



**The coronavirus pandemic and the post-Brexit regulation of
migration**

CERIC Briefing Paper

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Summary

The COVID-19 pandemic is having profound effects on work and employment across the world. The pandemic has led to emergency measures restricting travel, with more than 200 countries implementing coronavirus-related restrictions on border entries, and with 93 per cent of the world's population living in countries where such restrictions have been imposed. In the UK, the pandemic has brought into even sharper relief the crisis of labour mobility that was triggered by the UK Exit from the European Union. A new post-Brexit points-based system of migration has been proposed by the government, which will have significant impacts on migration flows, and on those groups of migrants who will be able to work in the UK.

This briefing looks in more detail at the proposed post-Brexit immigration regime in the UK. It highlights the contradictions between the restrictions on free movement in the proposals, and employers' labour needs in particular sectors. The briefing highlights how these contradictions have been amplified by the coronavirus pandemic. The briefing looks in detail at the points-based system, considering the proposals around qualifications, shortage occupations, post-Brexit salary thresholds, and possible exemptions. The briefing concludes with reflections on whether the coronavirus crisis will lead to a shift in perceptions about the value of particular jobs, and whether this will have any impact on regulation of migration in the post-Brexit era.

Introduction

The COVID-19 pandemic is having profound effects on work and employment across the world. Data from the International Labour Organisation have shown that by the start of April 2020, 4 out of 5 workers, out of a total workforce of 3.3 billion globally, have had their workplaces partially or totally closed as a result of the coronavirus pandemic. Lockdowns and restrictions on daily life have led many firms to make staff redundant, or to lay them off temporarily.

The impact of coronavirus on global mobility and migration flows is also unprecedented in the post World-War II era. The pandemic has led to an urgent re-assessment of the regulation of migration, with more than 200 countries implementing coronavirus-related restrictions on border entries, and with 7.3 billion people (93 per cent of the world's population) living in countries where there are restrictions on travel (Shoichet, 2020). These restrictions include migration for economic reasons, and with movement within countries for work also being stopped or severely curtailed.

In the UK, the COVID-19 crisis has brought into even sharper relief the crisis of labour mobility that was triggered by the UK Exit from the European Union. It has raised crucial questions over whether UK government should seek to extend the transition period beyond December 31st 2020, with bodies including the International Monetary Fund calling for the UK to be flexible over the Brexit transition deadline in order to avoid inflicting a double pain for UK economy from the coronavirus crisis and Brexit (Islam, 2020).

Even more fundamentally the crisis has also brought into focus the importance of the role of the state in the management of international mobility. The coronavirus pandemic may present opportunities to re-think the ways governments intervene to regulate migration. The categorisation of some jobs as 'essential' by governments for example, has stimulated a broader debate about the value of particular occupations: which jobs are seen to be vital to protect public health and allow for the essential services needed

in our communities at a time of crisis, how are these valued materially and what is the role of migrant workers in fulfilling these roles? In the UK, some of the jobs that are now defined as essential – for example, healthcare work, the provision of food and necessary goods, and transport (see Cabinet Office and Department for Education 2020) are among those considered to be of low-skill and value to the UK under the post-Brexit Points Based system. These are also the very jobs where migrant workers are over-represented and have long played a vital role.

At the Centre for Employment Relations Innovation and Change (CERIC) at Leeds University Business School, since the EU referendum in 2016, we have been researching what the end of free movement will look like under the new post-Brexit immigration system. We have examined the Government's evolving proposals for new immigration rules, as well as reports published by the government's Migration Advisory Committee (MAC). We have looked at commentaries and position papers by trade unions, employer bodies, migrant advisory support groups and other stakeholders, and have held our own stakeholder events to gather views on Brexit and migration. We have also analysed secondary data and looked within particular sectors to explore the likely effects of the new immigration regime in particular areas.

Critically, the MAC reports of the past 2 years include an in-depth, predominantly economic analysis of different sectors and occupations according to their economic and public value, and their relative reliance on EU and European Economic Area (EEA) migrant workers in particular, and migrants in general. The COVID-19 crisis merits an examination of sectors of high public value with new eyes.

