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in migrant labour markets:
An analysis of migrants, employers
and the state in the UK**

Martin Ruhs and Bridget Anderson

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The origins and functions of illegality in migrant labour markets: An analysis of migrants, employers and the state in the UK¹

This paper explores the nature and determinants of illegality in migrant labour markets. It conceptualises the various “spaces of (il)legality” in the employment of migrants, and explores the perceptions and functions of these spaces from the points of view of migrants, employers and the state. Our theoretical approach goes beyond the notion that illegality is “produced” by the state, and recognises the agency that some migrants and employers have vis-à-vis the state’s migration frameworks. Drawing on quantitative and qualitative interviews with East European migrants and employers in the UK, and analysis of the UK government’s policies, rhetoric and enforcement, we find that migrants, employers and the state all recognise the distinctions between different types of illegality, and their differentiated impacts. In particular, semi-compliance – which we define as the employment of migrants who are legally resident but working in violation of the employment restrictions attached to their immigration status – is a distinct and contested space of (il)legality that serves important functions. It allows employers and migrants to maximize economic benefits from employment while minimizing the threat of state sanctions for violations of immigration law. Semi-compliance exists, and is likely to persist, because it constitutes an equilibrium which, we show, serves the interests of migrants and employers and in practice is difficult for the state to control. We expect these findings for the UK to be of relevance to many other high income countries that, like the UK, consider migrants both as an important source of flexible labour and yet as subjects of immigration control whose employment needs to be closely controlled.

Keywords: Illegality, Labour Markets, Migration, Semi-Compliance, UK

Authors:

Martin Ruhs, Senior Researcher, COMPAS –
martin.ruhs@compas.ox.ac.uk

Bridget Anderson, Senior Researcher and Programme Head, COMPAS –
Bridget.anderson@compas.ox.ac.uk

¹ This paper draws on data collected in a major research project *Changing status, Changing lives? The socio-economic impact of EU Enlargement on low-wage migrant workers in the UK* (see www.compas.ox.ac.uk/changingstatus). The four principal investigators in *Changing Status, Changing Lives?* are Bridget Anderson, Martin Ruhs, Ben Rogaly and Sarah Spencer. The project was funded by the Joseph Rowntree Foundation (JRF) and the Economic and Social Research Council (ESRC). We thank Ben Rogaly and Sarah Spencer for their permission to use the data for this paper. This paper is a revised and extended version of the paper: ‘Semi-compliance in the migrant labour market’, first published in 2006.

I Introduction

Few migration issues generate more controversy and public debate in high income countries than those arising from what is typically called “illegal” or “irregular” migration. Consequently, there is now a vast policy literature on the subject. As DeGenova (2002) and others have pointed out, the general approach of this literature has been to cast “illegal migration” as a “problem” that can be “solved”, or at least significantly reduced, through public policies. The taxonomy of the states’ potential policy responses to illegal migration typically includes: increased border control; more effective employer sanctions; regularization exercises; guest worker programmes; return agreements with migrants’ countries of origin; and policies that promote economic development in order to reduce emigration pressures in migrant sending regions (see, for example, Ghosh 1998; Koser 2005).

The framing of illegal migration as a problem, and the subsequent focus on policy-oriented research with minimal development of concepts and theories, has been long lamented as a major obstacle to advancing a more comprehensive analysis of “illegality” in the migration and employment of migrants (see, for example, Black 2003; Portes 1978; Sciortino 2004). Although still relatively small in number, there have in recent years been a growing number of studies that approach and analyse illegality as a “phenomenon” rather than as a problem, exploring its nature, origins, processes, perceptions, experiences and impacts rather than straightforwardly searching for “solutions”. This paper aims to contribute to this emerging literature with a theoretical and empirical analysis of illegality in the context of the UK’s migrant labour market.

More specifically, the purpose of this paper is to conceptualise the various “spaces of illegality” in the employment of migrants in the UK, and to explore the perceptions and functions of these spaces from the points of view of migrants, employers and the state.

We go beyond the notion that illegality is “produced” by the state by explicitly recognizing the agency that migrants and employers have vis-à-vis the state’s migration frameworks. This leads us to explore to what extent, when and how illegality may become a strategic choice for some migrants and their employers. By considering the perceptions and actions of migrants and employers, as well as state policies, rhetoric and enforcement, the paper aims to contribute to a better understanding of why certain types of illegality persist in the UK’s migrant labour market.

