



IR - MultiLing   
*Industrial relations in multilingual environments at work*

## MultiLing Country Report UK

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# 1. Social Context

## 1.1. Historical Overview

It is difficult to know where to begin to provide an historical overview of migration and language in the UK. It is tempting to start 125,000 years ago with the early migrations of *homo sapiens* into Asia and Europe and it is certainly the case that at one time there existed a relatively coherent group around the Neolithic period who shared a single Indo-European language. Only as a result of subsequent migrations did this language split into a polyglot including Slavonic, Germanic and Celtic to the west and Farsi, Bengali, Punjabi to the east. As Russell King notes this linguistic diversity is staggering when it is thought of as a corruption of a single language and, all the more so for the purposes of this project, to note that this linguistic diversity is largely the consequence of migration. (King, R. 2007).

If the British population can ultimately be traced back to its African roots, the migrations of Celts, Romans, Anglo-Saxons, Vikings and Normans gave it a distinctively western European flavour. The English language, in its modern form, emerged with the advent of the printing press in the late 15<sup>th</sup> century. The migration of Jews after the Norman Conquest, followed by the Huguenots in the 15<sup>th</sup> century and Africans from the 16<sup>th</sup> century were joined by communities of Chinese, Indian as well as African seafarers who settled around the port cities of Cardiff, Bristol, Liverpool, Glasgow and London. Such migration served to enrich Britain's cultural heritage but not to challenge the ascendancy of the English language. The different migrations are reflected in different ways languages are used. The Romans introduced Latin words to many parts of life but the influence on education was profound with higher education being in Latin until the 17<sup>th</sup> century and the judicial system continuing to use Latin. The Norman Conquest introduced French words to the system of government and the way cooking and food are described, for example.

If nothing else the above serves to remind us that cultural diversity pre-dates more recent migrations. The latter, if we pick up the thread again in the mid-19<sup>th</sup> century, began with the mass migration following the famines in Ireland of 1822 and 1846-7 which, as Engels famously reported, would threaten the wages and living standards of English workers (Castles, 2003:88) Italian migrants brought such things as street theatre and selling ice an ice cream and political activism (Anglo Italian History Society , online) and the Russian pogroms of the 19<sup>th</sup> early 20<sup>th</sup> century that brought both Jewish refugees and legislation restricting 'alien' immigration. Like the Huguenots before them, the Jewish community settled in East London, with its tradition for textiles and clothing manufacturing. Before the First World War there were at least eight trade unions specifically for Jewish workers which generally did their business in Yiddish. The industries they covered included clothing, shoe and hat making, metal and wood work, baking, and tobacco (Kershen, 1995; Wayne, 2009; Mazower, 2015). They also joined established trade unions.

The period before the Second World War brought refugees from Nazism and Fascism (Including the Spanish Civil War). Trade unionists were among those persecuted and they and others went on to be active trade unionists in the UK (London, 2000; Miller, 2002).

The modern period of migration from 1945 onwards can be divided into five periods. The first included ex members of the armed services and prisoners of war (POWs) unwilling to return to their countries, now under the influence of the Soviet Union. Whilst Polish migrants were covered by special legislation (see below), other displaced POWs and migrants from Lithuania, Ukraine, Latvia and Yugoslavia were hired on short term contracts (Rees, 1982:82; McDowell, 2004). The Trades Union Congress insisted that European Voluntary Workers such as ex Polish soldiers could only get jobs in areas like Agriculture, Textiles and Mining with the consent of individual unions and this was often delayed and sometimes refused (Weber-Newth and Steinert, 2006). In particular there was some union opposition in the mining industry to miners from Poland. In part this seems to have been Communist led hostility to Poles who had (allegedly) fought for the Nazis and who were opposed to the Communist regime now in power. However there is also a suggestion that they were threatened by the skills and productivity of those Poles who were already skilled miners. In the second phase a pool of labour was drawn from the former colonies and New Commonwealth and, as with the first wave, were integral to post war reconstruction. Immigrants from the Caribbean, Indian sub-continent and Africa worked thus worked in key sectors of the economy, notably transport and automotive, textiles and health. There were a number of significant developments in Industrial Relations from this group of migrants. (Mainly) Bengali Seafarers or Lascars had their own trade union which negotiated settlement rights in the UK. The term Serang referring to the recruiters and crew leaders went on to be used by White trade union officials to refer to Bengali shop stewards and community leaders (GLTURU, 1986). The first major strike of 500 Asian workers at Mansfield Hosiery Mills in Loughborough in 1972 (Union History, Online) was followed by strikes at Trico, Grunwick and Gate Gourmet strikes led by women of South Asian descent (Pearson et al, 2010). The third period is significant specifically because of the trade union aspect to it. In 1956 the (State run) National Coal Board (NCB) agreed with the National Union of Mineworkers (NUM) recruitment of thousands of Hungarian refugees. However local NUM Branches also had to consent and many refused and so in the event only a few hundred were employed by the NCB (De Aranjó, 2013) . The fourth phase is associated with refugees and asylum seekers following the collapse of the former Soviet Union and genocidal civil wars in the Balkans and in Africa during the 1990s. The most recent phase coincided with the expansion of EU membership and the entitlement to free movement of labour. This is reflected in patterns of migration since the early 2000s and the backdrop to current efforts (2015) of the Cameron Government to find ways of restricting entry and curtailing rights of EU nationals.

## 2. UK migration trends

### 2.1. Measurement

There are different ways of measuring migration to and from the UK. None are perfect.

The Census is the most comprehensive source but is only carried out every ten years which means it is used well beyond its 'best by' date. At the time of the 2011 Census there were 7.505m people living in the UK who were not born in the UK. They were almost equally split between people who had lived in the UK for more than 30 years, those living in the UK 11-30 years, people living in the UK between 1 and 10 years and people who had been living in the UK less than one year.

