause of stress and research in the retail sector has found that, when combined with insecure hours of work, workers experience pressure which borders on coercion and they are exploited

in ways which negatively impact both their physical and mental health (Wood 2016). Several studies have correlated low pay and insecurity with increased incidence of suicide (McKee et al 2017).

Low-wages are not only a consequence of low hourly pay, they are also a feature of low-hours jobs. Studies define a 'low-hours job' as being one that does not provide enough hours for a sustainable income (O'Sullivan.M et al, 2015). Indeed, increased risk of exploitation can be indicated by a combination of variable hours, low-hours and low pay.

Across the UK labour market, employment insecurity has become more commonplace since the global financial crisis of 2008 (Gregg and Gardiner, 2015) but the prevalence of insecure employment in the UK labour market is hard to establish. According to research recently commissioned by the GMB trade union, up to a third of workers in the UK are variously on short or zero-hours contracts, temporary contracts, are underemployed or at risk of false self-employment (Butler, 2017). This estimate considerably exceeds the 1 in 5 workers (4.5 million people) estimated by the Citizens' Advice Bureau to be precariously employed (Citizens' Advice Bureau, 2016a).

Box 1: Labour abuse and exploitative practice in social care (Hayes, 2017)

- Deductions of wages as a ‘fine’ for being absent from work due to sickness.
- Demand for payment from employers for uniform or equipment that is a requirement of the job.
- Lengthy periods of unpaid on-the-job training prior to an offer of employment being made.
- Lack of notice of being required to work.
- Wide fluctuation in hours of work offered from one week to the next without a reasonable explanation.
- Refusals to offer work in future if workers decline to accept work at very short notice.
- Effective instant dismissal by a starving of work without explanation.

The risks & indicators of exploitation that matter for Wales

Reforms to out-of-work and in-work welfare benefits, as well as structural changes to the economy following the financial crisis of 2008, have increased the number of people taking up paid employment in the UK. However, there is evidence that this employment is too often constructed in the form of poor quality jobs (Gregg and Gardiner, 2015). Employment concerns found political expression in the results of the UK’s 2016 referendum on continued EU membership. While much has been said about the propensity for older people to vote ‘Leave’ and younger people to vote ‘Remain’, the largest ratio by demographic was based on skill. People in low-skilled jobs voted 70% ‘Leave’, 30% ‘Remain’ and this points to a polarisation in workplace experience and vastly different understandings of the benefits of legal rights which stem from EU membership, including those of free movement and protection in employment (O’Reilly, 2016).

One important legal effect of the ‘Wales Act 2017’ is to identify ‘employment rights and duties’ as a reserved matter. This means that the UK government has reserved powers in respect of employment rights and duties and in respect of the functions of the UK-wide enforcement agencies that are responsible for labour standards compliance. Under the ‘Government of Wales Act 2006’ employment was a subject about which the Act was silent; it was neither a conferred subject, nor an exception to a conferred subject.

However, as a consequence of two rulings by the Supreme Court, it has been judicially confirmed that the Assembly can in fact legislate on employment issues in certain circumstances. The unanimous judgment in the ‘Agricultural Sector (Wales) Bill’ case was that Welsh law which ‘fairly and realistically’ related to both a devolved subject and a silent subject (in that case agriculture and

employment respectively) was within the Assembly’s legislative competence. The ‘Wales Act 2017’ now provides that ‘employment rights and duties’ are expressly reserved and this essentially means that the Assembly cannot pass legislation whose sole purpose relates only to employment rights and duties such as, for example, the minimum wage. However, it was made clear by the UK Government during the Parliamentary process that the purpose of an Assembly Bill provision (which could be an employment-related provision) must be assessed by considering how the provision has been drafted, what it actually does and its wider legislative context. So, whilst an Assembly Bill will not be within competence if it is solely about employment rights and duties, it could fall within competence if its employment provisions were an essential part of a Bill whose overall purpose is devolved.

The Welsh Government is acutely aware of public concerns in Wales about poor quality employment in low-waged jobs and s.4 'Well-being of Future Generations (Wales) Act 2015' sets out a statutory duty to maximise its contribution to achieving the well-being goal, seeking 'a prosperous Wales' which allows people to take advantage of wealth generated through securing 'decent work'. The Bevan Foundation has observed that a lack of decent work 'remains by far the most important factor in Wales' relatively high levels of poverty' ('National Assembly for Wales, 2015') and Oxfam Cymru regards that in Wales, 'the fundamental problem is the chronic lack of decent jobs' (National Assembly for Wales, 2015a).

One way of tackling worker exploitation is to seek decent work for all. The Welsh Government has additionally established a 'Code of Practice on Ethical Employment in Supply Chains' and issued guidance to limit the use of zero-hours contracts in Welsh public services. These initiatives are positive and welcome developments which, when combined with heightened awareness of the need to continually guard against modern slavery, go some way to reduce the risks of exploitation in Wales.

Nevertheless, the risk of exploitation increases where circumstances or status make it harder for workers to assert or enforce their rights. The most pertinent risk factor for workers in Wales is that labour standards enforcement in the UK carries a low risk of prosecution for

abusive employment practices, is characterised by a lack of workplace monitoring, focuses on enforcement as the responsibility of individual workers and offers few opportunities for independent representation of workers' interests through trade unions (Weatherburn and Toft, 2016; Hayes and Novitz, 2014; Ewing et al, 2016). However, other key issues include:

Isolation

Working alone is a common experience for workers such as cleaners, security guards and homecare workers and their limited contact with other workers or employers means they have few opportunities to complain or raise queries and may feel vulnerable to abuse in one-to-one situations with line managers (Weatherburn and Toft, 2016; France, 2016).

Connections between isolation and the risk of exploitation are also present where people work anti-social hours and their daily routines are disconnected from those of other people. Cases of harassment are common and abuse can appear to be invisible. Lack of public visibility of workers who labour in fields, factories and on building sites is another example of how isolation increases the risks of exploitation (Beels, 2017).

Harmful sectoral norms

In some forms of work there is a particularly high risk of exploitation because poor employment practice and labour abuse are prevalent across the industries in which they are located. These industries include: cleaning, agriculture, construction, fishing, hospitality,

social care, food processing, hand car-washing, nail-bars, restaurants and take-aways (Beels, 2017; Anderson, 2010; EHRC, 2014). These are also sectors where the risk of slavery and forced labour is highest.

The Welsh Government is regarded by non-governmental organisations as being particularly proactive in the fight against modern slavery. It is alone in the devolved nations in having an anti-slavery co-ordinator who has been in post since 2011 and has recently launched a Code of Practice to help corporations prevent modern slavery and other employment abuses through ethical commissioning in public sector supply chains (Welsh Government, 2017a).

Undocumented workers

Fear of the immigration authorities is a major barrier that prevents both undocumented and documented migrant workers from reporting abuse. The threat of reporting to police is routinely used by unscrupulous employers to hold workers in abusive situations (Bales, 2017). Even if the threat does not come directly from the employer, undocumented workers often will not report abuse as they are afraid of coming to the attention of authorities and being deported.

Similarly, where workers are claiming out-of-work benefits yet also engaging sporadically in paid work they are unlikely to report abuse for fear of prosecution. Indeed, in circumstances where workers are knowingly engaged on the basis of an illegal contract, any

claim they may make in relation to employment rights is likely to be barred by the common law doctrine of illegality (see *Allen v Houna* [2014] UKSC 47 [24]).

Hope, fear and personal debt

Exploitation is often fuelled by a combination of ‘hope’ that things will get better and ‘fear’ of dismissal (Beels, 2017). When people are employed on insecure contracts and lack formal employment protection, fear of losing work (even if the income it provides is meagre) is a major deterrent to reporting abuse. Many workers are willing to endure labour abuses and even exploitation because they are highly dependent on their employer yet continue to hope for improvements. When they lack alternative sources of work, the lower their wages, the more dependent they become on a subsistence standard of living. Employers take advantage of this, knowing that workers are reliant upon them to survive.

Insecurity of income also increases the risk that workers will need to borrow money to tide them over in periods when paid work is in short supply. However, the insecurity of their income also restricts their choice of credit and increases the attractiveness of payday loans or other exploitative forms of credit, including those associated with aggressive debt collection tactics (Citizens’ Advice Bureau, 2016c; Taylor, 2017). This intensifies their vulnerability within a cycle of hope and fear that increases the risk of exploitation taking hold in their working lives.

Migrant workers

A useful snapshot of the integrity of labour standards can be taken by considering the position of migrant workers in low-waged work. Migrant workers are at particular risk of exploitation where they have little choice of alternative available employment, if they are unclear about their rights or are unaware of how to enforce them, if they have difficulties in understanding written or spoken English, if they are isolated from family and social networks and if they live in inadequate housing or suffer poor health (France, 2016).

Yet migrant workers are by no means the only workers who are at risk of exploitation since exploitation is a consequence of shoddy employment practice, non-compliance with employment law, breaches of human rights and criminal behaviour by employers. Non-enforcement of minimum labour standards puts both migrants and non-migrant workers at risk. Nevertheless, it is important to note that racism and prejudice puts ethnic minority workers in a position of greater vulnerability to exploitation (Wills, 2012; Healy et al, 2004).

Where migrant workers are employed in unregulated or under-regulated workplaces, especially where they are employed via agencies or by subcontractors in complex contracting chains, there is an increased risk that exploitation and abuse will take hold. Many migrant workers who do not know their rights may expect poorer pay and conditions or perceive their situation, however exploitative, to be better than they would have had in their country of origin (Beels, 2017).

Subcontracting and self-employment

Subcontracting models which create long employment chains are a key driver of exploitation in certain sectors, particularly construction and cleaning. As many workers do not know the identity of the organisation by whom they are ultimately employed they are unsure of where they can complain if there are problems (France 2016). Lack of accountability within subcontracting models is a major issue; primary contractors are able to deny knowledge of, or responsibility for, abuse, and often do not know who is working for them.