In this briefing we begin by looking at the proposed post-Brexit immigration regime in the UK, highlighting the contradictions between the restrictions on free movement in the proposals, and employers' labour needs in particular sectors. We highlight how these contradictions have been amplified by the coronavirus pandemic. We then move on to consider the proposed Points-Based System of immigration in more detail and look at the ongoing debate over post-Brexit salary thresholds for migrants. We then look briefly at examples of the healthcare and agriculture sectors. We conclude by reflecting on whether the coronavirus crisis is likely to lead to a shift in perceptions

about the value of particular jobs, and whether this may have any impact on regulation of migration in the post-Brexit era.

The new landscape of migration regulation in the UK and the fault lines exposed by COVID-19

In April 2020, the UK Government published guidance (UK Visas and Immigration, 2020) on the implementation of the new Points-Based System for immigration. This points-based approach will replace the current 'Tier system', and will bring all categories of migrants, including EU nationals, under the same migration regime. The end of free movement rights for EU workers is planned for the 1st of January 2021, although the practical application of the new rules will not apply to EU nationals who are already based in the UK by 31 December 2020. This includes those who will be able to apply (together with their family members) to the EU Settlement Scheme until 30 June 2021¹.

The most recent government data available (Sturge and Hawkins, 2020), indicate that by the end of March 2020, 3.4 million applications had been made to the EU Settlement Scheme. Nearly 3.15 million of these cases had been concluded (1.8 million have been given settled status and 1.3 million pre-settled status). Whilst this suggests that the scheme has been relatively successful in terms of registering EU citizens in the UK, there is likely to be significant double counting in these figures. Furthermore, it has also been stressed that the limited timescale of the scheme, and the numbers of EU citizens in the UK would result in some of those eligible missing the registration deadline (Migration Observatory, 2020; O'Carroll, 2020). Moreover, according to an interview our research team conducted with the head of a social enterprise involved in helping EU migrants to register with the scheme, the process of applications has been especially

¹ Until the same date, employers are expected to accept the passport or ID cards of the EU national as a proof of their right to work in the UK.

difficult for those citizens with rudimentary IT skills and those with low English language proficiency, leading to some potentially serious misunderstandings. For example, some citizens eligible for settled status (given to those who have been in the UK for more than 5 years) have applied for pre-settled status which would put them in a potentially disadvantaged position should they seek to settle longer-term in the UK. Furthermore, much of the local level support that was in place for EU citizens is likely to have come to a halt, or been significantly reduced as a result of social distancing measures (Home Office, 2020)

Prior to the coronavirus pandemic, there was already widespread criticism of the proposed new points-based system. Employer associations and business advocacy organisations argued that the underlying approach of seeking to attract ‘the brightest and the best’ was outdated and failed to reflect the realities of the UK labour market and employer ‘low-road’ strategies to competitiveness. A House of Commons review of responses to the proposals for a points-based system (Pepin, Holland and Gower, 2020) revealed particular concerns around the acute labour shortages that would result in some sectors, should the proposals go ahead in their current form. Responses also argue for a lowering of the salary and skills thresholds.

The coronavirus pandemic has further exposed the fault lines in this points-based system. Under the new system, EU and non-EU nationals will be brought under the same regulatory framework for migration. In addition, the new policy requires a sponsor (an employer) for all occupations before moving to the UK, a job offer at the “required skill level” (RQF 3 - A Level and equivalent or above) and a required level of English language. The first two of these compulsory elements are ‘worth’ 20 points each, while English language proficiency carries 10 points. Applicants will need to collect a minimum of 70 points including other non- compulsory but “tradable” characteristics, which range from: the level of salary (which cannot go below £20,480; whether the job falls under the shortage occupation list (currently this includes 24 occupations in health and education but will be reviewed by the MAC, and there will still be a special scheme for farm workers); and type and level of educational qualifications (with higher level STEM qualification particularly favoured).

The bottom line is that the new system regulating migrants' entry in the UK does not include a channel for so called "low skilled" workers, and only allows entry in exceptional circumstances workers classified by the MAC under a shortage occupation list . In other words the current system does not envisage any specific entry route into the country for the likes of whom have been so essential to the front line of the coronavirus pandemic, including delivery drivers, supermarket workers, home-care assistants, hospital porters and cleaners (Child, 2020). Migrant workers are over-represented in many of these sectors and occupations. The transport sector, for example, employed 10 per cent of workers from new EU member states, compared to 5 per cent of UK workers. Food preparation is the occupation with the third highest proportion of EU workers, at 13 per cent, whilst drivers are the occupation with the fifth highest concentration (Fernandez-Reino and Rienzo, 2019)