There are big differences in which countries people are from and how long they have been in the UK. People from Ireland and the Commonwealth countries (Notably Jamaica, India, Pakistan and

Bangladesh) are more likely to have been in the UK longest. People from Poland and China likely to have been in the UK the shortest time.

6.0 million of the non-UK born population are aged 16 to 64. In 2011 63% were in employment, a slightly lower level than the UK-born population (69%), largely due to the higher proportion who were studying. Those born within the EU were more likely to be in employment (73%) than those born outside the EU (59%). EU-born residents were less likely to be studying (11%) or economically inactive.

Recent arrivals were more highly qualified than those who had been in the UK for longer, with 38% of recent arrivals having Secondary or Tertiary Education or above qualifications (and only 11% reporting no qualifications), compared to 29% of those who had lived in the UK for more than 30 years (and 32% reporting no qualifications). Although there are some consistent patterns by country of origin about levels of qualifications, there are also some significant differences within countries: Irish and Indian long-time residents are generally less well qualified than more recent arrivals.

In general, the longer that non-UK born people have lived in the UK, the more highly skilled are their occupations. Indian-born and Polish-born populations had the highest numbers of residents employed in highly skilled occupations, which may reflect their positions as the top two non-UK born countries of birth in the resident population because Poland –born residents had one of the lowest proportions of people in highly skilled occupations. The Nigerian-born population has a distinctive pattern: a lower proportion of recent arrivals working in highly skilled jobs (32%) compared to those who had lived in the UK for 5 years or more (46-64%). Over half of Nigerian-born recent arrivals were qualified to Secondary or Tertiary level or above (55%), which may be attributable to relatively high proportions of students among Nigerian-born recent arrivals (ONS, 2014a).

Net migration is the most high profile and politically sensitive figure in the UK. However it is based largely on the International Passenger Survey (IPS) which is far from robust and has repeatedly been criticised as unfit for purpose for the following reasons:

- It is based on a very small sample.
- The way the sample is collected is flawed.
- It excludes migration over the land border between the UK and the Republic of Ireland in Northern Ireland.
- It also excludes most asylum seekers and their dependants.
- The data collected is on self-declared intentions not what actually happens (House of Commons 2013-14; Migration Observatory, Online).

The IPS data is particularly useful for showing why people migrated. It shows that work related and study are the main reasons (ONS, 2014b).

Particularly for adults, National Insurance registrations (NiNos) are useful. Every adult who is working legally has to have a National Insurance number which is issued for life. The application records where the applicant was born but not when they came to the UK. It does not record people who are working illegally. The data is most useful for identifying which countries and regions people come from and where they go with most coming from within the European Union. The latest figures show 824, 000 registrations, an increase of 37% on the previous year. 76% of NiNo registrations were from EU nationals. Over 40% of registrations were in London (DWP, 2014).

Registration with NHS general (medical) practitioners is another source of information about international migrants. UK residents are entitled to register (Broadly irrespective of their

immigration status) and registration is generally high. First time registrants in the UK are asked where they came from ('Flag 4') and this information is available for England, Wales and Northern Ireland but not Scotland. The last ten years shows new registrations consistently at between 500 and 600,000 people. The data is available by locality and region (ONS, 2014c).

The term migrant has become a catch- all for groups from diverse socio-economic and cultural backgrounds who move to the UK for different reasons. How they are 'received' both formally and more widely in terms of public perception and media coverage, their location in the labour market and opportunities for social mobility are correspondingly varied. The UK and London in particular, are in the top 5 of places with the largest number of billionaires with people from the former Soviet Union prominent among them (Forbes, 2015; Hurun Rich List, 2015) The settlement of Russians in London seeking a haven for their capital gains, however gotten, has attracted less attention (aside from the assassinations of Alexander Litvinenko and Boris Berezovsky) than Governmental and public response to the settlement of New Commonwealth immigrants in the 1950s and 1960s. Nevertheless, whilst these particular migrant communities differed in their respective socio-economic backgrounds, both migrations were voluntary, unlike those following the break-up of the Soviet Union and the subsequent flight of refugees and asylum seekers in the 1990s from the former Yugoslavia, Rwanda and elsewhere and the trafficked migrants (including children) from eastern Europe, Africa and Asia who are forced into sex work, agriculture, construction, food industries and domestic slavery. With regard to trafficked migrants, the major difficulty here is obtaining accurate data and relatedly a consensus around policy assumptions and priorities. According to the National Crime Agency, the majority of Romanians (the largest group) worked in the sex industry, whilst those from Poland (the second largest group) often worked in construction, agriculture and factories. (Cited by the BBC 'Rise in UK trafficking, slavery and exploitation'). Anti-Slavery International have also identified a number of ways in which traffickers control the people they traffic, including taking away their documents, moving them around the country, withholding wages, threatening violence and preventing them from learning the native language, in this case English. (Skrivankova, K. 2006).

In 2014, about 8.3m people or 1 in 8 (13.0%) of the usual resident population of the UK were born abroad. This compares to 1 in 11 (8.9%) in 2004. 5.3m don't have British Nationality: 8.4%.

Country of birth	2014
India	793
Poland	790
Pakistan	523
Republic of Ireland	383
Germany	301

(ONS, 2015a)

In terms of occupational distribution, migrants are concentrated in health, hotel, manufacturing and restaurant sectors, particularly those from A8 countries (i.e. the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia and Slovenia that those that joined the EU in May 2004.) Longstanding EU members, (EU15) in contrast are concentrated in the finance sector. It is very clear that there is segregation by sector, occupation and skill level. Areas such as Food Processing, Hospitality and Cleaning and low-processing jobs are the industries and occupations with the highest proportions of migrant workers. (Migration Observatory, 2014).