The Law Society has proposed employment law reform such that all individuals would be entitled to information about the identity of their employer (2017). Section 54 of the ‘Modern Slavery Act 2015’ applies to organisations with an annual turnover of £36 million or more who are incorporated in the UK or carry on business in the UK. It requires companies to set out the steps they have taken each year to ensure slavery and human trafficking are not present within their supply chains.

However, the most common form of exploitation is the failure to pay in line with minimum wage law and business-size also matters in this regard because micro-businesses are three times more likely to offend (Beels, 2017).

Women comprise a majority of those who are both living in poverty and working in a job with an employer. Men comprise a majority of those who are living in poverty and work on a self-employed basis. Since 2010,

32% of all new jobs across the UK have been self-employed jobs but in Wales the proportion is far lower, at 20% and this profile has remained static since 2015 (Office of National Statistics, 2017). However, there are considerable variations between Welsh regions. For example, with its heavy reliance on small-scale farming and rural businesses more than 1 in 4 workers in Powys identify as self-employed while in Rhondda Cynon Taf, an historical home for heavy industry in Wales, the ratio is less than 1 in 13.

There are 4.5 million self-employed workers in the UK and it is estimated that half a million of these workers are in 'false' self-employment; meaning that their relationship with a 'client' is in fact a relationship with an employer (Citizens' Advice Bureau, 2016b). People who are falsely self-employed lose out on rights to paid holiday leave (worth an average of £1,288 per person per annum), sick pay and the right to be paid a minimum wage.

There is some evidence that workers find it difficult to assess the true cost or benefit of

engaging in contracts which speculatively construct them as self-employed (Citizens' Advice Bureau, 2016b). Frequently, the hourly wage advertised is significantly higher than the level of the NLW and thus the work appears at first glance to offer the potential of a 'better than basic' income. However, in order to make an informed choice, workers must know in advance (and be able to accurately calculate) the deductions from the hourly rate which are necessary to cover the costs of taking holiday, periods of sickness, personal insurance, motoring costs, work clothes, other tools and equipment (in addition to tax, national insurance and pension contributions).

When employers defend the commissioning of large proportions of their workforce on a self-employed basis they often do so on the basis that workers require, and enjoy, freedom of choice within the employment relationship. For example, a large logistics operator has submitted evidence to a Parliamentary inquiry arguing that, 'in return for this flexibility [which they list as a

flexibility to collect children from school, care for elderly relatives, study or undertake other work] Hermes couriers sacrifice a number of employment rights' (Hermes, 2017). However, this 'sacrifice' is not a legally recognised exchange, there are no such provisions in law by which employment rights are optional and can be 'traded'.

The evidence from Hermes is illustrative of social understandings that employment protection is somehow discretionary. It also reveals how known responsibilities for the care of others can impact upon the quality of available terms of employment and can be used as a justification for the removal, or non-applicability, of employment rights. The effect of false self-employment is that workers exchange protection from exploitation for the opportunity to engage in paid work (see box 2). This trade-off indicates a severe imbalance of power within the employment relationship which put workers at an increased risk of exploitation.

Box 2: Labour abuses and exploitative practice in Logistics

Evidence of exploitation in the logistics sector was presented to the UK Parliament's Business Energy and Industrial Strategy Committee. It focused on an assessment of the disproportionate balance of economic risk between workers and employers. For example, drivers were charged for all damage to vehicles and cargo irrespective of whether the damage was caused by them and they were also fined for failure to attend work due to sickness. There was evidence that contracts stating workers were self-employed also gave the employer a high degree of control over the worker, their working time and earnings which was inconsistent with self-employed status. The suggestion was that such contracts were not only intended to thwart labour standards but also to subvert the potential of securing trade union recognition (written evidence by Helen Goodman MP WOW0105).

Poverty and a lack of alternative employment options

People in poverty are much more likely to be at risk of exploitation than people who have sufficient income for a decent quality of life (Weatherburn and Toft, 2016). This is especially relevant in the context of developments in the UK labour market over the past decade because the number of people who are in work yet living in poverty has increased by over a million.

Average wages have fallen from 2010 to 2015 and while the fall in Wales is quantitatively smaller than in Northern Ireland and several English regions, the average weekly income in Wales is £370 and is the lowest of the countries of the UK (Tinson et al, 2016:32). Since 2011, there has been a considerable fall in out-of-work benefit claims across the UK but Wales and the North East of England continue to be the places with the highest proportion of the working age population who claim out-of-work benefits (Tinson et al, 2016:95).

Relative to the rest of the UK, Wales' high poverty, low employment and low-waged profile creates propensities for worker exploitation. It suggests a lack of choice in employment

opportunities as well as considerable hurdles for people in accessing and sustaining employment.

In Wales, 23% of the population lives in relative income poverty. This is higher than the overall UK average of 21%. In relation to the English regions, relative poverty rates are higher only in London (27%) and the West Midlands (24%). Across the UK, 60% of people in relative income poverty were in households in which at least one adult is in paid work and this is historically the highest recorded figure (Hick and Lanau, 2017). It is increasingly important that public policy initiatives in the field of poverty reduction do not overlook the extent to which the quality of employment relationships shapes the economic circumstances and well-being of working people. As is well documented, the study of household poverty is not the same as the study of low pay since studies of poverty foreground questions about the extent to which households rely upon the earnings of one or more low-waged workers (Bennett, 2014). Poor quality employment and inadequate terms and conditions of work are increasingly significant factors in the lives of people in poverty. Questions about

labour standards compliance and enforcement are especially relevant to contemporary political debates in which 'work' is claimed to be 'the best route out of poverty' (Newman, 2011).

Of the 690,000 people in relative income poverty in Wales, 26% are people with disabilities. This is higher than the 23% for the UK as a whole (Tinson et al, 2016:35) and suggests that a number of people have particular difficulties in accessing employment due to high levels of caring responsibilities in households of working age in Wales.

It is important to note that the higher rate NLW which came into force from April 2016 falls below that of a 'true' living wage i.e. it is set at a rate which does not provide for an acceptable standard of living (see box 3). The Living Wage Foundation calculates a 'true' living wage rate of £8.45 an hour in Wales and elsewhere outside of London. Once we recognise that the law fails to provide for pay rates which are adequate to sustain acceptable living standards, the seriousness of unlawfully low wages in exploitation debates is brought into clear focus.

Box 3: Minimum hourly wage rates by age group 2017

- £3.50 Apprentices rate
- £4.05 Under 18s rate
- £5.60 Minimum wage for 18–20 year olds
- £7.05 Minimum wage for 21–24 year olds
- £7.50 National Living Wage for workers aged 25 and over.
- £8.45 True Living Wage rate (has no legal status)

Social infrastructure

In addition to the impact of employment rights and their enforcement, a wide range of public and private sector functions shape the labour market. Governments can influence the prevalence of exploitation through attention to the availability of social infrastructure such as public transport, childcare, domiciliary care, training opportunities and credit unions.

Stronger social infrastructure reduces workers' dependence on poor quality employment by creating circumstances in which a greater choice of work is possible. For example, an absence of accessible, affordable childcare is a significant factor in limiting workers' choice of employment opportunities (O'Sullivan et al, 2015). This exposes workers to a higher risk of insecure contracts and, with a limited choice between a range of poor quality jobs, puts them at an increased risk of exploitation. Education and training infrastructure is also key to enabling community resilience because people with low-skill levels are at a higher risk of exploitation than others (Weatherburn and Toft 2016).

Lack of rights awareness and communication barriers

Lack of employment rights awareness is a general problem across the UK. Research by Citizens' Advice Bureau (2016c) found that 50% of their clients employed on zero-hours contracts thought they were not entitled to any paid holiday at all, 40% of those in temporary work

and 18% of their clients working part-time were similarly unaware of any right to paid holiday in their employment. Nevertheless, rights which are set out in the 'Working Time Regulations 1998' provide all workers with a basic entitlement to 5.6 weeks pro-rata paid holiday leave each year, which can include bank holidays (therefore, persons working five days a week have a right to 28 days of statutory holiday).

Low-level English language skills are a key driver of worker vulnerability, as workers who do not speak English are less able to access information about their rights and face difficulties complaining to their employers about abuse or reporting exploitation to police or other agencies. Workers with low levels of literacy and numeracy are also at greater risk.

Many of the people who have suffered labour abuses or exploitation do not know their labour rights or what they should expect of their employers (France 2016). This may mean that they accept low-level abuse, which can develop into more severe exploitation. It also means that even if they suspect something is wrong, they are ill-equipped to challenge it. Some exploited workers may not be aware that they are victims of a crime or unlawful treatment (Beels 2017).

Insecure or unclear contracts

Employment rates across the UK labour market are at a record high. Yet the paradox is that the reform of welfare benefit regimes serves to pressure people to accept insecure work, low hours or non-guaranteed hours jobs (Deakin and Adams, 2014). Forms of insecure contracting

enable employers to make minute-by-minute adjustments to the size of their workforce in order to match micro-peaks and micro-troughs in demand (Wood, 2016). This reduces labour costs (although it may also reduce productivity) and it additionally increases the risk that workers engage in unpaid work because their labour is compressed into intermittent periods of paid work (Moore and Hayes, 2017).

The numbers of men and women in full-time work in Wales has increased steadily over the past three years. There has been a 10% increase in the numbers of men in part-time work and while the number of women in part-time work has remained constant, the proportion of women in temporary work has increased by 7% since 2015 (Office of National Statistics, 2017). The gendered nature of this increase in temporary work may be explained in part by Welsh Government commissioned research which concluded that non-guaranteed hours contracting across devolved public services had increased in recent years and was 'fairly wide-spread' in Wales (Burrowes 2015:53).

Employment in public services is predominantly undertaken by women and the research found that much of the increase had happened in the health and education sectors and could be accounted for as the use of 'bank arrangements'.