Our empirical analysis draws on data obtained from a total of 573 survey interviews and 93 separate in-depth interviews with East European workers and au pairs in the UK; and from 39 in-depth interviews with employers and host families. The interviews were carried out in two waves, just before and 6-8 months after EU enlargement on 1st May 2004. All of the migrants who

participated in this study were already working in the UK before EU enlargement. The sample had very particular characteristics: they were predominantly young, without dependants, with fluent or adequate English and white. A third were from Bulgaria and the Ukraine, both of which remained outside the European Union during the period of our study.² The other two thirds of our sample of migrants were nationals of the so-called “A8” countries that joined the European Union in May 2004.³ For them, EU enlargement meant a change in legal status in the UK (as they became EU nationals). For those A8 workers residing in the UK illegally, 1st May 2004 was effectively an amnesty. EU enlargement thus provided an ideal opportunity for us to study the role of illegality in the employment of East European migrants in the UK.

The paper begins, in *section 2*, with a theoretical discussion of why and how illegality may constitute for some migrants and employers a form of strategic engagement with the state’s legal migration frameworks. We also explore the complexities and potential determinants of state policies on illegality in the migrant labour market. This is followed by a discussion, in *section 3*, of illegality in the context of the UK’s Managed Migration policies since the early 2000s. We introduce the concept of “semi-compliance”, which refers to the employment of migrants who are legally resident but working in breach of the employment restrictions attached to their immigration status. Using survey data, we argue that semi-compliance is a potentially important but much under-researched space of (il)legality in the UK’s migrant labour market. *Section 4* then uses our data from in-depth interviews with migrants and employers, as well as analysis of recent government policy documents and the available enforcement data, to explore the perceptions, experiences and functions of the various spaces of illegality (including semi-compliance) from the perspective of employers, migrants, and the state.

2 Theorising illegality in the migrant labour market

Although the formal authority and capacity of nation states to regulate immigration is disputed (see, for example, Joppke 1999; Sassen 1999; and Zolberg 2000), states create the legal frameworks that determine whether immigration (entry), residence and the employment of migrants falls within or outside the law. In other words, although their control over the number and characteristics of migrants may be incomplete, states define the boundaries of the “spaces of

² Bulgaria joined the European Union in January 2007.

³ The ten countries joined the EU in May 2004 include the “A8” countries – the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia and Slovenia – plus Cyprus and Malta.

(il)legality” (compare Guild 2004) within their territories.⁴ These boundaries are frequently disputed and the spaces of (il)legality in both immigration and employment can be extremely varied and intricate even when considered separately. When the two fields are brought together, as they are in the case of the employment of migrant workers, they become particularly complex and varied. Illegality in the migrant labour market may involve various combinations of illegal residence and/or illegal employment (for typologies of illegality in immigration, see Ghosh 1998; Tapinos 1999).

In practice, the legality of the employment of a migrant critically depends on the migrant’s immigration status. Immigration status indicates the absence, presence and conditions of legal residence including any associated employment restrictions. Immigration status is a key factor determining rights and responsibilities in the immigration state, including employment rights and social rights such as access to the social welfare system. Most high-income countries are characterized by a multitude of different immigration statuses, each associated with different employment restrictions, and economic and social rights. In the UK, there are significant differences between the employment restrictions and rights of, for example, au-pairs, working holiday-makers, work permit holders, students and illegally resident migrants.

Immigration statuses, and the associated spaces of (il)legality in the migrant labour market, are not a natural set of categories but are created by the state. Individuals are not inherently “work permit holders”, “student visa holders” or “illegal”. Illegality is in this broad sense “produced” by the state (Black 2003; DeGenova 2002; Samers 2004). The state may change the legal status of an individual or group over time. This could be done, for example, by creating new immigration statuses or by moving people within existing statuses, as was the case when the EU enlarged in May 2004 or, more generally, under any regularization of illegally resident migrants. The state has the formal power to create and change the immigration status of migrants on its territory.