For, example, 95% of London Underground cleaners are foreign-born; two thirds of care assistants in London are migrants (Migration Observatory, 'British and other EU migration'. See Angiano et al.,

2009). These are also the sectors most vulnerable to poor working conditions and violations of employment codes (Anderson and Rogaly 2005; Low Pay Commission 2009). Furthermore, there is evidence of pay having declined in these sectors in London in recent years (Wills et al 2009). Domestic work is of particular concern for London, given the concentration of domestic workers in the capital and the large numbers of migrants employed in the sector (Gordolan, L. and Lalani, M. 2009).

With regard to geographical distribution, by far the largest percentage live in London followed by the West Midlands, Greater Manchester and West Yorkshire. Interesting variations are found if the E8 countries are disaggregated. London has the highest numbers (Outer London has a higher population than Inner London) with other smaller, but significant populations distributed across the East Midlands, East Anglia, South Yorkshire, Scotland (other than Strathclyde) and Northern Ireland (ONS, 2015b) .

### 3. UK language data and trends

#### 3.1. England and Wales

In the 2011 Census, over 90% (92.3%) of people in England and Wales said their main language was English (or Welsh in Wales). 4.1m people reported a main language other than English (or Welsh if they lived in Wales). Although over 100 languages are reported, more than three quarters (77%) are accounted for by twenty languages. The top five languages were Polish, Punjabi<sup>1</sup>, Urdu, Bengali (with Sylheti and Chatgaya) and Gujarati.

1.7m people recorded a language other than English as their main language in London (over 22% of the England and Wales total). The next highest Region was the West Midlands with 7.2%. As well as asking what people considered their Main Language to be, people were asked “How well can you speak English (Or Welsh) (ONS Main Language, Online).

Of those who have a main language other than English, just over one in five say they cannot speak English well or at all (21.45%). Significantly a higher proportion of people living in London and the South East say their English is good but because there are more of them, nearly half of those whose English is not good live in London and the South East (46%). Between roughly three-quarters and two-thirds of the speakers of the top five languages other than English said that they speak English well or very well (ONS Main Language, Online).

Looking at specific country of birth there are big differences. The percentages saying their Main language is English (English or Welsh in Wales) for selected countries for people of working age are:

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<sup>1</sup> Punjabi is the spelling in the UK Census, Panjabi in the England and Scotland School Census

	Poland	Nigeria	Bangladesh	India	Pakistan
Males	0.7	86.4	26.1	47.3	36.9
Females	9.5	84.9	18.6	41.8	26.2
Age 16 to 24	5.3	90.1	29.4	41.4	36.5
Age 25 to 34	5.1	87.8	28.7	43.5	31.6
Age 35 to 49	6.6	84.3	21.4	46	34.4
Age 50 to 64	15	83.6	12.6	44.7	29.8

The contrasts are interesting between Polish women, more of whom say their main language is English than men, and Bangladeshi and Pakistani women, fewer of whom say their main language than men from those communities, as well as differences by age in several communities. Recent arrivals were less likely to be proficient in English (84%) than those who had been in the UK for longer (5-10 years, 90%; 11-30 years, 90%; more than 30 years, 93%) (ONS, 2013).

There were 84,436 residents of Wales (2.9% of total population) spoke a language other than English or Welsh as their main language in 2011 (ONS, 2014d).

The UK has collected data on the home languages of school pupils since the 1960s, originally as part of race relations legislation making provision for funding for helping immigrant children learn English (Eversley, 2000).

The total number of state school pupils in England in January 2012 was 6, 626,690. The number reporting that their home language is English (5,570,335) or believed to be English (34,240) is 5,604,575 (84.6%). The top five languages in English schools in January 2012 were Panjabi, Urdu, Bengali, Polish and Somali (NALDIC, Online).

### 3.2. Wales

The pupil data for Wales is only available by level of fluency in English or Welsh for broadly defined ethnic or racial categories. 3.1% (12,123) of all children are described as acquiring English as an Additional Language (EAL). Nearly half of these (43.8%) are described as at the stages of 'New to English, Early Acquisition or Developing Competence'. The largest categories of EAL pupils are categorised as Asian (35.5%), Other White (26%) and Any Other Ethnic group (17.6%).

### 3.3. Scotland

The population of Scotland was 5,295,403 in 2011, of whom 98 per cent of the population aged 3 and over in Scotland reported they could speak, read, write or understand English. 93% of people aged 3 and over in Scotland reported that they used only English at home. More people said they spoke Polish than speak Gaelic. 73,000 people reported as being unable to speak English well or at all (Krausova and Vargas-Silva, 2014b).

The 2011 annual pupil census for publicly funded schools in Scotland showed 32,266 pupils whose main home language was neither English, Gaelic, Scots, Doric nor Sign Language. A total of 138 languages were spoken as the main home language. The top 5 home languages were Polish, Urdu,

Punjabi, Arabic, Scots and Cantonese in publicly funded schools in Scotland (Krausova and Vargas-Silva, 2014b).

### 3.4. Northern Ireland

50,376 residents of Northern Ireland (2.9% of total population) spoke a language other than English or Irish as their main language in 2011. There were 50,376 residents of Northern Ireland who spoke a language other than English or Irish (Gaelic) as their main language in 2011. This represents 2.9% of the total resident population aged 3 and above. The most commonly spoken language was Polish. (17,731) residents mainly spoke Polish in 2011, accounting for 35% of those who used a language other than English or Irish as their main spoken language (and 1% of the population aged 3 and above overall) (Krausova and Vargas-Silva, 2014c).

The data for Northern Ireland pupils is based on 'Newcomer pupils who are defined as

*enrolled in a school but who does not have the satisfactory language skills to participate fully in the school curriculum, and the wider environment, and does not have a language in common with the teacher, whether that is English or Irish. This has previously been referred to as English an Additional Language. It does not refer to indigenous pupils who choose to attend an Irish medium school.*

In 2010/11 (The closest to the 2011 Census) the number of Newcomer Pupils was 8,266 (DoE NI, Online).