Although trade unions recognised that permanent employment was preferable, the arrangements were not considered to be exploitative and represented a 'cost effective way for organisations to cope with fluctuations in staffing

needs' (Burrowes 2015:22). This serves as an important reminder that employment on a zero-hours contract should not be assumed as uniformly undesirable (Pennycook et al 2013). However, while guarding against assumptions, it should be noted that neither the study by Pennycook nor Burrowes directly sampled the views of workers employed on insecure hours contracts, and Burrowes acknowledged that her consideration of devolved public service delivery 'did not allow detailed dialogue to take place' with contractor organisations (2015:55).

Since the contracting out of service provision is tightly connected to cost-saving objectives it would be in these areas that less ethical employment practices would be more likely to arise on account of a lack of trade union representation, exclusion from public sector collective bargaining arrangements and pay pressures. However, there are two particularly important points to be drawn. Firstly, that attempts to 'ban' zero hours contracts are unlikely to achieve their intended aims. Secondly, that 'regulation needs enforcement' and requires

'additional resources to be made available' because people with an insecure supply of work are 'unlikely to seek to enforce their own rights' (2015:54). These observations illustrate that the prevention of exploitation requires attention both to the quality of employment contracts as well as to sufficiency of income (see box 4).

Contracts which are unclear create stress and financial pressure (Citizens' Advice Bureau 2016c). For example, workers on zero-hours contracts report being 'sent home' mid-way through a shift, receiving insufficient notice of the availability of work, feeling bullied into working excessive hours and running into difficulties with benefit payments due to fluctuating employment income. These are indicators of exploitation which are far less likely to arise where workers have the security of a permanent, guaranteed hours contract.

Welsh Government commissioned research has suggested that zero hours contracts increase anxiety amongst staff (Atkinson et al 2016). There is also emerging evidence of workers being more likely to experience negative general mental health if they are employed on zero-hours arrangements rather than on

contracts with regularised hours (Ravalier et al 2017).

Insecure contracts shift financial risks away from employers and onto the shoulder of workers and this makes it much harder for workers to speak out about abuse. There is evidence that fear of speaking out increases the risk of abuses against children and vulnerable adults remaining hidden and unchallenged (Levett-Jones 2008). The Welsh Government's consultation on regulating for guaranteed-hours employment contracts in social care reflects the seriousness of its desire to address the issue of insecurity at work (Welsh Government, 2017b).

Examples of the impact of precarious work on workers' experience suggest that exploitation is more likely where the risks of being in business are transferred from the employer to the worker at the same time as the 'rewards' typically associated with paid work are removed ie: the legal protections and assurance of earnings which are sufficient to sustain a decent quality of life.

Box 4: Minimum wage abuse and zero-hours contracting

In 2014 the UK's Parliamentary Public Accounts Committee acknowledged with 'astonishment' that over 220,000 homecare workers were being paid so little that their wages fell short of the legal minimum. HMRC is responsible for minimum wage enforcement and it acknowledged, on the basis of its own research, that half of employers in the homecare sector did not comply with minimum wage law (HMRC, 2013). One of the key reasons for this is that contracts of employment common to the homecare industry do not provide pay for much of the work performed and homecare workers are typically paid only for time that they spend inside service-users' homes. The paid element of each working day is so small that when wages are averaged across the hours in a working day, they fall below the hourly rate which the law requires as a minimum.

Minimum labour standards and their enforcement

The robustness of any system of labour standards regulation depends on the ability of the system to respond to the labour market and to shape it. This requires effective systems of enforcement and the effective enforcement of minimum labour standards is key to ensuring workers, both migrant and non-migrant, are protected from exploitation.

The UK's system places heavy reliance on individual enforcement by workers seeking redress through formal legal avenues. This approach puts vulnerable workers at risk of exploitation and also places a resource intensive regulatory burden on enforcement agencies (since rights fall to be enforced and examined on an individual basis). As Linda Dickens has argued:

“Britain’s enforcement approach is flawed in that too much reliance is placed on individuals having to assert and pursue their statutory employment rights, which generally require only passive compliance from employers and too little weight is placed on State agency inspection, monitoring and enforcement, and on other levers which would require or encourage proactive employer action to deliver fairer workplaces by addressing structural, systemic and organisational issues going beyond individual cases of rights infringement.” (2012: 203)

The potential of effective trade union organisation to protect and enhance terms and conditions of work has been severely curtailed by 40 years of restrictive trade union laws (Wedderburn, 2007; Ford and Novitz, 2016). In place of collective bargaining, a complex and expanding range of statutory employment rights has offered (in principle at least) a form of protection against exploitation as successive governments have sought to shape a flexible and responsive UK labour market.

Since the 1990s, academic commentators on employment law have observed a shift from the ‘regulation of employment relations in the interest of correcting inequality of bargaining power, to labour market regulation in the interest of competitive flexibility’ (Davies and Freedland, 2007:204).

However, in the context of considerable reductions by UK government in the funding of agencies responsible for enforcement, the employment tribunal fees regime¹, and the withdrawal of legal aid from employment cases, there has been much concern that the UK is at a point where the enforcement of statutory employment protections is effectively out of reach for many working people (Rose and Busby, 2017). Indeed, the decision of the Supreme Court in July 2017, to declare the employment

tribunal fees regime unlawful, has confirmed fervent criticism of fees as a powerful barrier to justice in violation of domestic and international norms (Adams and Prassal, 2017). When viewed in the context of the UK’s notoriously restrictive trade union law (Ewing and Hendy, 2013), it is apparent that tools which had previously offered working people the ability to exert (at least some) influence over their living standards have become increasingly ineffective.

“When there is a dispute, our law relies on individuals taking their employer to courts to get their rights recognised – a task that is beyond most people” (Law Society, 2017)

Enforcement problems in an individualised system

The UK’s floor of statutory labour standards offers protection which should kick in when the terms and conditions of work set by the market falls below a politically acceptable level (Davidov, 2007). In 2014, the Home Office’s Migration Advisory Committee identified the general lack of enforcement action as a key factor leading to the exploitation of low-skilled migrant workers. It concluded that the UK labour market is amongst the most flexible in the world and this fact consequently requires UK governments to commit greater

1 Declared unlawful by the Supreme Court in judgment handed down on 26th July 2017 in R (UNISON) v Lord Chancellor [2017] UKSC 51.

resources and attention to the enforcement of minimum labour standards (Migration Advisory Committee, 2014).

Furthermore, it stressed that all workers must have access to the minimum floor of protection (see box 5) and that bad

employers must not be able to undercut the majority by relying on unlawful employment practices.

Box 5: What are minimum labour standards?

Minimum labour standards protection is comprised of those employment rights which are available to all workers and all employees from the first day of work. These include:

- Right to a minimum wage (National Minimum Wage Act 1998)
- Paid holiday (Working Time Regulations 1998)
- Rest breaks between shifts and right to a maximum working week (Working Time Regulations 1998)
- Protection from unlawful deduction from wages (Employment Rights Act 1996, s13)
- Equal Pay (Equality Act 2010)
- Protection from dismissal for whistleblowers (Public Interest Disclosure Act 1998)
- Parity with a relevant full-time comparator (Part-time workers (Prevention of Less Favourable Treatment) Regulations 2000)
- Protection from discrimination because of race, sex, disability, marriage or civil partnership, religion, sexual orientation, gender reassignment, age, pregnancy and maternity (Equality Act 2010).

Box 6: The relevance of EU law

Lord Reed in R (UNISON) v Lord Chancellor [2017] UKSC 51

“Relationships between employers and employees are generally characterised by an imbalance of economic power. Recognising the vulnerability of employees to exploitation, discrimination, and other undesirable practices, and the social problems which can result, Parliament has long intervened in those relationships so as to confer statutory rights on employees, rather than leaving their rights to be determined by freedom of contract. In more recent times, further measures have also been adopted under legislation giving effect to EU law. In order for the rights conferred on employees to be effective, and to achieve the social benefits which Parliament intended, they must be enforceable in practice”.

EU sources of UK employment law:

Working Time Directive 2003/88/EC

Transfer of Undertakings Directive 2001/23/EC

Temporary Agency Workers’ Directive 2008/104/EC

Self-employment (equal treatment) directive 86/613/EEC

Parental Leave Directive 96/34/EC

Race (equal treatment) Directive 2000/43/EC

Framework (equal treatment) in employment Directive 2000/78/EC

Recast Equal Treatment Directive 2006/54/EC (includes Equal Pay)

Pregnant workers and working mothers Directive 92/85/EEC

Protection of Young People at Work Directive 94/33/EC

Part-time Work Directive 97/81/EC

Fixed-term work Directive 1999/70/EC

European Works Council Directive 94/45/EC

Collective Redundancies Directive 98/59/EC

Consultation Directive 2002/14/EC

Protection of Employees in the event of insolvency Directive 2008/94/EC

Nevertheless, it is apparent that in recent years, government attention has turned away from providing support for general compliance and towards a particular focus on exploitation in relation to migrant workers and allied concerns about illegality, illegal working and immigration control (France, 2016). This is problematic because it fails to address the imbalances of economic power between workers and employers and it leaves unresolved many of the complexities of the UK's highly legalised and individuated approach to the provision and enforcement of rights at work.

Employment rights are not universally available across the UK labour market. Instead, the availability of rights depends upon a legal determination of the type of contractual relationship in which a potential claimant is engaged and is often tied to length of service qualification periods. This means, for example, that the right to receive a written statement setting out why you have been dismissed is only available to workers in a qualifying form of employment relationship who also have at least two years of continuous service (Employment Rights Act 1996 s.92).

There are three key categories of employment status: employee, worker and an independent contractor (commonly understood by the phrase 'self-employed') yet the law does not provide a simple formula nor a fixed definition through which an individual's status can be classified. Rights and obligations have developed through a combination of statutory provisions and decisions taken in UK and EU courts (see box 6).

It is hardly surprising that knowledge of employment rights among the general public is low and that employment law specialists continue to argue for legal simplification (Law Society, 2017). Indeed, the Institute of Employment Rights has recently recommended fundamental reform of these categories and a clear framework of rights that are available to everyone from their first day in paid work regardless of contractual status (Ewing et al, 2016:35-36).