A migrant’s immigration status and legality of employment may also change because of the migrant’s and/or their employer’s actions or inactions. Examples include migrants who obtain citizenship, persons who switch from one type of visa to another or who work for more hours than legally allowed by their immigration status. Employers may offer employment to a migrant without the permission to work, or require work which breaches the employment restrictions associated with the migrant’s immigration status. Migrants and employers can thus be, at least to a

⁴ There is also a relation between supranational bodies and states which may limit states’ freedom to define these boundaries.

certain degree, active agents vis-à-vis the state's laws and policies on migration and their actions and interactions affect legal status.

The analysis of illegality in the migrant labour market must, therefore, go beyond the idea that illegality is produced by the state, an argument that can limit the analytical focus to the evolution and impacts of the state's laws and policies. Although analysis of the state is key, a comprehensive conceptual approach to the study of illegality in the migrant labour market needs to acknowledge and theorise the degrees, motivations and processes of migrants' and employers' engagement with the state's laws and policies on the employment of migrant workers. This includes analysis of the decisions and choices that migrants and employers may make when confronted with the legal migration frameworks created by the state. These decisions may be based on significant differences between what Schuck (2000) calls the "law on the books" (i.e. the law as formally enacted), the "law in action" (i.e. the law as implemented) and the "law in their minds" (i.e. the law as perceived by different groups and actors in society including migrants and employers).

It is important to emphasise that including migrants' and employers' motivations and actions in the discussion does not mean that illegality is simply the outcome of choices of migrants and/or their employers. Indeed the term "choice" vastly oversimplifies the highly complex relation between structure and agency which has given rise to a considerable body of literature (Archer 2000; Emirbayer and Mische 1998; Goddard 2000). We in no way underestimate the powers of the state, clearly manifest in enforced removal, nor the highly constrained circumstances of particular groups of non-citizens. However, the degree of migrants' and employers' agency vis-à-vis immigration laws is an important issue for empirical analysis. It varies across persons and depends on, for example, individuals' characteristics and personal circumstances, as well as on place and time. Debates on "illegality" in the employment of migrants have tended to be framed in terms of the constraints on individuals' actions. We wish to focus on those who, for a variety of reasons, including anticipated change of legal status, might have greater possibilities to engage with immigration laws than is generally acknowledged in discussions of illegality.

The remainder of this section introduces, at a theoretical level, some of the key considerations that are likely to determine whether and why certain migrants and employers engage in employment relationships that fall outside the spaces of legality created by the state. We also outline some of the main challenges of "getting inside the state" to explore its views and policies on illegality. The theoretical discussion below frames our approach to the subsequent empirical analysis.

2.1 Migrants

Public debates on illegality in migrant labour markets are often based on two contradictory stereotypes of migrants, the vulnerable victim or the manipulative abuser. Both are homogenizing and neither are adequate models for understanding migrants' interactions with immigration control. The vulnerable victim model underplays the possibility that for some migrants illegality may be the best alternative from a very limited set of options available to improve their lives. It cannot simply be assumed, for example, that illegal employment abroad will automatically result in a degree of exploitation that is any more extreme than that which would have occurred had the migrant remained at home. The stereotype of migrant as abuser of the host country's migration policies in contrast assumes a high degree of knowledge and agency on the part of the migrant, and does not account for the wider social, political and economic constraints that may be operating, such as the pressures of debt incurred through the migratory process. In practice, existing research shows that the impacts and experiences of illegality for migrants can be very varied (for a review, see, for example, Schonwalder et al 2004).

To explore when and under what circumstances illegality becomes part of a "strategy" and "choice" for migrants, it is useful to distinguish between three types of objectives that migrants may be concerned with: (i) *security of residence* in the host country⁵; (ii) *economic improvement*; and (iii) *social integration*, i.e. the extent to which migrants are able to achieve a quality of life that is comparable to that of citizens of the host country including participation in "public life". Policies can create inverse relationships ("trade offs") between these objectives for some non-citizens. For example, migrants who are residing and working illegally may gain economic benefits from their employment but at the cost of a potentially significant insecurity of residence and social exclusion; while migrants intending a short term stay abroad may be much more concerned with maximising economic benefits from employment abroad than with social integration.