## 4. Migration Policy

### 4.1. Policy direction since 1945

Government policies on migration have been largely shaped by and reactive to the particularities of the different migrant groups since 1945. The Polish Resettlement Act of 1947 provided resettlement camps for a group who had after all been a significant ally against Germany. Other displaced POWs and European migrants did not receive the support offered to the Poles but were hired on short-term work permits (Rees, op. cit: 82). Men mainly worked in agriculture, coal mining, textiles and building as part of the overall reconstruction effort after the War. Women worked in health and social care, textiles and other industries (McDowell, 2004).

Initially, at least, the temporary work permits did not apply to those from the New Commonwealth who, under 1948 Nationality Act were allowed to enter the UK freely to settle, find work and bring their families (ibid: 83). The reasons for the shift from this open door policy to one of restriction will be discussed in the following section, but there followed successive Commonwealth Immigrant Acts of 1962, 1968 and 1971 and by the early 1970s two important principles had been established. Firstly, automatic rights of entry were restricted to those either with significant ties to Britain (see below for details) or to those with a job to go to and a proven skill that could not be met using domestic labour.

Following a similar pattern, applications from asylum seekers that had averaged around 4000 per annum until 1990, significantly increased to almost 45,000 and up to 84,000 in 2002. For reasons again that will be discussed below, legislation was passed in 1993 and 1996 under a Conservative Government and subsequently strengthened by Blair's Labour Government in 1999 on similar ideological grounds. Specific provisions included the replacement of benefits with vouchers (a provision that was scrapped soon after its introduction), a national dispersal policy and the introduction of smart ID cards. In 1999, a camp in Sangatte, outside Calais, was established to provide shelter and welfare for around 1800 (it was only meant for 700 at any one time) for those seeking entry to Britain.



In the meantime, EU legislation prevented restrictions on internal migration from within the EU and, as new states have joined the EU, so migration to the UK has increased. Rather than seek restriction directly through legislation, the British Government has hitherto sought to reduce industry's reliance on EU labour (namely through incentives to use domestic labour).

## 4.2. National Discourse

There is a paradox here in that those policies described above, that have sought to limit the entry and curtail the rights of migrant workers, do not sit comfortably with a sense of national identity associated with fairness, compassion, responsibility, and freedom. The tension between policy and values has been addressed through a series of popular narratives that somehow sanction restrictive legislation, discriminatory policies and punitive treatment whilst maintaining the values intact. The narratives shifted in emphasis over the decades but there were a number of common themes:

The first was that British culture and national identity were under threat. In 1968 Enoch Powell talked of 'rivers of blood' resulting from the inevitable conflict between different cultures and in 1979 Margaret Thatcher said as much when she talked of the threat of being 'swamped by people of an alien culture'. These arguments had a strong racial undercurrent.

Similarly in the 1990s there needed to be a strong argument to prevent those fleeing persecution from entering the country and compounding their sense of injustice by curtailing their rights on entry. After all, the fact that Britain was a signatory to the Geneva Convention of 1951 tied it to a set of obligations to provide sanctuary and support for refugees. However, a way out of this seeming contradiction was provided by the narrowness of the definition of refugee and the widespread view that many of them were not genuine asylum seekers at all but bogus applicants whose claims on our good nature were fraudulent. This rhetoric dominated tabloid press coverage (ICAR, 2012) but also found its way into ministerial statements from both Conservative and Labour governments in the 1990s. Together these arguments helped sanction legislation controlling the entry and curtailing the rights of refugees and asylum seekers fleeing persecution. The discourse of community cohesion (another term for assimilation) was popularised at this time, with its emphasis on a single British identity and one bolstered by the introduction of new nationality tests, the latter to be found in amongst the provisions of the 2002 Immigration and Asylum Act. It is also worth noting that this period also coincided with the War on Terror and its political spin-offs: Islamophobia, radicalization and the Prevent strategy.

Finally, current efforts to re-negotiate the terms of membership of the European Union has its origins in a very vocal anti-European lobby, one that also alludes to the threat to national sovereignty, as well as the annexation of Westminster by Brussels (the latter characterized by overregulation and bureaucracy at the expense of individual and market freedoms). The influx of European migrants from newly annexed member states (according to the Independent newspaper, 30.5.15., 86,000 in 2014) compounded this ably constructed sense of threat and loss. This narrative has been shared by Euro-sceptics in the Conservative Party and is a key plank of the UK Independence Party (UKIP)<sup>2</sup>. In the longer term, efforts of the current Cameron government (Elected in 2015) to renegotiate the terms of EU membership includes proposals to restrict to those who have worked for four years or more and to deport EU nationals after six months without work. (ibid).

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<sup>2</sup> Sufficiently in line with right wing populist thinking for such groups to lose their impetus and, with factionalism rife, for further splits, dissolutions as well as re-births.

Although the thrust of popular media coverage is on the negative aspects of migration there is the “paradox” of government perception of ‘good migrants’ who have included refugee scientists, doctors and nurses before WWII, the public services migrants of the 1960s (both not only welcomed but facilitated by Enoch Powell, and ‘highly skilled’ and rich migrants and White, English speaking migrants from Australia, New Zealand, USA, Canada and South Africa who don’t have to endure the same visa restrictions etc.

## 5. Legislative and industrial relations landscape

In this section we will look at various international and national legal documents which shape legislative landscape in the field of industrial relations and the use of languages.

### 5.1. United Nations

The Second World War brought unprecedented hardships and displacement of millions of people in Europe and other parts of the world. The integration of the millions of refugees in their countries of arrival was not easy in Europe or in America. European states were, in the main, too preoccupied with the sufferings of their own citizens and with the tasks of reconstruction to have much compassion to spare. The situation required a new international order which would enable the world to build a safer world for all people and protect their rights and freedoms. This was the task of United Nations which was created in 1945.