Some businesses seize upon legal complexity and public confusion as an opportunity to minimise regulatory burdens and hence large numbers of people work in environments where they are denied the benefits of the minimum standards set by Parliament, including access to a minimum wage. The government commissioned 'Taylor Review' of modern working practices reported in July 2017 and recommended that the three-tier system of employment protection should continue, albeit with an adaptation which would see 'worker' status renamed as 'dependent contractor' status based on a re-balancing of two key legal tests of contractual determination. What is problematic is that this recommendation embraced and reflected the 'more casualised employment relationships that are on the increase today' and did not seek to reverse casualisation trends nor substantially improve workers' security of income (2017:36). Indeed, Taylor's proposals also appear to weaken the universality of national minimum wage law by introducing new avenues for opt-outs.

The introduction of employment tribunal fees across the UK in July 2013 was met with wide-spread disapproval by employment rights scholars for being highly detrimental to the prospect of labour standards compliance within workplaces. The unanimous verdict of the Supreme Court in *R (UNISON) v Lord Chancellor* classified the fees regime as unlawful and the Government has accordingly committed to take "immediate steps to stop charging fees in employment tribunals and put in place arrangements to refund those who have paid" (Rt Hon Dominic Raab MP as quoted in the Guardian newspaper 26/07/17).

In his submissions to an earlier government-led review, the Chair of the Employment Tribunals Service, Judge Brian Doyle had argued that fees had a "damaging effect on access to justice" and represented "a very clear disincentive to bringing claims that are not obviously weak or unmeritorious" (Ministry of Justice, 2017). Nevertheless, the Government had maintained its defence of the scheme despite acknowledging that fees had led to a very large reduction in the number of tribunal claims across England and Wales (approximate 70% fewer).

Evidence presented to the Supreme Court in the *UNISON* case revealed that Wales and the North East of England were the geographic areas with the greatest fall in the number of tribunal claims. Having to pay £390 to proceed to a tribunal hearing in a case concerning (for example) unpaid wages, lack of notice pay or redundancy entitlements was a considerable investment for workers of average means.

More complex cases such as discrimination claims and unfair dismissal cases attracted a fee of £1,200. It is difficult to imagine how workers who were being exploited would have been able to find the financial and emotional resources necessary to sustain a course of action (despite a formal process of fees remission).

The Supreme Court found the fees regime to be unlawful on three grounds; firstly, that they breached the constitutional right of access to justice; secondly that statutory rights created by Parliament must not be cut down by subordinate legislation passed according to powers contained in a different Act of Parliament; thirdly, that the higher rate fees were indirectly discriminatory against women and other people with protected characteristics. Of the rights which may be enforced in employment tribunals, 24 have their source in EU laws and include the right to equal pay, the right to paid holiday and rights to equal treatment.

It is important to recall that prior to the fees issue, scholars were concerned that UK industrial relations relied more heavily on individual claims-making than was healthy for promoting compliance (Dickens, 2012). Although the Supreme Court's decision on tribunal fees is welcome, the deep-rooted problems of the individualised nature and fragmented impact of minimum standards enforcement in the UK are not resolved by the removal of fees.

The emphasis on individual responsibility in the UK's system of labour standards enforcement has arguably strengthened in recent years. For example,

section 2 of the 'Deregulation Act 2015' removes the power of tribunals to make 'wider recommendations' (a power which had been set out in s124 of the 'Equality Act 2010'). Thus tribunals, in determining cases brought under the Equality Act 2010 may make a recommendation as to the rights of the individual parties to a dispute and may award individual compensation.

They may no longer make a 'wider recommendation' that employers take steps to obviate or reduce the adverse effect of discrimination to all members of a particular group in the employer's workforce. It is also problematic that tribunals have no power to recover the compensation they award in successful claims. Non-payment by employers has risen steadily and in almost 40% of awards the compensation is not paid (Busby et al, 2014; see also Taylor, 2017). This means that even where claims are successful, very many claimants must pursue additional individual action in the ordinary courts for the recovery of monies owed.

Furthermore, the qualifying period for protection from unfair dismissal has doubled to two years continuous service (Employment Rights (increase of limits) Order 2011) and this deepens the extent to which individuals are vulnerable to arbitrary expressions of managerial power.

In respect of minimum rest periods, the Employment Appeal Tribunal has found that where an employer does not routinely provide workers with the periods of rest to which they are legally entitled it does not constitute an unlawful 'refusal' to grant the

right unless workers have made a prior individual request for their minimum rest entitlements to be honoured (see *Carter v Prestige Nursing Care* [2012] UKEAT/0014/12/ZT).

The growing importance of labour standards inspection

The introduction of the NLW higher rate of Minimum Wage for workers aged 25 and over in 2016 was accompanied by in-work benefit reductions in the value and availability of tax credits and child benefit. The rationale provided by the UK government was to shift responsibility for workers' incomes away from the state and towards employers.

While this has some of the appearances of an anti-poverty strategy, it reduces the value of the state safety-net for low-waged workers and therefore enhances the risk of exploitative consequences if workers who do not, in practice, benefit from the uplift in their minimum wage entitlements. Large employers in the retail sector such as Argos and Debenhams have recently been held to account by labour standards inspectors for breaches of minimum wage law (Butler and Booth 2017; Butler 2017).

These examples illustrate that exploitation, in the form of underpayment of wages, is commonplace. They also illustrate the importance of the work of labour standards inspection bodies. If a worker from Argos or Debenhams had sought to bring an individual claim at a tribunal they would have had to pay £390 in order to access to hearing. Yet as

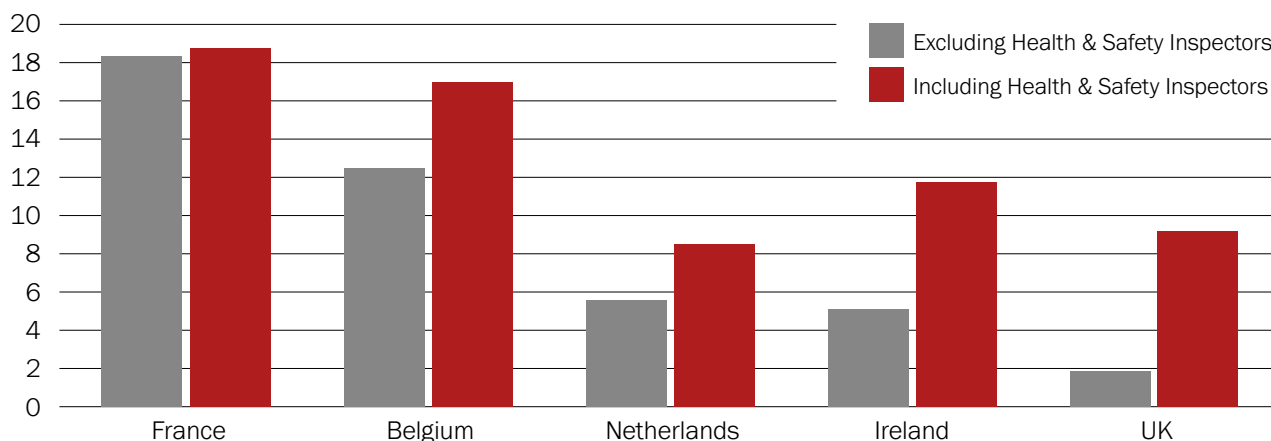
this report has evidenced, even without the barrier of tribunal fees, low-waged workers are highly unlikely to pursue

individual claims and are highly dependent on state-led enforcement. It is therefore problematic that the UK has

one of the weakest employment law enforcement structures in Europe (see Figure 2).

Figure 2: Comparative lack of labour standards inspection in UK workplaces (FLEX, 2015:3)

Number of labour inspectors per 100,000



There are 4 key labour inspectorates responsible for examining and enforcing compliance with employment laws in the UK:

- HMRC National Minimum Wage (NMWCU) compliance unit;
- Health and Safety Executive
- Employment Agency Standards Inspectorate (EASI);
- Gangmasters and Labour Abuse Authority (GLAA) which recently superseded the Gangmasters' Licensing Authority (GLA).

As a consequence of the austerity programmes of UK governments since 2010 there have been significant cuts to the resources and scope of these bodies and their capacity for pro-active inspection and enforcement activities was accordingly curtailed. However, there is recent evidence of an expansion in funding and staffing capacities in relation to National Minimum Wage enforcement

and the newly formed GLAA, alongside diminished funding of the Health and Safety Executive and EASI.

The net effect is a considerable funding reduction across the four agencies. While the policy messages are positive and point towards a greater emphasis on minimum wage enforcement in particular, the underlying trend continues to undervalue trade union representation, reduce potential for worker voice and deprioritise financial recompense for workers who have been subjected to breaches of their rights and entitlements.

Exploitation and the Immigration Act 2016

Section 8 of the 'Immigration Act 2016' established a new position of The Director of Labour Market Enforcement to have oversight of three of the four enforcement authorities: NMWCU, the EASI, and the GLAA.

The Director's role is to gather information from each of these authorities to form a coherent view of the nature and extent of exploitation and non-compliance in the labour market. The Director is responsible then for formulating an enforcement strategy for each of the three authorities and presenting this for Ministerial approval (i.e. the strategy proposal is independent but getting the strategy approved is a political process).

'The Immigration Act 2016', at section 14, gives powers to issue an 'improvement notice' to Labour Market Enforcement Officers from the GLAA, EASI or the NMWCU where they believe that a firm or individual has committed an offence according to the 'Employment Agencies Act 1973', the 'National Minimum Wage Act 1998' or the 'Gangmasters Licensing Act 2004' (or another offence specified in regulations by the Secretary of State). This improvement notice must include

details of the trigger offence and invite the firm or individual to give the authority a 'labour market enforcement undertaking' where it is considered necessary to prevent or reduce the risk of further or continued offending. The undertaking may be for up to two years. If the firm or individual fails to give the requested undertaking or gives it and subsequently fails to comply,

Labour Market Enforcement Officers may apply to the Court for a Labour Market Enforcement Order which hinges on the civil rather than criminal standard of proof. If the firm or individual fails to comply with the order they commit a criminal offence with the potential of imprisonment for 2 years.