In practice, different migrants will attach different weights to security of residence, economic improvement and social integration in the host country. The notion that some migrants make choices about how to trade off competing objectives is useful in framing the empirical analysis but at the same time, it is important to emphasise its limitations in cases where migrants are extremely constrained. Although all migrants will seek a minimum degree of security of residence, deportation may have very different implications for an Australian working holiday-maker visa holder than for a Congolese asylum seeker. Indeed failed asylum seekers may have few

⁵ De Genova (2002) points out that it is "deportability" rather than illegal status per se that can make migrants vulnerable.

options other than to work illegally in order to survive, even if they are desperate not to be returned to their country of origin. Such cases can hardly be described as “choosing” economic improvement over security of residence. Thus the degree to which migrants may choose to “trade off” one objective against another depends on broader economic and social contexts, as well as on personal characteristics and aspirations.

2.2 Employers

Profit-maximising employers can be expected to base their decisions about whether and how to employ migrant workers illegally on three business and recruitment objectives: (i) *minimizing labour costs*; (ii) *recruiting “good workers”* with the personal qualities and attitude that best fit the employers’ needs; and (iii) *minimizing immigration costs*, i.e. the economic and other costs arising both from state sanctions on illegal actions and from complying with bureaucratic requirements of the legal employment of migrants.

Where the legal employment of migrants is restricted, recruiting migrants illegally will increase labour supply and therefore put downward pressure on wages, at least in the short term. Employers may also use illegally employed migrants to lower costs through non-compliance with employment and tax laws, such as non-payment of minimum wage, savings on health and safety, and through non-payment of tax and national insurance contributions.

Illegality may also impact on employment relations. For example, some illegally resident migrants may be perceived as displaying a better “work ethic” and be willing to accept worse employment conditions than citizens or migrants who are legally employed. However, it is also possible that illegality reduces the suitability of migrant workers from the employers’ point of view because, for example, illegally employed migrants may be more difficult to retain than migrants legally employed on work permits that “tie” the worker to the employer. Although it is clear that illegality can impact on employment relations and on employers’ behaviour, it is important to keep an open mind about the nature and direction of the impact in practice.

A third important consideration in employers’ decision about whether to employ migrants outside the spaces of legality created by the state is the balance between the cost of employing legally and the potential cost arising from state sanctions of employers who violate immigration laws. In practice, the latter will depend on the probability of detection (a function of state enforcement) and the actual level of sanctions such as fines, imprisonment, the possibility of being barred from participating in legal labour immigration programmes (if they exist) etc. As with

migrants, however, perceptions of such costs may vary across different employers, some of whom may be more or less willing to take risks than others.

It is important to emphasise that, to choose to illegally employ migrant labour to help maximise profits, employers need to *know* both the conditions governing particular immigration statuses, and the immigration status of the migrants they employ. Both these assumptions, but particularly the latter, need not always apply in practice. Employers may, for example, not detect an illegally resident migrant who is using forged identity documents.

2.3 The State

What determines how states define the space of (il)legality in migrant labour markets, and what influences the level and type of enforcement measures against illegality in practice? The complex internal dynamics of the state bureaucracy and the political economy of immigration control make these questions a major challenge for empirical analysis (see, for example, Calavita 1992). The state is not a monolithic entity whose decisions are always rational in the sense that they result in policies that maximise a clear set of objectives in a transparent manner. In practice, the “state” comprises various state institutions including different government departments with varying responsibilities, interests and capacities in the making and implementation of public policies. Decisions on where the boundaries between legal and illegal should be drawn, and the extent to which they should be enforced, can thus be significantly influenced by negotiations, power struggles, and compromises made within the state bureaucracy. As a consequence, policies may be vague or internally contradictory and there can be significant gaps between policy design and implementation. For example, in the US context, Schuck (2000, p. 192) argues that “power over day-to-day immigration decisions runs bottom up instead of top down”, with front-line enforcement officers playing the key role in deciding how to implement what are often ambiguous policies.