The capacity to retain EU workers in these sectors will depend on the effective functioning of the EU settlement scheme and the capacity and willingness of migrant workers to 'regularise' themselves through this scheme. Many EU citizens in the UK have already made alternative choices: to go back home or leave the UK for another EU member state where they can still enjoy free movement. According to the latest quarterly report on migration from the Office for National Statistics (ONS, 2020), whilst overall net migration to the UK increased by 240,000 in the 12 months ending September 2019, EU net migration *fell* by 64,000 (with the number of EU migrants arriving in the year to September 2019 being 196,000 and the number leaving being 133,000). In terms of migration for work specifically the ONS note that "following a peak of 190,000 in the year ending June 2016, the number of EU citizens arriving for work has fallen to 79,000, the lowest level since 2004" (ONS, 2020). Current virus-induced shortages of labour, resulting from workers becoming ill with the virus, and from the increased demand for labour in some sectors are likely to have been exacerbated by EU workers leaving the UK in large numbers since the referendum results. There are also significant numbers returning to EU home countries from the UK or unable to move from their country of origin as lockdown and travel restrictions have been put in place.

The vexed questions of salary thresholds and the shortage occupation list

Defining the salary threshold for the new immigration system has been one of the most controversial aspects during the different rounds of the government's consultation of stakeholders on the post-Brexit immigration rules. It was also highlighted in the two Roundtables on Brexit and Labour Mobility that we conducted at CERIC researchers in 2018 and 2019 with representatives from labour, business and civil society organizations. (see for example, Alberti et al, 2018).

Most of the employer representatives of sectors considered to be low-skilled have been highly critical of the initial recommendation of a proposal of a salary threshold of £30,000 (MAC, 2018), considering it 'unrealistic'. Employers in sectors including hospitality, social care and food manufacturing denounced the proposal pointing to the massive shortages that this threshold would generate for their businesses. Whilst the argument of the MAC was that it was seeking to avoid wage undercutting, employers argued that they were unwilling and unable to pay higher wages. Furthermore, trades unions and charities supporting precariously employed migrants expressed their concerns about the counterproductive nature of such thresholds. The most recent MAC report shows that even the trade union umbrella organization, the TUC, pointed to the contradictory effects of setting such a high salary threshold in a post-free movement scenario. They further expressed a preference for the continuation of free movement, highlighting that such thresholds could make migrant employees more dependent to employers and therefore at greater risk of exploitation (MAC, 2020). The Government response to these critiques was that employers can choose to up-skill existing 'home' workers or invest in new technologies that limit the need for migrant labour.

The latest MAC report proposes a salary threshold of £25,600 and can therefore be considered a compromise by the Home Office, following the criticism of employers and other stakeholders. At the same time, the various elements of 'tradability' in the system, such as higher qualifications traded against a lower salary threshold, indicates a *much*

more flexible system and potentially provides a backdoor for employers who cannot or simply do not intend to stop their reliance on hiring migrant labour on lower wages than those prescribed by the policy. For instance, those earning between £20,480 and £23,039 will, under the latest proposals, get zero points for salary, but will be able to reach 70 points by using other characteristics. Those earning between £23,040 and £25,599 will still obtain 10 points, making the £23,040 the real minimum salary outside of shortage occupation list, and £20,480 the absolute minimum salary.

One strategic response by the government would be to lower the salary threshold if a migrant's job is among the Shortage Occupation List. In this sense the government did not really follow the MAC's (2020) recommendations, arguing at various points the need *not to create exceptions* on the basis of a Shortage Occupation List, precisely to avoid a pressure on wages in those areas considered the most valuable in terms of their social and economic functions. Their final recommendation was indeed that "Occupations on the Shortage Occupation List should not lower salary thresholds on entry", further arguing that "Instead of solving skills shortages by improving the offer to attract workers into the occupation, this would have the opposite effect of perpetuating or even exacerbating the shortages. This would have distortionary impacts across the labour market where some sectors are disincentivised to make pay or conditions more attractive" (MAC, 2020: 149).

Some have argued that in a number of respects the proposed new system is more 'liberal' than the previous Tier system, as rules will be in fact partly "relaxed" for migration from outside the EU (Portes, 2020). Indeed the new Points-Based system combines some elements of de-regulation (lowering the skills threshold down from RQF6 to RQF3; eliminating the cap on the number of people who can come on the skilled worker route; and removing the resident labour market test). However, as Portes notes, these are accompanied by a much tougher migration regime for all migrant categories, with the requirement of a sponsored job offer for all 'tiers' and the need to show specific skills routinely assessed by the MAC. In addition, of course, there is the new restriction imposed now on a much larger group of migrant workers including those from within the EU who are losing their free movement rights.