As has been noted by Davies (see box 7), "we now have a labour law of two extremes: individual litigation for the well off and public protection for the vulnerable. The enforcement options for people in between those two extremes remain very limited" (2016:442).

Box 7: Why the Immigration Act 2016 matters for the enforcement of minimum labour standards (see Davies, 2016)

Measures in the Immigration Act present a significant shift from the reliance on individual litigation that has characterised UK employment law enforcement and compliance. Firstly, workers do not gain individual benefit in the sense that there is no redress or compensation to them for the harm they have suffered and the violation of their rights. Secondly, it suggests that the government has defined a handful of 'core rights' in the UK's suite of employment law by establishing institutional enforcement backed by criminal sanctions:

- the right not to be subject to slavery, servitude or forced labour
- the right to be paid no less than a national minimum wage
- the right not to be engaged by an unlicensed agent (as per the Gangmasters' Licencing Act 2004) or by an agent that is subject to a prohibition order (as per the Employment Agencies Act 1973).

When this 'core' of protection is set alongside that provided for in the International Labour Organisation Declaration of Fundamental Rights at Work 1998, it is apparent that the new UK regime is missing the ILO's emphasis on a right to equal treatment, the prohibition of child labour, and the right to freedom of association and collective bargaining. This raises important questions about the place of equality and trade unions in the UK Government's vision for labour standards enforcement.

National Minimum Wage Compliance Unit (NMWCU)

Purpose and structure: The NLW rate of £7.50 an hour from 1st April 2017 applies to workers aged 25 years and over. Claims for non-payment of National Minimum Wage can be brought before an employment tribunal. However, in recognition that workers who are paid unlawfully low-wages may be unable to assert their rights without state support, the HMRC has responsibility for enforcing minimum wage law (and it also provides an enforcement function in relation to Statutory Sick Pay see Taylor 2017:57).

If the NMWCU finds employers have underpaid the national minimum wage it will issue a notice of underpayment which shows the arrears the employer must pay to the workers and the penalty that must be paid to HMRC. The NMWCU responds to complaints made about employers suspected of not paying the minimum wage, and visits a sample of employers about whom no complaints have been made. There is a Freephone helpline, run by the Advisory, Conciliation and Arbitration Service (ACAS), through which workers can report their individual concerns. They may do so anonymously and this might trigger a workplace inspection.

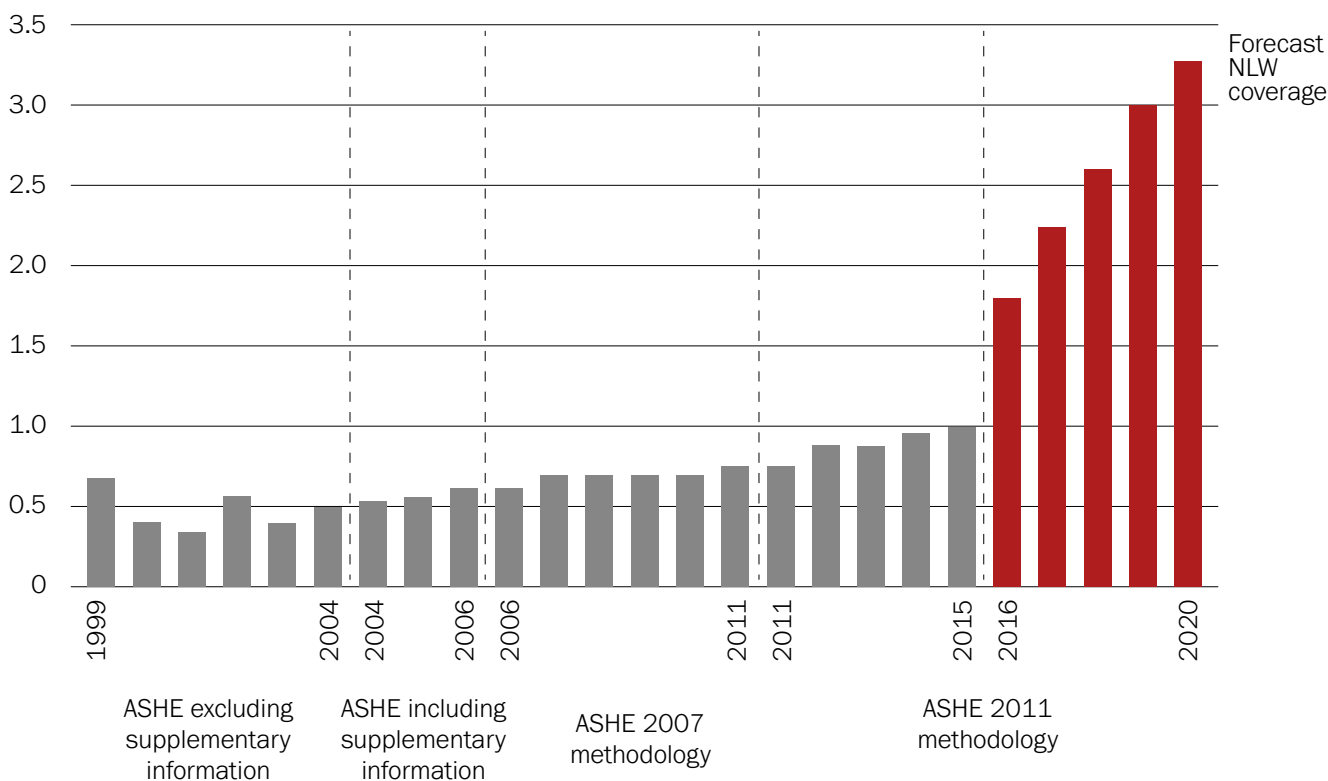
The NMWCU has increasingly adopted a strategic approach and focused enforcement activity at high risk sectors such as hospitality, childcare, retail and especially social care (Low Pay Commission, 2016).

Resources and impact:

An impact of the introduction of the higher rate NLW from April 2016 is to bring a much higher proportion of the UK workforce under the auspices of statutory pay protection (see Figure 3). The NLW is particularly significant for Wales. It is in Wales that the Low Pay Commission believes that the NLW rate will have greatest impact as a proportion of the workforce (see Figure 4).

Figure 3: Coverage of the Adult Rate of the National Minimum Wage/ National Living Wage for Workers Aged 25 and over, UK, 1999-2020 (Low Pay Commission, 2016)

Number of workers aged 25 and over in minimum wage jobs (millions)

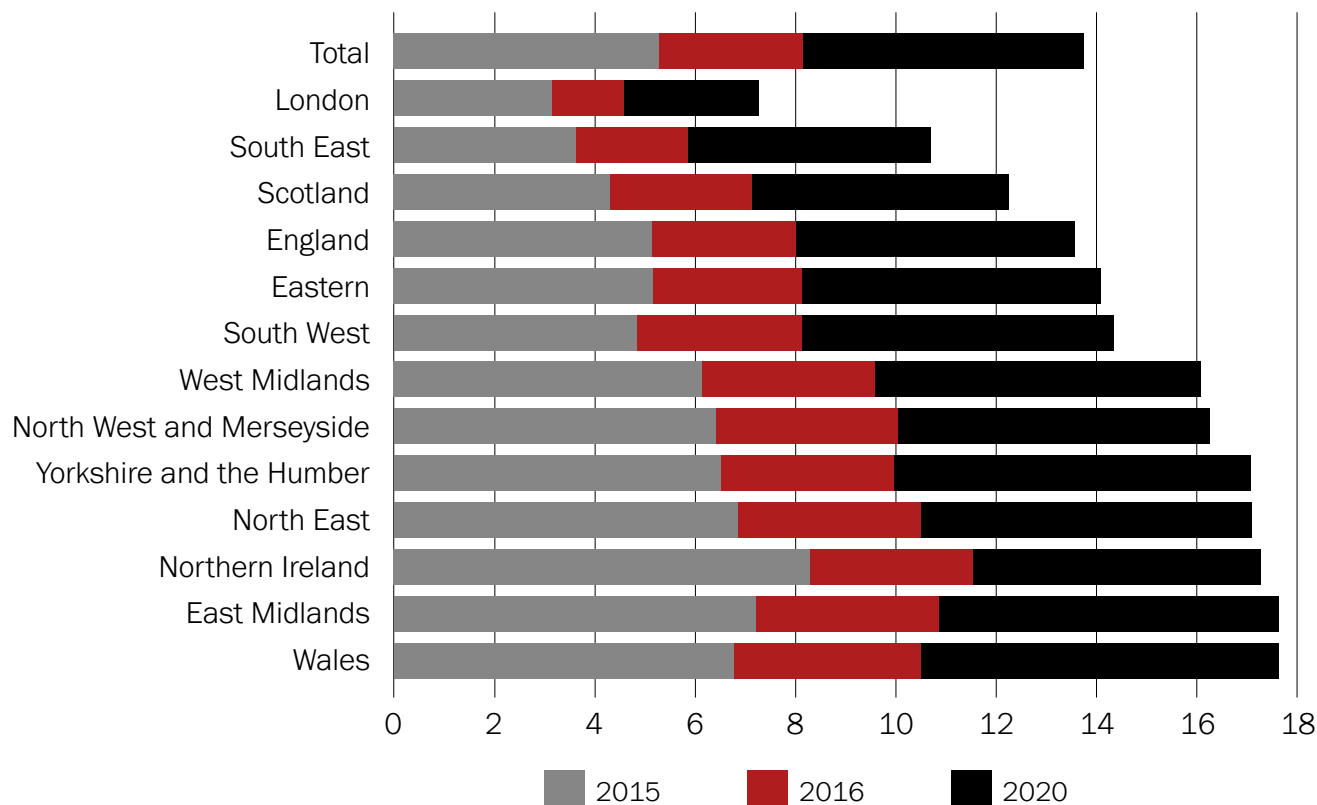


Source: LPC estimates of earnings using: ASHE, low-pay weights, including those not on adult rates of pay, UK, 1999-2015: and OBR average hourly earnings growth forecasts, November 2015.