Among the fundamental documents which defined freedoms and rights of citizens was the Universal Declaration of Human Rights adopted by the UN General Assembly in 1948. The Declaration was commissioned and drafted immediately after the Second World War and reflected aspirations of peoples suffered during the war. While not a treaty, the Declaration was specifically adopted for the purpose of ensuring understanding of "fundamental freedoms" and "human rights" appearing in the United Nations Charter, which is binding on all member states. Article 2 of the Declaration specifies that

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

Being a constitutive document of the United Nations, it served as the foundation for the development and adoption of two binding UN human rights covenants in 1966: the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights. The latter undertakes “to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant” (Article 3). The principles of the Declaration were elaborated further in international treaties such as the International Convention on the Elimination of All Forms of Racial Discrimination, the International Convention on the Elimination of Discrimination Against Women, the United Nations Convention on the Rights of the Child, etc.

The UN has developed and promoted various documents to protect linguistic rights, especially indigenous, minority, and endangered languages. Article 27 of the ICCPR contains the most far-reaching binding protection for linguistic human rights for minority languages. It specifically declares that

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.

UNESCO has been instrumental in offering support to language communities of endangered languages, funding research projects and describing those languages. However, various declarations and documents initiated and developed by the United Nations do not always have the force of internationally ratified conventions, for example The Universal Declaration of Linguistic Rights (The Barcelona Declaration) World Conference, signed by the International PEN Club, and several non-government organisations in 1966. It remains a non-binding document.

## 5.2. Council of Europe

In Europe, human rights of the European citizens have been central in all activities of the Council of Europe founded in 1949. The Convention for the Protection of Human Rights and Fundamental Freedoms, better known as the European Convention on Human Rights, incorporates some rights of citizens to communicate in a language an individual understands, e.g. in court (Council of Europe, 1950). The Convention was the first instrument to give effect and binding force to certain rights stated in the Universal Declaration of Human Rights and established the European Court of Human Rights in Strasbourg. Article 14 of the Convention contains a prohibition of discrimination. This prohibition is broad in some ways, and narrow in others. It is broad in that it prohibits discrimination under a potentially unlimited number of grounds. The article specifically prohibits discrimination based on “sex, race, colour, language, religion, political and other opinion, national and social origin, association with a national minority, property, birth and other status”.

Protocol 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms (2000) developed further application of the Article 14 of the Convention. It applies the expansive and indefinite grounds of prohibited discrimination in Article 14 to the exercise of any legal right and to the actions (including the obligations) of public authorities. The Protocol entered into force on 1 April 2005 and has (as of July 2015) been ratified by 18 member states. Several member states – Bulgaria, Denmark, France, Lithuania, Malta, Monaco, Poland, Sweden, Switzerland, and the United Kingdom – have not signed the protocol.

The UK Government has declined to sign Protocol 12 on the grounds that they believe the wording of the Protocol is too wide and may result in a flood of new cases testing the extent of the new provision. They believe that the phrase “rights set forth by law” might include international conventions to which the UK is not a party and eventually would result in

incorporation of these instruments by stealth. While the UK is expecting the European Court of Human Rights to address the meaning of the provision, the Court finds it difficult to provide further explanations due to the lack of applications related to the Protocol caused by the decision of Europe's most populous countries not to ratify the Protocol. On top of the 18 member states which did not sign the Protocol, 19 states did not ratify it.

Another issue raised by the Council of Europe was the position of minority and endangered languages in Europe. Their concerns are raised in the European Charter for Regional or Minority Languages which grants recognition, protection, and promotion to regional and/or minority languages in European states, but specifically non-immigrant languages (Council of Europe, 1992). Once every two years, the Secretary General of the Council of Europe has to present to the Parliamentary Assembly a detailed report on the application of the Charter. This ensures that members of Europe's parliaments are kept informed about the application of the Charter and latest developments. This also, enables them to bring political pressure and encourage national governments to take appropriate measures.

The Council of Europe has also done a lot of work to promote the speaking of more than just home languages in European countries. This issue was addressed in the European Cultural Convention (1954) where Article 2 prescribes that each member state

“shall, insofar as may be possible:

- encourage the study by its own nationals of the languages, history and civilisation of the other Contracting Parties and grant facilities to those Parties to promote such studies in its territory; and
- endeavour to promote the study of its language or languages, history and civilisation in the territory of the other Contracting Parties and grant facilities to the nationals of those Parties to pursue such studies in its territory.

The Language Policy Unit in Strasbourg deals with intergovernmental programmes focusing on activities and tools to support policy decisions of the Council. They work closely with the European Centre for Modern Languages and the European Charter for Regional or Minority Languages. The Language Policy Unit funded the development of a policy document Linguistic Integration of Adult Migrants – Guide to policy development and implementation (2014) which confirms that the Council of Europe has been at the forefront in promoting the integration of migrants in all member states. It specifies a two-way process: migrants learning the language of the host country and the responsibility of the state to providing access to labour market and averting discrimination. The recommendations address the issues of quality of language training for immigrants and calls for careful consideration of the levels of competence required in order to ensure that these are appropriate, achievable and do not exclude migrants who would otherwise be eligible.

The European Centre for Modern Languages has engaged in research which looked at language training and effective use of the multilingual and multicultural resources in the workplace and migration and language training. The Centre has promoted learning foreign languages across Europe as a valuable resource to enhance employability and deliver success to companies employing multilingual workforce. The most recent project Language For Work: Developing Migrants' Language Competences at Work (2012-2015) explored

learning of the majority language by migrant and ethnic workers in the workplace and how to make the workplace a learning space.

### 5.3. European Union

The EU has developed and adopted the policy of multilingualism which has two major objectives: to protect Europe's rich linguistic diversity and promote language learning. Article 3 of the Treaty on European Union (The Maastricht Treaty) says the Union... shall respect its rich cultural and linguistic diversity, and shall ensure that Europe's cultural heritage is safeguarded and enhanced (European Union, 1992). Member states are not allowed to discriminate against citizens of other EU and EEA countries, simply on the basis of language, under the 'free movement of labour' provisions (European Union, 2011).