In light of the COVID-19 crisis and given the areas of work where migrant workers are concentrated, a critical area of policy intervention will be the definition of the Shortage Occupation list. It is not clear yet what jobs will be included in this list, with latest government advice indicating that the list will be expanded, and that this will be based on already published advice from the MAC (UK Visas and Immigration, 2020). The MAC has already warned that it is inadvisable to carry out the review of the Shortage Occupation list yet, because the effects of the end of free movement still need to be visible 'once free movement has ended' (MAC 2020: 267). In the interim, the government concludes that "allocating extra points for occupations that the MAC determines to be in shortage in the UK will provide immediate temporary relief for shortage areas, making it easier to recruit migrants. However, we expect employers to take other measures to address shortages and the MAC will look at this when they review whether an occupation is still in shortage". (Home Office and UK Visas and Immigration, 2020: point 8).

Shifting perceptions of jobs with high public value?

Returning now to the question of the exceptions to the salary threshold, in the light of the COVID-19 crisis, will the government alter their views about jobs that are to be considered of high public value? The government has already stated (prior to the pandemic) that certain occupations will be exempt from the new migration salary threshold and will be rather based on *published pay scales*, noting: "We will set the requirements for new entrants 30% lower than the rate for experienced workers in any occupation and only use the base salary (and not the allowances or pension contributions) to determine whether the salary threshold is met" (Home Office and UK Visas and Immigration, 2020: point 4). Among the sectors that will follow these pay scales are the NHS and schools, currently in the front line in the fight against the virus and/or supporting key workers during the pandemic. However, social care and domiciliary care, food processing, delivery and cleaning, also of vital importance under the virus-imposed lockdown, are currently left out and remain among those who are set to be affected hugely, even with the lower salary threshold, as they have historically relied on low-paid labour from within and outside Europe.

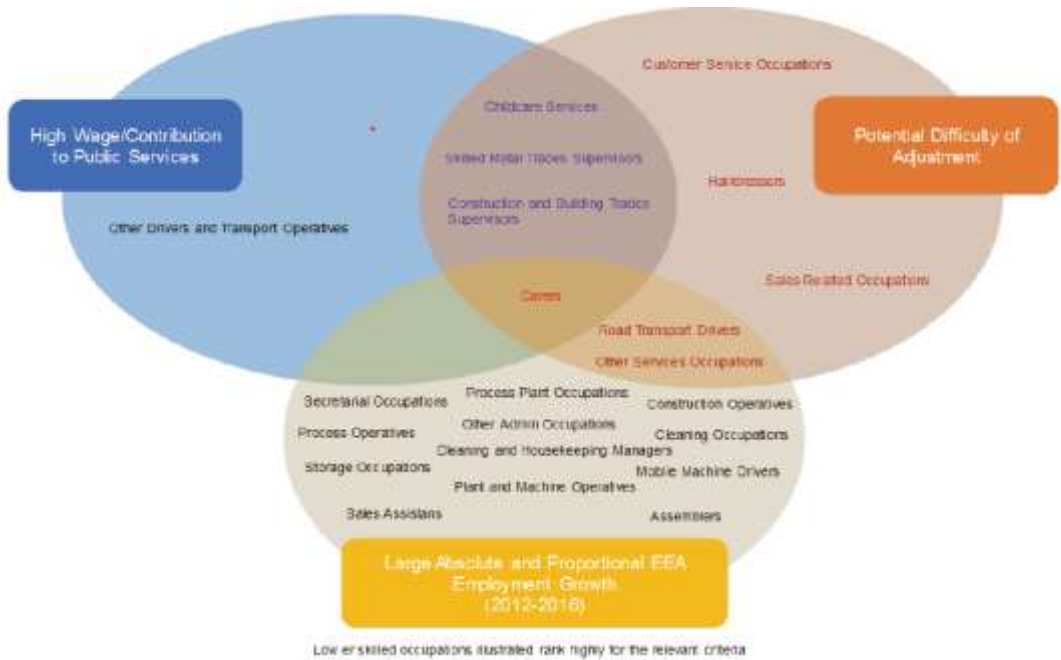
The UK Government's own economic appraisal of its proposals for a skills-based immigration system (Home Office, 2018) is a good starting point to identify perceptions and government definition of what is considered an essential sector. Even though the report was published under the previous (Theresa May) government, it is this analysis which has been mostly incorporated in the 2020 MAC report and has been used as the evidence base for the current Points-Based System.