Note: Data include apprentices from all years. It is not possible to identify apprentices prior to 2013.

Figure 4: Proportion of workers aged 16 and over in minimum wage jobs by region (Low Pay Commission, 2016)

Proportion of workers aged 16 and over in minimum wage jobs (per cent)



Source: LPC estimates of earnings using: ASHE 2010 methodology, April 2015, low-pay weights, including those not on adult rates of pay, UK: and OBR average hourly earnings growth forecasts, November 2015.
 Note: Data exclude Year One Apprentices.

Consequently, this means that a larger proportion of the workforce in Wales than elsewhere in the UK are at risk of non-compliance with minimum wage law.

Non-enforcement of minimum labour standards becomes a greater risk as the value of pay protection increases and demands on NMWCU are likely to increase considerably in coming months (Low Pay Commission 2016a). It is in this context that HMRC have been permitted to invest more resources in minimum wage enforcement. In 2014-15 the budget was increased from £9 million – £12 million (Hansard, HC

Deb 21/09/15; BIS, 2015). The government announced it would spend £25.3 million on minimum wage enforcement in 2017/18 and it seems that about £20 million of this is dedicated to the NMWCU where staff numbers have risen from 237 in 2015/16 to 291 in 2016/17 (Hansard, HC Deb 09/01/17, Jane Ellison MP).

With increased resources, there have been broad improvements in performance reported by HMRC (BEIS, 2016). The number of investigations rose more than 20 per cent year on year but the HMRC annual report acknowledges lengthy delays in the time taken to investigate

complaints (an average of 82 days) (National Audit Office, 2016: R14).

In its Autumn 2016 report, the Low Pay Commission found the largest rates of minimum wage non-compliance in hairdressing, hospitality, childcare and cleaning, with considerable increases also in social care and transport (2016a:81). It therefore has recommended further investigation by Government in relation to barriers to effective enforcement.

Criminal prosecutions via NMWCU for the most serious cases of breach of minimum wage law depend upon the

Crown Prosecution Service taking a decision that prosecution is both in the public interest and has a reasonable chance of success. It must be borne in mind that criminal prosecution represents a slower route to recovering arrears than civil routes.

According to a Parliamentary answer in December 2016 from Jane Ellison MP, Financial Secretary to the Treasury, HMRC does not record statistics about the countries or regions of the UK to which the number of complaints received and the outcomes of its investigations relate. Subsequently, Ellison confirmed to the House that there are no recorded statistics on the number of complaints or investigations in Wales. This maybe something about which the Welsh Government wishes to seek clarification. However, Ellison could confirm that there have been no prosecutions in Wales for non-payment of Minimum Wage since 2010 (Hansard, HC Deb 05/12/16).

Health and Safety at Work including aspects of Working Time Regulation

Purpose and structure:

The UK's Health and Safety Executive (HSE) is a non-departmental public body that has a degree of independence in how it regulates health and safety (including working time) across a range of labour sectors through inspection, advice, support, awareness-raising and enforcement. Although it enforces parts of the 'Working Time Regulations 1998' it does not have responsibility for other labour issues.

'The Health and Safety at Work Act 1974' is the central plank of Health and Safety law in the UK and the HSE reports to Ministers in the Department for Work and Pensions as its sponsoring department. HSE has enforcement powers, along with certain local authorities and the Office of Rail Regulation and these institutions share similar powers and responsibilities to enforce health and safety legislation in the different sectors of the economy to which they are assigned.

Responsibility for enforcement at certain premises may be transferred between HSE and local authorities by agreement and there is a memorandum of understanding between the HSE and the Healthcare Inspectorate Wales.

The enforcement of working time regulations is split between different authorities. Working time limits (and health assessments for night workers) are enforced by the HSE (in the case of factories, building sites, mines, farms, fairgrounds, quarries, chemical plants, nuclear installations, schools and hospitals), local authorities (in the case of retailing, offices, hotels and catering, sports, leisure and consumer services), the Civil Aviation Authority (CAA) (for aviation), the Vehicle and Operator Services Agency (VOSA) (for road transport), the Maritime and Coastguard Agency (MCA) (for seafarers) and the ORR (for rail transport).

Entitlements to rest and leave (paid holidays) must be enforced via individual claims to employment tribunals.

Resources and impact:

The Health and Safety Executive has 1047 staff of which 972 are frontline inspectors. The Board of the Health and Safety Executive is a tripartite body, with representatives from both employers' and employees' associations. There is, therefore, an opportunity for trade unions to provide input on the formulation of national policy for health and safety. At workplace level, recognised trade unions have the right to appoint health and safety representatives to act on the employees' behalf in consultations with the employer about health and safety matters.

The business plan of the Health and Safety Executive (HSE) for 16/17 shows projected funding from central government is £100 million less in 2019/20 than it was a decade prior and that a drop from a central government budget of £231 million in 2009/10 to £141 million in 16/17 represents a 46% reduction in funding over seven years.

There are plans to further reduce the business costs associated with compliance through actively pursuing a 'deregulatory agenda' which promotes the simplification of health and safety law (much of which emanates from the EU), takes activities out of the scope of health and safety law (for example the Deregulation Act 2015 exempts self-employed persons from the scope of 'The Health and Safety at Work Act 1974' unless they conduct 'an undertaking of a prescribed description') and reduces inspection frequency (HSE 2016).

Employment Agency Standards Inspectorate

Purpose and structure:

The Employment Agency Standards Inspectorate (EASI) carries out routine inspections of agencies and investigates complaints about agency conduct. EASI's mission statement is to work with agencies and employers to raise standards within the industry and to ensure compliance with employment rights, particularly for vulnerable agency workers. Where an agency worker is involved in a serious accident, HSE will notify EASI to ensure that there is an opportunity for coordinated investigation. EASI has 9 frontline staff, 1 administrative officer and is part of the Department for Business, Energy and Industrial Strategy.

Resources and impact:

The EASI enforces the 'Employment Agencies Act 1973' and the 'Conduct of Employment Agencies and Employment Businesses Regulations 2003'. Between 2011 and 2017 its budget has been approximately halved from £932,000 to £500,000. The number of referrals of complaints to EASI rose by a fifth between 2011-2016 but its inspections reduced by 50% and EASI did not bring forward any prosecutions or employer prohibitions in 2016 (Grierson, 2016).

Gangmasters and Labour Abuse Authority

Purpose and structure:

'The Immigration Act 2016', at section 10, created the new Gangmasters' and Labour Abuse Authority (GLAA) from the Gangmasters Licencing Authority (GLA). The GLA was focused on

three sectors and concerned with the operation of a licensing scheme for agencies supplying workers in these sectors.

The GLAA has a labour-market-wide mandate and from spring 2017 began work to address the prevalence of extreme exploitation in labour supply arrangements across all or any industrial sector.

Its predecessor, the Gangmasters Licensing Authority (GLA), had 69 staff and was a non-departmental public body sponsored by the Home Office. The GLA licensed and regulated gangmasters in the agriculture, forestry, horticulture, food processing/packaging and shellfish sectors. Its eight licensing standards addressed indicators of forced labour (including the right to join a trade union and the right to equal treatment) and it worked with the police and immigration services to identify, disrupt and dismantle serious and organised crime.

GLA inspections of licence holders upheld expectations of continuous compliance and took enforcement action against those who operated illegally. In addition, the GLA oversaw four specific criminal offences:

- Operating as an unlicensed gangmaster
- Entering into arrangements with an unlicensed gangmaster
- Obstructing GLA officers
- Having false documentation.

Resources and impact:

The GLA sustained a 17% reduction in funding from UK government between 2010/11–2014/15 to £4.5 million and this necessitated a reduction in staffing and a narrowing of its activities to focus on 'gross

abuse' (including tax evasion, human trafficking, health & safety negligence).

The government has provided the GLAA with an additional £2 million in 2017-18 to extend the prevention, detection and investigations of worker exploitation across the entire economy (GLAA 2017).

Aside from questions about the adequacy of its budget, there is a risk that the impact of the GLAA in relation to labour standards enforcement across the labour market will be undermined by conflicting policy priorities. For example, the government response to consultation on transforming the GLA suggested on the one hand that the new GLAA would aim to enforce minimum labour standards while on the other it would be focused on 'organised crime' and 'the modern-day slave trade' (Department for Business Innovation and Skills 2016:4). This tension appears to reflect the shift in focus previously made by the GLA and is well encapsulated in the following statement:

"Where employers are exploiting their workers by non-compliance with employment law, the Government steps in to enforce legislation in some circumstances, for example where it is believed that there is a higher risk of exploitation or vulnerability" (Department for Business Innovation and Skills 2016:5).

It appears that the government's commitment to enforce minimum labour standards is skewed away from general compliance concerns and conflates the enforcement of rights at work with a desire to tackle the problem of illegal working.

In April 2017, a new Joint Slavery Trafficking Analysis Centre was launched as a dedicated unit designed to gather intelligence and combine the expertise of analysts from the National Crime Agency, Police, Border Force, Immigration Enforcement, HMRC and the GLAA.

There is currently no clarity about whether the GLAA will extend to the wider labour market the regulatory system of licensing which defined the GLA. Responsibility for advising Ministers on this decision rests

with the newly appointed Director of Labour Market Enforcement.

Schedule 2 of the 'Immigration Act 2016' gives the GLAA the power to enforce the provisions of the 'Employment Agencies Act 1973'; the 'National Minimum Wage Act 1998' and sections 1 and 2 of the 'Modern Slavery Act 2015' which deal with slavery, servitude and forced labour and trafficking where there is a connection to the labour market.