EU's human rights framework is defined by the EU Charter of Fundamental Rights, which was agreed in 2000 and later referred to in the Lisbon Treaty. Article 15 of the Charter specifically addresses the right to seek employment and work in any Member State, that they are entitled equal working conditions:

2. Every citizen of the Union has the freedom to seek employment, to work, to exercise the right of establishment and to provide services in any Member State.
3. Nationals of third countries who are authorised to work in the territories of the Member states are entitled to working conditions equivalent to those of citizens of the Union.

Article 21 of the Charter specifies that any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited. Article 22 goes further and confirms that the Union shall respect cultural, religious and linguistic diversity.

It should be noted that the United Kingdom did not "opt-out" but obtained the agreement of the other EU Member States to a further protocol to the Lisbon Treaty which restricts the interpretation of the Charter by the European Court of Justice and courts in England, Wales and Northern Ireland. There are provisions in the Charter which prevent it from applying to national law, i.e. all member states are only affected when they implement Union law and when they deal with non-EU matters the Charter has not legal application. However, some provisions of the Charter may become relevant as the EU develops its policy in the field of justice and home affairs.

There were some concerns in the UK that some principles in the Charter could have a negative impact on some areas of the British law and especially employment legislation, e.g. the right of workers to be consulted by their employers or the right to strike (Article 28), although the Article states that these rights are to be exercised "in accordance with national laws and practices". The main concerns were that the Charter might be used by the courts in delivering new interpretations of existing rights.

What areas of employment and social protection are affected by EU legislation? In the first instance, Member States are responsible for most social and employment legislation. Since

the 80s there has been an increase in the amount of legislation in this policy area, especially on the health and safety issues. This led to a number of legal challenges on the grounds that the proposed measures were not really about health and safety only but covered wider issues related to social policy. For example, the UK Government challenged the 1993 Working Time Directive arguing that it was not health and safety matter but a social policy measure which could have negative impact on employment relations in the UK. However, the European Court of Justice ruled that it was a matter of health and safety. The difference may seem obscure but it is still a live issue as the government tries to change the core working hours of doctors ( many of whom are migrants) to include evenings and weekends which the doctors argue is an infringement of their right to a family life.

The Employment Equality Framework Directive defines a general framework for equal treatment in employment and occupation. It aims to protect everyone in the EU from discrimination based on age, disability, sexual orientation and religion or belief in the workplace. Although language was not mentioned in the Directive, it specifies discrimination on the basis of racial and ethnic origin in the introduction. This principle was fully presented in the Council Directive 2000/43/EC which dealt with the implementation of the principle of equal treatment between persons irrespective of racial or ethnic origin.

#### 5.4. United Kingdom

There have been controls on immigration to the constituent parts of the UK for more than 800 years but the twentieth century, and particularly its last quarter and the 21<sup>st</sup> century have seen an acceleration in the number of Acts and their impact. Since 2008 where the UK has control of immigration it is broadly based on a Points system but this does not apply to migrants from within the EU or Asylum seekers.

Five threads can be discerned in migration policy and law in the UK relating to Individuals and groups thought to be:

1. Undesirable to be allowed to come, stay or be free including rules on internment, detention or deportation

The earliest legislation of this kind was in the thirteenth century expelling the Irish (1243) and the Jews in 1290. The Aliens Act of 1905 was directed against Jews trying to flee pogroms in Eastern Europe (Winder 2004). Contemporary legislation focuses on individuals. (European Migration Network, 2013)

2. Deserving because they have been persecuted or other reasons:
  - Asylum: the UK acknowledges the 1951 Convention. In fact the Aliens Act in 1905 prefigured the Convention by saying that people threatened with prosecution or punishment on political or religious grounds would not be refused entry (Quoted in Cooper, 2015). However it is now very rare for refugees to be granted Indefinite Leave to Remain.
  - Family reunification (Though suspicion of fake marriages can make this difficult) (European Migration Network, 2013)

3. Entitled because of Britain's colonial ties or past

A distinction has been made between the Old Commonwealth (Mostly, the predominantly White countries of Canada, Australia and New Zealand) and the New Commonwealth (The

former colonies mainly in the Caribbean, Africa and the Indian sub-continent). From the mid-1960s onwards the rights of New Commonwealth British subjects (Later Citizens) and post-independence citizens have been progressively more restricted. The patriality clause in immigration legislation from 1968 effectively conferred rights of entry on white citizens of the old commonwealth whilst preventing those without such ties from entering. Accusations of racism were vehemently denied, particularly by those in government.

#### 4. Desirable for economic reasons

Categories who can get fast-track entry include:

- Highly qualified workers
- Rich and High Earning individuals
- Intra-Corporate Transferees (Staff within companies)
- Working holidaymakers (Allowed where the UK has reciprocal relationships with the sending country)
- Students and researchers (Though the government is reducing the time students can stay in the UK after graduation is being shortened) (European Migration Network, 2013)

#### 5. Rights and responsibilities arising from EU membership

The UK does not participate in the Schengen agreement and the current debate in the UK on renegotiating the terms of its membership of the EU has focused on whether the 'free movement of labour' can be qualified in any way.