The policy paper develops a classification of all jobs according to the skill level, the potential scope of adjustment of the occupation to labour market change, and whether the occupation is of high wage or high public value. Particularly important to the new immigration regime are those skilled occupations "which-have high economic or public value, have been heavily reliant on long-term EEA migrant labour and may find adjustment to labour market changes difficult. Examples include teaching professionals and nurses and midwives." (Home Office, 2018: 139) Agricultural occupations are included in the 'difficult to adjust' category but are not among those that are seen to provide a high contribution to public services. Indeed this 2018 Home Office classification appears to be at odds with those groups that are understood as "essential sectors or key workers" during the current coronavirus pandemic.

Another group defined in the policy paper are "lower-skilled occupations facing labour market adjustment difficulties and of high relative value" (Home Office, 2018: 142). The policy paper notes that 55 per cent of EEA migrants work in occupations at a skill level below RQF3, and thus would not be eligible for the skilled workers' route. Figure 12 from the report, reproduced below as Figure 1, identifies many of so-called 'low skill' occupations where employers in the UK are heavily reliant on this labour, and/or where the occupation is seen to be of high public value. Carers (including childcare); construction and building trade supervisors, and skilled metal trade supervisors are recognised as having high public value. Road transport drivers are positioned as an occupation facing difficulties of adjustments and where employers are heavily reliant on labour from the EEA, rather than being seen as having high public value. 'Other drivers and transport operatives' are however, seen as having high public value. Process plants occupations (including food processing and packaging) are not included in the high public value, rather they are simply recognised as being sectors where there is a heavy reliance on migrant labour. Similarly, food preparation

occupations are considered as ones that will find it difficult to adjust to sudden changes in labour market conditions, and where there is a reliance of employers on migrant labour but are not seen as having a high public value.

Figure 1: Low Skill Occupations and their perceived public value in the Home Office Policy Paper on a Future Skills Based Immigration System, 2018



While some perceptions about the public or social values of these occupations might have already been shifted in light of the coronavirus crisis, the fundamental separation in the proposed points-based system between highly or medium skilled on the one hand, and the lower skilled on the other is stark. This distinction reflects the persistent assumption by the Government of the greater economic and fiscal impact of higher skilled workers to the national economy and the continued need to “attract the brightest and the best”.

Transnational labour mobility on the front line of the COVID-19 pandemic

Evidence suggests that the sectors that have been mostly affected by a 'Brexodus' are also those that are most acutely in need of labour during the current coronavirus pandemic. Here, we focus briefly on two sectors, health, and agriculture.

Health workers

As the powerful, moving and arresting images of nurses, doctors and other healthcare workers in the media have shown over recent weeks, a significant proportion of the NHS and private care workforce are migrant workers. This is borne out by official statistics. In 2018, 12 per cent of the 1.8 million strong healthcare workforce in the UK were non-UK nationals (ONS, 2019), whilst according to data from Skills for Care (2020) one in six of the 840,000 care workers in England were non-UK nationals. The pressing need of the NHS for healthcare workers during the pandemic has certainly not been helped by the large outflow of migrant workers since the EU referendum. Data collected by the Royal College of Nursing indicates a steep fall in the workforce from the EU, with a total of 3,962 Nursing and Midwifery Council registered staff from EEA countries leaving the Council between 2017 and 2018 (Campbell, 2018). According to more recent data (but not focusing on migration specifically), the number of nurses and health workers leaving the NHS increased by 25 per cent from 2012 to 2018, from 27,300 to 34,100 (Nuffield Trust, 2019). The same report reports a drop in EEA doctors. Whilst there has been a surge in non-EEA migrants working in the UK, there were many unfilled healthcare vacancies before the pandemic, with levels unsuitable for the current demand. In December 2019, for example there were 25,573 FTE vacancies in the NHS alone (NHS Digital, 2020). There have already been calls for a rethink of the proposed migration system to ensure that care workers are not classified as low skilled (Sylvester, 2020). According to one report, Liz Kendall, the new shadow social care minister, has already written to the Health Secretary, requesting a fast-track visa regime to be created for care workers, noting: 'The whole

world has changed as a result of the coronavirus crisis...It beggars belief that this policy will not change as well.” (Sylvester, 2020).