A special class of officers of the GLAA are given statutory recognition via s.12 Immigration Act 2016 as 'Labour Abuse Prevention Officers' and they have investigatory powers which include powers of arrest, entry, search and seizure (as per the Police and Criminal Evidence Act 1984). These officers also have the power to request assistance from police and immigration officers, a power which suggests migrant workers and others may be suspicious of the credibility of their intentions.

Opportunities to strengthen existing approaches and improve the policy framework

Wage transparency

One of the key ways in which workers lose out on the opportunity to establish whether their minimum wage rights have been breached is through a lack of information about working time and lack of control over access to that information.

The Institute of Employment Rights is calling for an amendment to the 'National Minimum Wage Act 1998' which would require employers to provide workers with sufficient information about working time at the point of payment so that workers are able to verify they have been paid correctly and have also been paid at least as much as that to which they are minimally entitled (Ewing et al 2016).

Trade union UNISON has expressed concern to the United Nations Committee on Economic Social and Cultural Rights that the UK's minimum wage regime is insufficient to meet its convention obligations.

In addition, UNISON has submitted draft regulations to the Low Pay Commission as 'The National Minimum Wage (Prescribed Information) Regulations'. These regulations, if adopted, would require employers to provide workers with a national minimum wage statement which includes the gross and net sums of their pay, the number of hours that the worker has worked, total hours spent training and travelling, an itemised account of any deductions from pay made by the employer and a confirmation that the employer is remunerating the worker at a rate which is at least equal to the national minimum wage or living wage.

With greater wage transparency, workers would be far better informed about their pay and in a much stronger position to challenge inconsistencies or underpayment.

Working time

The extent to which people work is a growing source of inequality in the labour market. Some people feel forced to work many more hours than they would otherwise choose while other people are deprived of working hours. It is also a feature of working to a zero hours contract that some people experience insecurity of hours due to periods of overwork followed by insufficient hours.

Income insecurity is key signifier of a higher risk of abusive practices at work. This is because income insecurity makes workers vulnerable to being bullied, coerced and silenced.

Workers employed for a low number of working hours each week are either contracted on a part-time fixed hours basis, on an 'as and when' casualised basis, or on a hybrid basis with a few guaranteed hours and an understanding that additional hours are available on an 'as and when' basis.

The introduction of s153 of the 'Small Business, Enterprise and Employment Act 2015' has done little to halt exploitative zero hours contracts. This measure prohibits the inclusion of exclusivity clauses in zero hours contracts, that is, it stops employers from preventing workers on zero hours contracts from working for anyone else.

This approach reinforces the (often false) perception that workers on zero hours contracts have alternative and additional employment opportunities from which to choose.

There has been a public debate about whether and how zero-hours contracts should be 'banned'. One of the evident difficulties in such an approach lies in defining zero-hours contracts to prevent or restrict their use, another is the risk of unintended consequences since not all zero-hours contracts are problematic. This is not an insurmountable hurdle, for example in Ireland the legal definition of a zero-hours contract is one which explicitly requires an employee to be on stand-by and available for work during periods in which the employer has not offered paid work. However, what is problematic about this definition for low-waged workers is that the requirement to be on stand-by is often not a contractual one, in practice it is a requirement

imposed by fear, coercion or poverty.

The solution proposed in a study commissioned by the Irish government was to introduce regulation which would make insecure contracts much less attractive to employers and thereby disincentivise their use (O'Sullivan 2015).

Recommendations included the introduction of statutory duties:

- For employers to provide a written statement of terms and conditions on the first day of commencing employment for people on guaranteed hours and non-guaranteed hours contracts.
- For employers to provide a written statement of working hours to be a true reflection of hours required, including non-guaranteed hours.
- That the average hours worked in the previous 6 months (non-continuous or continuous) would be taken as the minimum number of hours stipulated in a contract and that these arrangements would be subject to periodic review to reflect change.
- A recognition that where employees were required by their contracts to be available for additional hours, over and above their guaranteed minimum hours, that they should be compensated at an hourly rate of 25% of their standard hourly pay or a fixed payment of 15 hours a week, whichever is the smaller.
- A 72 hours minimum notice period or 150% of hourly wages for workers on non-guaranteed hours contracts as well as 72 hours' notice of cancellation.

There are draft Welsh regulations under consultation which would require employers in the social care sector to provide care workers on non-guaranteed hours contracts with a choice of alternative contractual arrangements (Welsh Government 2017b).

There is also a potential role for mobile phone technology to be developed which would help workers to keep track of their movements and working hours. This would assist them to have a greater understanding of the value of their right to a minimum wage, to paid holiday, rest breaks and the regularity of their income.

Action on Commissioning: Code of Practice on Ethical Employment

The 'Welsh Government's Code of Practice on Ethical Employment in Supply Chains' was launched in March 2017. It is the product of partnership working between the Wales Anti-Slavery Leadership Group, the National Procurement Director and Value Wales team, the Gangmasters and Labour Abuse Authority, UNICEF UK and Every Child Protected Against Trafficking (ECPAT UK).

The Code aims for supply chains in the delivery of public services in Wales to be more ethical and sets standards for contracting in the Welsh public sector and by third sector organisations in receipt of public funds. While the reporting requirements of s.54 'Modern Slavery Act 2015' apply to large commercial organisations, this Code embraces the activities of organisations of all sizes and in all sectors.

The Code is voluntary and its ambitions are broader than the abolition of modern-day slavery. Welsh Universities are classified as commercial organisations for the purposes of the 'Modern Slavery Act 2015' and are therefore bound by its requirements but they have additionally agreed to sign up to the Code in the summer of 2017.

The Welsh Government itself has signed up to the Code and has developed an action plan with timescales and regular progress reports. It is expected that all 22 of Wales' Local Authorities will commit to the Code by Autumn 2017. In one example, Cardiff Council is at an advanced stage of consultation and has identified a Cabinet Member in their new administration to take responsibility for developments, they have been a 'Living Wage employer' for some time, and are now working through the Code's other commitments, including those aimed at tackling modern slavery.

It will take some time before the impact of the Code can be assessed but the initiative aims to make a meaningful contribution to the wellbeing of people living and working in Wales as well as those involved in supply chains reaching across the world.

Of particular relevance to the discussions contained within this report is the Code's expectation set out at section 9.4 that suppliers will 'ensure that trade union representatives can access members and contracted workers'. There may be potential for this expectation to play an important role in enhancing the ability of trade unions to contribute to tackling exploitation

and promoting decent work in Wales.

Advocacy and advice

Research undertaken by the Legal Action Group has identified an important shift in public opinion: support for free access to legal advice in respect of employment law by a majority of the public across all social classes (2012). The findings reflect rising anxiety about employment rights abuse in the context of the economic slowdown which has followed the financial crisis of 2008.

However, the 'Legal Aid and Punishing of Offenders Act 2012' removed employment cases from the scope of legal aid except in relation to discrimination claims and this came into effect as of April 2013. The legal aid service in relation to discrimination claims is restricted to the provision of telephone-based advice from provider organisations and this takes the form of initial instructions and advice followed up by a written briefing note (Wiggin and Fowler 2013). Clients are not entitled to face-to-face advice unless a provider determines they cannot be otherwise advised.

Approximately a quarter of visits to the Citizens' Advice Bureau website sought advice about employment rights in 2015/2016 and employment issues now fall within the top five problem types that Citizen's Advice Bureaus are dealing with in face-to-face appointments. Citizens' Advice in Caerphilly and Blaenau Gwent reports that a new webchat service has been particularly valuable in dealing with employment issues since people are able to access support while they are at work or

at home and can do so without being overheard (Citizens' Advice Bureau 2016d:19).

Funding from Welsh Government supports frontline advice in relation to benefit, debt, housing and discrimination advice (Citizens' Advice Bureau 2016d:16). The specialist Employment and Equalities team at Newport CAB report that their work has become harder since the introduction of employment tribunal fees because this has 'reduced [clients'] ability to take the necessary action' (Citizens' Advice Bureau Cymru 2014:8).

It appears that support has been limited to cases in which employment issues such as unfair dismissal are conjoined with allegations of discrimination and that resource limitations have constrained the ability of CAB personnel to represent clients in person at tribunal.

Although the abolition of tribunal fees is very welcome, legal aid cuts in the field of employment have not been reversed and the funding of advocacy and advice services is an essential component in the fight against exploitation.

Trade unions, representation and strategic litigation

It is undoubtedly the case that the most effective way to strengthen protection of statutory rights is to improve and support trade union representation at the level of individual workplaces and through collective bargaining across sectors (Ewing et al 2016; Hayes and Novitz 2014).

In the context of an enforcement environment that has been marred by tribunal fees,

individualisation and the removal of legal aid, there is an emergent shift in trade union activity. In partnership with specialist legal firms, unions approach potential breaches of statutory labour standards as opportunities to organise workers into membership and invite them to join a litigation pool. This reflects unions' awareness that they have a strong role to play in relation to minimum standards enforcement. It also suggests contemporary demand for trade unions to fill the administrative justice void.

While this is a resource intensive activity which can take months, even years, of preparation before claims reach a first

hearing, unions gain positive press coverage and are able to demonstrate quantifiable benefits from trade union membership.

Their litigation strategies often focus on contractual status claims because a successful challenge can lever entitlement to a host of employment rights protections (see box 8). One example is in the social care sector where Unison have been pursuing a strategy of bringing minimum wage claims on behalf of homecare and residential care home workers.

Another lies in the logistic and courier sectors which are characterised by employment

relationships shaped by contracts which impose bogus or forced self-employment and therefore lie outside of the scope of key protective measures laid down in the agency workers regulations, statutory sick pay provisions, working time regulations and minimum pension payments.

Here, the focus is wider than just an assertion of minimum wage entitlements because it takes account of the perceived injustice of 'undercutting' which is often a feature in workplaces that draw on agency workers but do not provide them with comparable pay to the established workforce.