Specific laws and policies often mix the different threads up and alongside this have been measures to reduce discrimination against migrants or to promote 'integration'. The logic behind this was summed up in the so-called Hattersley Equation in 1966: 'Integration without control is impossible, but control without integration is indefensible' In 1999 he acknowledged his view was mistaken: 'If your immigration restrictions are too repressive you encourage bad race relations rather than encourage contentment and satisfaction, because you are saying, 'We can't afford any more of these people here', and the implication is that there is something undesirable about these people.' (Both quoted in Mouncer, 2009)

Legislation to mitigate disadvantages, discrimination and the worst abuses of migrant labour, and to promote integration has included:

- Section 11 of the 1966 Local Government Act made provision to meet the language needs of immigrant children. Such legislation implied that integration meant the assimilation or removal of differences and subsuming them into mainstream British culture. Other views lent more towards a goal of diversity and support for maintaining the richness of distinct cultural traditions.
- Various Race Relations Acts, notably that of 1976, offered some protection to migrants though couched in terms of discrimination and disadvantage on the grounds of membership of an ethnic minority group
- The Gangmasters Licensing Act of 2004 that required suppliers of labour to have a license. This covered agricultural and horticultural work and sought to offer protection to workers in these industries, many of whom were migrant but with limited resources for enforcement (Travis, 2014)
- The 2002 Immigration and Asylum Act and the Sexual offences Act 2003 outlawed trafficking. Between 2009 and 2011 there were only 51 successful prosecutions for trafficking (HM Government, 2012)

- The Coroners and Justice Act 2009 which made the forced enslavement and servitude of individuals a criminal offence. Hence alongside more punitive measures, there was a parallel human rights discourse and much of the official language was couched in terms of integration, though there was some debate as what integration, in practice, stood for.
- Knowledge of language and life in the UK through a Citizenship test (European Migration Network, 2013).

In October 2015, the Cabinet Office published a consultation on a draft Code of Practice relating to the requirement set out in the Immigration Bill 2015-16 that UK public sector workers who regularly speak to the public as part of their roles must be able to speak fluent English (or Welsh in Wales). It is intended to assist public authorities in meeting their obligations under Part 7 of the Immigration Bill 2015-16 and also to provide a higher quality service offering to the public. The proposed Code of Practice addresses important issues related to the use of English and Welsh, however the UK Project Team identified some inconsistencies and sent their assessment of the proposed legislation we sent it to UNISON with whom the UK IR Multiling team have been working closely on the project.

### 5.5. Case Law

The expansion of the EU and other developments in the world required new legal provision in the UK, which is based on a number of international treaties mentioned above, EU legislation and national legislative acts. It is important to note that legal systems in England, Wales and Northern Ireland are based on Case Law and therefore depend on decisions of adjudicatory tribunals that can be cited as precedent.

Basic rights related to employment in the UK are regulated by the Employment Rights Act 1996 and the Equality Act 2010. These Acts protect employees against discrimination on various grounds. One of them is race which includes colour, nationality and ethnic or national origins. Here we need to differentiate direct and indirect discrimination, the latter “can be harder to recognise” (Evans 2012) as it occurs when certain practices, policies or procedures adopted by the organisation have the effect of disadvantaging people who share protective characteristics. Evans (2012) provides examples of recent cases:

(1) *Dziedziak v Future Electronics Limited 2012*, the Employment Appeal Tribunal upheld a decision that it was an act of **direct** discrimination when the employer told Ms Dziedziak, who was Polish, not to “use her own language”. This was particularly problematic as while it is possible to defend a claim of indirect discrimination as being objectively justified (i.e. speaking Polish effectively discriminates against non Polish speakers), there is no such defence to claims of direct discrimination;

(2) Another recent employment tribunal case dealt with indirect race discrimination brought by a Portuguese national but was ultimately struck out at a pre-hearing review for having no reasonable prospects of success. In the case *P F Franco v Fyffes Group Limited*, Mr Franco claimed that some of the line supervisors conducted some of their discussions in Polish and this amounted to the application of a provision, criterion or practice (PCP) which put persons who shared the characteristic of not speaking Polish, including him, at a disadvantage.

The claimant, although not English himself was unhappy that all employees were not required to speak English the whole time.



The Judge had a different view and considered that Fyffes could objectively justify this PCP and found that,

*'.. to allow people who share a mother tongue to communicate in it is generally likely to lead to clearer communication and efficient management, and no sensible employer would try to suggest that two Polish workers should not speak in Polish between themselves. Of course it is quite different when someone who does not speak that language is also party to the conversation.'*

As the employer in this case could demonstrate that management reminded Polish speakers to consider the needs of those without the language when they were around, this was considered by the tribunal a proportionate modification of the PCP. As this was a packing/sorting type role in a factory, it did not require excellent English skills.

The above examples provided by Evans receive further explanation in the Statutory Code of Practice:

3.8

*When the protected characteristic is race, deliberately segregating a worker or group of workers from others of a different race automatically amounts to less favourable treatment. There is no need to identify a comparator, because racial segregation is always discriminatory. But it must be a deliberate act or policy rather than a situation that has occurred inadvertently.*

An example of segregation is provided in the explanatory notes when a company has a deliberate policy of separating staff because of race or language use:

*A British marketing company which employs predominantly British staff recruits Polish nationals and seats them in a separate room nicknamed 'Little Poland'. The company argues that they have an unofficial policy of seating the Polish staff separately from British staff so that they can speak amongst themselves in their native language without disturbing the staff who speak English.*

Language specific policy or approaches about the use of language(s) or multilingualism in a workplace are not always easy to implement and justify as proportionate unless there are specific compelling reasons or good business case, for example health and safety, other particular internal or external circumstances.

In 2012 a Tribunal found that it was not detrimental for a petrol station manager and some staff to hold conversations in Urdu and Punjabi even if it made another member of staff, who did not speak those languages, feel 'uncomfortable'. The Tribunal held that the way the conversations occurred did not amount to a detriment in his case. "They were not designed to exclude him or otherwise upset him and should not, in the circumstances, reasonably have that effect" (Pannone, 2012).

## 6. Trade Unions

### 6.1. Numbers (BIS, 2015)

6.4 million people in the UK were trade union members in 2014, 25% of all employees. 28% of women employees are union members compared with 22% of male employees. 14.2% of private and 54.3% of public sector employees are union members. Employees in professional occupations are more likely to be trade union members than other employees.

26% of UK born employees are in a trade union compared with 18% of non-UK born employees.

50% of the 'Public administration and defence' and 'education' sectors' employees are trade union members. 'Human Health and Social work' membership is 40%. 'Accommodation and food services' had the lowest at 3.5%.