Agriculture

The maintenance of food supplies has featured prominently in the COVID-19 pandemic in the UK, with shortages of key products, slow responding supply chains, and urgent requests for labour all being highlighted. With the social isolation of vulnerable categories of citizens, and with barriers to charities and food banks to operate normally, exceptional measures may still need to be taken to allow for the necessary mobility to maintain food supply chains.

Agricultural workers in particular, whilst often paid low wages and engaged in highly precarious and demanding seasonal work, are categorised by the MAC report (2018) as high and medium skilled. Indeed, the coronavirus pandemic has revealed just how difficult it is to recruit labour to this sector, now that UK borders are (partly) closed and airlines have shut down large parts of their daily operations. There have also been challenges in “converting” British volunteers into efficient pickers of fruit and vegetables. Those that have signed up to the Feed the Nation/Pick for Britain initiative include many students, laid off and furloughed workers, most of whom had little or no previous experience in the agricultural sector. According to one report, whilst 32,000 signed up for the Pick for Britain initiative, only 13,000 (32 per cent) have so far turned up for online interviews (The Economist, 2020). Whilst the recruitment of EU migrants from such countries as Romania appears to be extremely complicated during the health crisis – these workers have to go through health checks and need to be placed in the temporary quarantine - there are indications amongst some in the agriculture industry that they are still preferred to British workers.

The sector is therefore facing a double crisis of drying supply because of Brexit, and new physical border impediments to seasonal migration. According to one recent report there is currently a shortage of 80,000 workers in the agricultural sector for fruits and vegetable picking, despite 10,000 people signing up to work at more than 500 farms across the country as part of the new 'Feed the Nation' campaign (Farming UK, 2020). Some specialist labour providers such as Concordia, plan to charter planes to

bring workers in, highlighting the continued – if not greater - importance of *labour brokers and intermediaries*, in transnational labour mobility despite the end of free movement.

Conclusions

The COVID-19 crisis has brought into even sharper relief the “crisis of labour mobility” that the UK Exit from the EU had already triggered, together with the growing importance of the role and intervention of the state both in the economy and in the management of international mobility. More specifically, it has raised questions over whether the UK government should seek to extend for one more year the Brexit transition period in order to avoid inflicting a double pain for UK economy from the coronavirus crisis and Brexit.

The sudden suspension of free movement within the EU and across the world has been the only possible response to the crisis, with borders being shut to save lives. At the same time, the continued mobility of workers is critical in the very sectors that sustain the response to the crisis, such as health care, agriculture, food processing and food retail, transportation and delivery.

Looking at the proposed re-regulation of labour mobility post-Brexit for employers and workers, and our ongoing work in CERIC to understand the responses of stakeholders, the current crisis has brought to the fore the relevance of many of these same sectors in terms of their relative ‘vulnerability’ in the Brexit context. Health and nursing, social care and elderly care, food delivery, food manufacturing, and agriculture are all sectors highlighted by unions, employers and other stakeholders as critical, and ones which will face significant challenges under the proposed new points-based system of immigration. Many of these sectors have been identified as having high economic or social value by the government in their economic analysis and shaping of the new migration system post-Brexit. Their value has become even more evident during the current health and socio-economic crisis under the effects of the lockdown. Significant

numbers of key workers employed in these sectors would not be eligible to come to the UK if the proposed earnings thresholds and shortage occupation lists are in place.

Will the COVID-19 crisis lead to a re-think by policy makers in their approach to post-Brexit migration regulation? Will perceptions of the value of particular occupations move beyond narrow economic modelling and salary threshold criteria? Does the current crisis offer a new terrain for migrant workers themselves to show their 'value', not only to the economy but for society at large and to bargain for better conditions beyond statutory and employer-controlled salary thresholds?

It seems to us that even in the field of migrant labour the pandemic opens up opposite scenarios, between utilitarian and draconian approaches focused on state self-sufficiency and enclosures on the hand, and the recognition of the inevitable interconnectedness of our lives, mobilities, care and survival in a world that cannot travel back from globalisation.

Further Information

This report is based on an ongoing wider programme of research undertaken within CERIC on migration. If you would like to comment on the issues covered in this report, or be involved in future events around migration, please contact:

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