At the same time, how the state defines and acts on illegality is obviously influenced by politics and economics. A naïve approach to the analysis would suggest that states aim to eliminate or, at a minimum, significantly reduce illegality in order to “uphold the law and integrity of the system”. In practice, the design and/or implementation of policies on illegality in the migrant labour market are likely to be affected by a variety of political and economic factors such as: public opinion on “illegal immigration” and the perceived level of public tolerance of varying degrees of surveillance of residents for the purpose of immigration control; lobbying by special interest groups including employers and trades unions (Freeman 1995); the constraints on domestic policy-

making imposed by the judiciary and, in some countries, international human rights frameworks (Jacobsen 1996); the actual costs of enforcing immigration and employment law; and, perhaps most importantly, the perceived net economic and social benefits from reducing illegality in the migrant labour market. The variety of impacts of illegality and potential policy objectives makes it difficult to predict, from a theoretical perspective, whether, when, and how the state will implement enforcement measures against illegality in the employment of migrants.

In the empirical analysis, state policies are thus best discussed as *outcomes* of intricate and often diffuse processes that occur across fragmented parts of state bureaucracy, and that are influenced by a range of political and economic factors. Thus the question of whether the presence of illegality in the migrant labour market is an intended or unintended consequence of the process of policy design and implementation is difficult to answer and may risk oversimplification. At a minimum, it needs to be recognised that the presence or absence of “policy intent” in such a complex process is an empirical question that cannot be deduced from the existence of illegality alone (see Heyman and Smart 1999).

3 Illegality in the UK’s migrant labour market

This section explores the prevalence and types of illegality in the UK’s migrant labour market. The discussion is set in the context of the government’s “Managed Migration” policies since the late 1990s and the effects of EU enlargement in 2004. While we do not discuss the labour market context it is important to bear in mind the weakness of UK labour market regulations and the lack of a structure of labour inspection (Ryan 2006) that impacts on the employment of both migrants and non-migrants.

3.1 Context: Managed Migration and EU enlargement

The UK government’s “Managed Migration” policies are based on the idea that, if managed properly, immigration can generate significant economic benefits for the UK (Home Office 2002). The Managed Migration policy regime has contributed to a significant rise in legal labour immigration and a proliferation of pieces of immigration legislation and regulations. In 2006 there were some 80 different routes of entry for non-EEA nationals⁶ to the UK, each governed by specific rules and regulations.

⁶ The European Economic Area (EEA) includes the EU plus Norway, Iceland and Liechtenstein.

Before EU enlargement in May 2004, the UK's migration policies were generally relatively liberal toward the immigration and employment of skilled and highly skilled workers but relatively restrictive with regard to the employment of migrants in low-waged jobs. Given the small scale of legal labour immigration programmes for the latter (limited by a total annual quota of less than 30,000), many employers filled their low-skilled vacancies by hiring migrants on a wide range of non-employment visas that allowed full or part-time employment (e.g. spouses, students, who can work 20 hours per week in term time, working holidaymaker visas, au pairs, migrants on training and work experience visas etc). A significant number of employers also employed migrants who were residing illegally in the UK. In 2001, the number of illegal residents in the UK was estimated to fall in the range of 310,000 – 570,000 (Woodbridge 2005). Most illegally resident migrants are thought to be working in low-wage jobs in agriculture and food processing, construction, the care sector, cleaning and in hospitality (Institute for Public Policy Research 2006, Dench 2006). As discussed later, illegal employment of migrants constituted little risk to employers as the enforcement of immigration and employment laws against employers was relatively weak.

EU enlargement in May 2004 provided an opportunity to address the apparent gap between employer demand for workers for low-skilled jobs, and the available channels for legal labour immigration. Along with Ireland and Sweden, Britain was in a minority among the member states of the pre-enlarged EU (EU15) to grant workers from the A8 countries immediate free access to the labour market. Since 1st May 2004 the new EU nationals have been free to migrate and take up employment in the UK without requiring work permits. For all those A8 workers residing in the UK illegally, 1st May 2004 was, in effect, an amnesty. Official statistics suggest that about 580,000 workers registered to take up employment in the UK during May 2004-December 2006, of whom about 100,000 were resident in the UK before enlargement⁷. Most of the A8 workers who registered are Polish (62 percent), male (58 percent), young (82 percent aged between 18-34) and without dependents in the UK (93 percent). They are employed across all occupations but most are working in relatively low-waged jobs (see Home Office 2007a).

The government now expects employers to meet all of their low-skilled vacancies with workers from within the enlarged EU. This expectation is reflected in the proposal for a new points-based system for managing migration in the UK, which aims to strictly limit low-skilled immigration from outside the EEA (Home Office 2006a).