	All employees	Male	Female
Accommodation and food service activities	3.5	3.5	3.5
Human health and social work activities	39.9	39.9	40.0

Source BIS, 2015

Wales and Northern Ireland have the highest densities of union membership (Around 35%) and London and the South East the lowest (just under 20%). In 2014, Northern Ireland had the highest proportion of employees covered by a collective agreement at 46%. Inner London had the lowest coverage at 18%.

The gender breakdown shows that across all ethnic groups women are more likely to be trade union members than men. Non-UK nationals and people born outside the UK are less likely to be union members as the following table shows.

	All employees	Male	Female
All employees	25	22.3	27.7
<b>Ethnicity</b>			
White	25.4	22.8	28
Mixed	22.1	17.7	26
Asian or Asian British	18.6	15.5	22.4
Black or Black British	29.5	23.9	33.5
Chinese or other ethnic group	17.9	16.6	19.3
<b>Nationality</b>			
UK, British	26.3	23.4	29.2
Other	12.4	11.7	13.1
<b>Country of Birth</b>			
UK	26.2	23.5	29.0
Other	17.7	15.0	20.5

Source BIS, 2015

## 6.2. Trade Unions and language issues

An example of a union taking up the issue of language restrictions at the workplace is Hobbycraft where Unite described management as 'overbearing' for insisting on employees in their Staffordshire distribution centre to speak English during working hours in the warehouse though they said that in within social areas all languages could be spoken (BBC, 2014). In 2011 the same union was involved on the same business park with a similar issue

at the distribution centre for the booksellers Waterstones run by Unipart (Burton Mail, 2011)

In 2007 it was reported that the GMB union had helped Polish workers at World Flowers (A flower importer) learn English (S.B, 2007).

On the other hand in 2014 it was reported that the GMB was uncomfortable with an advert by G4S company which said that a candidate who spoke English and Polish would be preferred for a cleaning supervisor to work at Harrogate Magistrates Court. A spokesman for the GMB union was reported as saying: 'GMB does not like stipulations like this that discriminate against workers. 'If there are practical communications difficulties in any workplace employers should offer the option of English language training support to existing and prospective employees.' It was also reported that the union was involved in a case in Northern Ireland in which a worker was allegedly not given an interview for a job on the grounds he could not speak Portuguese.

## 7. Conclusions

Whilst this report deals exclusively with the UK, it is one of six such reports that have been carried out elsewhere by project partners in France, Germany, Hungary, Italy, and Spain. Each report will serve as a basis for a series of case studies in each country. There are, therefore, a number of themes and issues arising from the UK desk research worth considering in terms of the selection of case studies in the UK and the development of analytical frameworks across the six countries.

- The first has to do with the categories migrant, immigrant, minority ethnic, refugee, all of which have specific meanings in the UK context and serve to underpin policy, whilst individuals may identify with one or more or none of these labels. The law has certainly helped shape this vocabulary but the meanings have inevitably shifted as they are adopted in different settings (e.g. academic, policy, media, community sector). Language adds a further complication to the mix, since language differences do not inherently coincide with any of the above categories and even within the same national/linguistic background there are significant differences, for example those whose families settled in the UK many generations ago and whose first language is English alongside their more recently arrived compatriots whose English may or may not be fluent.
- These conceptual issues are important to bear in mind in relationship to the use of statistical data on migration and language use. Overall, there is not an off the shelf data set that fits the precise requirements of the project, hence our reliance on diverse sources, including the census (collected at ten year intervals), passenger surveys (based on small samples) and National Insurance registrations (which exclude those working illegally, children and some older people), hence each with their own limitations.
- Both the above would present difficulties for the project if it even were exclusively UK based. However, the fact that we are seeking to develop comparative frameworks based on different ways of conceptualizing and collecting data presents additional difficulties which are important, both to acknowledge and mitigate where possible, but may well pose limitations on any conclusions drawn.
- In 2014, 1 in 8 of UK residents were born abroad with India and Poland largest migrant communities.
- Migrants are concentrated in the health, hotel, manufacturing and restaurant sectors of the UK economy. In some cases in very high proportions, for example 95% cleaners on London's underground and two thirds of care assistants are of migrant background.

- In 2012 the top five languages amongst school pupils were Panjabi, Urdu, Bengali, Polish and Somali.
- Trade Union representation in sectors with relatively high numbers of migrant workers varies so that there is 40% membership in human health and social work but only 3.5% in accommodation and food services. Industrial relations will therefore vary across the spectrum of sectors and industries where there are concentrations of linguistically diverse workforces.
- The role of trade unions in supporting language training and facilitating other languages in workplace has been patchy
- The EU has developed policies to promote linguistic diversity and promote language learning and the Lisbon Treaty supports free movement and equal rights at work across member states.
- UK Governments have a long history of restricting the entry of would-be migrants and when called to explain their actions do so in terms of a threat to national identity and , in the case of refugees, the idea that many asylum claims are bogus and that the primary motive is economic. Those campaigning for a BREXIT fear a loss of sovereignty over migration, employment rights, language policies all administered via a cumbersome and over regulatory Brussels bureaucracy. However, alongside such legislation and views, and testimony to some degree of ambivalence at the very least, is a history of legislation seeking to outlaw discrimination, defend human rights, protect employees and support diversity (though many would regard policies on community cohesion as the most recent manifestation of a longstanding commitment to assimilation).
- There are a number of implications of this review for the selection of UK case studies. Given the demographic data and industrial distribution, we should seek to include examples from both the private and public sectors in workplaces where unions are both strong and those where they are poorly represented. This will then provide diverse industrial relations frameworks, a range of workplaces and a diversity of languages spoken. As far as possible this will take account of data on migrant numbers and language use. It will also be useful to capture variation in management policy and practices around language training support etc. and to consider those conditions more or less favourable to positive developments. Whilst we could choose to look at languages at senior occupational levels we have opted to look at three sectors; cleaning, food processing and health care at the middle or lower occupation levels where workers experience higher levels of exploitation and insecurity.

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