Box 8: Litigation as a trade union challenge to false self-employment

Trade union Unite has announced action against the Agency Drivers' Network which provides drivers to third party contractors and appears to require them to set up their own personal limited companies in order to gain work assignments (Jahsan, 2017). The effect is that wage rates for the ADR drivers undercut the wages of directly employed drivers by £3 an hour. If Unite are successful this will potentially open the way for a subsequent Agency Workers' Equal Pay claim for parity with directly employed drivers.

Socio-economic disadvantage: new potential in the Wales Act 2017

Section 1 of the 'Equality Act 2010' places duties on public authorities with respect of socio-economic inequality but it has not been implemented by UK Government and indeed has been vehemently opposed by the Conservative administration (Burton 2014).

However, in the 'St David's Day Agreement 2015', UK government agreed to grant Welsh Ministers the power to commence s1 of the 'Equality Act 2010' in Wales. This provides

a potential route with which the Welsh Government may be able to promote the enforcement of minimum labour standards through the functioning of devolved Welsh authorities.

The socio-economic duty set out at s1 Equality Act 2010 requires:

An authority to which this section applies must, when making decisions of a strategic nature about how to exercise its functions, have due regard to the desirability of exercising them in a way that is designed to reduce the inequalities of outcome which result from socio-economic disadvantage.

As this report has illustrated, issues of non-enforcement and

non-compliance with minimum labour standards have the greatest detrimental impact on people who are likely to face socio-economic disadvantage and indeed serve to perpetuate that disadvantage.

The implication of measures contained within the 'Wales Act 2017' which bring the 'St David's Day Agreement 2015' commitments into law is that there is potential for devolved Welsh authorities, perhaps working under the guidance of the independent Equalities Commissioner or the Future Generations Commissioner, to develop strategies designed to galvanise action on minimum labour standards compliance in relation to employment rights and duties.

Conclusion: Policy observations

In legal abstract, the existence of statutory minimum labour standards is insufficient to tackle exploitation. What matters is the integrity of those labour standards and how they are understood as they take effect in workers' day-to-day experiences.

This report has identified many risks and indicators of exploitation and discussed their relevance in a Welsh context. It has also drawn attention to the most pertinent risk factor for workers in Wales, the risk

inherent within a system of employment rights enforcement in which there is a lack of workplace monitoring, a low risk of prosecution and no independent representation of workers' interests through trade unions (Weatherburn and Toft, 2016).

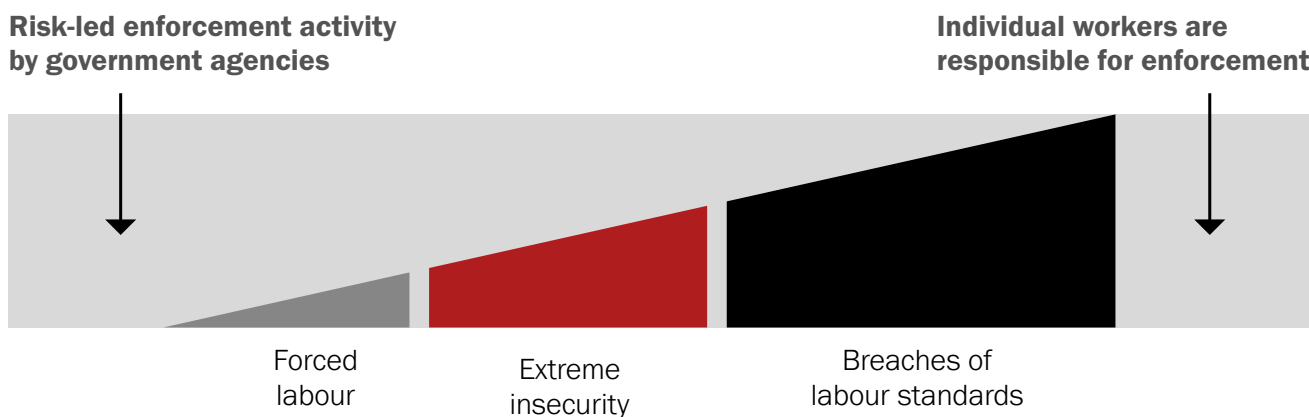
This report has presented a picture of legislation and enforcement in which UK Government policy and new statutory measures aim to address exploitation by focusing

the attention of UK enforcement agencies on the harms of illegal working and the vulnerability of undocumented workers (see Figure 5).

A step-change in labour standards compliance is required, as well as action on enforcement which specifically addresses the needs of workers in Wales. For example, in Wales the higher rate NLW is especially important and there is a need for future UK-wide compliance strategies to be suitably resourced and focused in Wales.

Figure 5: Locating enforcement and compliance activity across a spectrum of exploitation

Tackling exploitation: legislation and enforcement spectrum



Observation A. The need for new research which compares the experiences of both migrant and non-migrant workers in Wales.

Consider the commissioning of research to compare the day-to-day experience of migrant and non-migrant workers in relation to labour standards and job quality in low-waged work in Wales’.

The Welsh Government might wish to consider how tightly to link concerns about exploitation, to concerns about immigration, and may decide to strike a different balance to that of the UK Government.

If the social problem of exploitation is predominantly understood as a ‘migrant worker problem’ there is a risk of further pathologising migration, of giving the mistaken impression that the attention of public authorities is disproportionately focused on migrant workers and of overlooking the extent to which exploitation is also experienced by non-migrant workers.

The TUC and the Citizens’ Advice Bureau, in concert with organisations representing exploited migrant workers (FLEX 2015), argue that to effectively tackle exploitation there must be concerted action to prevent and respond to all breaches of minimum labour standards. Allowing low level breaches to routinely happen undermines standards of decent work and

encourages an environment in which exploitation can thrive (TUC, 2016; France, 2016).

Socio-legal accounts of labour rights enforcement are an emerging field of study but the knowledge base is currently underdeveloped (see McDermont et al 2016, Rose and Busby 2017, Barnard and Ludlow 2016, Ludlow 2016, Hayes 2017, Barmes, 2016). There is a strong evidence-base about poverty in Wales but less is known about worker experience in low-waged work. Future research could usefully elucidate the employment experiences of both migrant and non-migrant workers in Wales.

Observation B. The need to widen trade union access to workplaces, support strategic litigation and fund advice and advocacy for minimum labour standards claims to be adjudicated in Wales.

Explore how to widen trade union access to workplaces in Wales and promote workers’ access to justice by supporting strategic litigation initiatives and targeting additional resources at advice and advocacy organisations bringing Welsh claims about minimum labour standards violations to the attention of the tribunals.

The Welsh Government has evidenced its positive working relationships with trade unions through the passing of the ‘Trade Unions (Wales) Act 2017’. The commitment to partnership working between government and trade unions could provide useful opportunities to explore how trade union access to all workplaces in Wales might be widened.

The commitment expressed at section 9.4 of the ‘Code of Practice on Ethical Employment in Supply Chains’ (Welsh Government 2017a) would provide a valuable starting point. The Welsh Government also could look to increase the

capacity of trade unions to raise workers’ awareness of employment rights and promote good practice across Wales.

To ensure that minimum labour standards disputes and the voices of workers in Wales are heard in employment tribunals, the Welsh Government could support the work of trade unions in advancing strategic litigation initiatives and also provide advice and advocacy organisations with additional resources to specifically support individuals so that claims about minimum labour standards violations are brought to the attention of the tribunals in Wales.

Observation C. The need to develop expertise in Wales about the alignment of UK employment law with standards set out in international treaties and human rights conventions.

Enhance European Transition initiatives by developing expertise about how UK employment law aligns with the international treaties and human rights conventions which the UK has already ratified.

The Welsh Government's paper 'Securing Wales' Future' sets out a Welsh agenda on European Transition, one aspect of which is that leaving the EU should not be accompanied by a diminution of employment rights.

While it is right for Wales to seek assurances that Brexit will not entail a watering down of employment rights, the First Minister's call for awareness of the opportunities to 'think afresh' about policies and programmes is also critically important. In the field of employment law and labour rights this endeavour might usefully begin by investigating

the alignment of UK employment law with international treaties and human rights conventions. This would develop expertise with which Wales could seek to build support for legal improvements and consolidation based on legal instruments that the UK has already ratified.

Achieving the well-being goal of decent work in Wales requires a post-Brexit framework of employment law that accords with the international treaties and human rights conventions that establish minimum labour standards globally.

Observation D. The opportunity to address exploitation via equality law and harness new Welsh duties regarding socio-economic disadvantage.

Seek to understand exploitation as an equalities issue and look to new powers for Welsh authorities to address socio-economic disadvantage as an opportunity to galvanise action on labour standards enforcement.

Finally, the report has identified numerous ways in which exploitation arises in the context of social, political and economic inequality. The 'Wales Act 2017' gives Welsh Ministers powers to bring into force s.1 Equality Act 2010 on socio-economic disadvantage. This will be

another significant milestone in Wales' journey towards becoming a society in which equality and human rights are fully realised.

Using the legal lens of action on socio-economic disadvantage, Welsh authorities should give due regard to the desirability of exercising their functions in ways that are designed to reduce inequalities of outcome which result from socio-economic disadvantage.

As the new 'Code of Practice on Ethical Employment in Supply Chains' recognises, Welsh authorities have considerable influence in the Welsh economy. This influence is also felt where their functions bring them into contact with private sector organisations, for example for the purposes of inspection, monitoring or business support/ economic development activities.

With the objective of tackling exploitation firmly in mind, the Welsh Government could usefully investigate the desirability of harnessing the functioning of Welsh authorities so as to galvanise action on minimum labour standards compliance in pursuit of reducing inequalities of outcome which result from socio-economic disadvantage.

A practical contribution to this aim could be made by a research project which built a detailed, up-to-date picture of the day-to-day interactions between Welsh authorities and private sector employers in Wales. This would help to identify the scope to build regard for socio-economic disadvantage into their functions in ways that focus attention on labour standards compliance.

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