⁷ These figures exclude East European migrants who are self-employed as they are excluded from the registration requirement.

3.2 Data and methods

Our empirical analysis of illegality in the UK's migrant labour market draws on data obtained from 573 survey interviews and 93 separate in-depth interviews with workers and au pairs (immediately before and 6-8 months after EU Enlargement); and from 39 in-depth interviews with employers and host families (before and after EU enlargement).⁸ Migrant respondents⁹ were from six different countries (four A8 states: Poland, Lithuania, Czech Republic and Slovakia; and two non-accession countries, Bulgaria and the Ukraine) and working in low-wage occupations in one of the following sectors in April 2004: hospitality, agriculture, construction or as au pairs. The majority of migrants and employers in our study were working in London as of April 2004. Most were young (27 years old on average), and single. As of April 2004, respondents had spent an average of 17 months in the UK. Just under half of migrant respondents were women.

Both survey and in-depth interviews with workers and au-pairs were conducted face to face and in the migrant's first language. Wave 2 (6-8 months after EU enlargement) comprised of two sets of participants: re-interviews of those who had been interviewed in Wave 1 (April 2004), and new respondents/ interviewees whom we could ask retrospective questions about their experiences both before and after EU enlargement. Of the 333 survey respondents in wave 1, 109 could be re-interviewed in wave 2. Of the 51 in-depth interviewees in wave 1, 20 were re-interviewed in wave 2. The numbers of retrospective survey and in-depth interviews taking place in wave 2 were 243 and 42, respectively.

Most of the people in our sample were purposely selected rather than randomly chosen. Access to migrants was facilitated through gatekeepers – such as churches or community organizations – and personal contacts of interviewers. Access to employers was obtained through employer organizations, through agencies, through informal contacts and, for survey purposes, through Work Permits UK. This means that the samples are not representative of the wider populations of migrants and employers under consideration. Despite this important caveat, the data provide a very rich source of information about the various types and functions of illegality in the UK's migrant labour market.

⁸ For a detailed discussion of the methods and participants of *Changing status, Changing lives?*, see Ruhs, Anderson, Rogaly and Spencer (2006).

⁹ For ease of reference we use the term "respondents" to refer to migrants and employers who answered survey questionnaires. "Interviewees" refer to migrants and employers who participated in semi-structured, in-depth interviews.

3.3 Semi-compliance

Because of the complexity of UK's immigration policies, there are a potentially large number of migrants who could be compliant with certain aspects of the law, but not with others. In particular, because of the complex web of rules and conditions attached to the various immigration statuses, there are a potentially significant number of migrants who could be legally resident (i.e. with "leave to remain in the UK") but working outside the employment restrictions attached to their immigration status. To account for this contested space of (il)legality, we introduce the notion of "semi-compliance".

We identify and distinguish between three levels of compliance. *Compliant* migrants are legally resident and working in full compliance with the employment restrictions attached to their immigration status. *Non-compliant* migrants are those without the rights to reside in the host country (i.e. those "illegally resident"). *Semi-compliance* indicates a situation where a migrant is legally resident but working in violation of some or all of the employment restrictions attached to the migrant's immigration status.

In contrast to the strictly defined situations of "compliance" and "non-compliance", the category of semi-compliance is extremely broad and could capture a wide range of violations – with varying degrees of severity – of the conditions of employment attached to a migrant's immigration status. Consider the case of four full-time students all of whom have the right to reside in the UK and are legally allowed to work 20 hours a week in term time, and full time in the holidays. They are working 20, 21, 25 and 40 hours per week, respectively. Based on our definition of compliance, we would describe the first student as compliant and the other three as semi-compliant. Clearly, there is a substantial difference – in terms of the degree to which the employment restrictions attached to immigration status are violated – between a student who works 21 hours per week and a student who works 40 hours per week. The discussion of where and how the line should be drawn between semi-compliance and non-compliance – or indeed between compliance and semi-compliance – is highly politicised or one often resting on a personal judgment. Different actors may draw the line in different places, an example of how illegality is "socially constructed" (Engbersen and Van der Leun 2001).

Our use of the term "compliance" does not necessarily reflect the meaning and usage of this term in law or other disciplines. We use "compliance", "semi-compliance" and "non-compliance" to denote three different types of situations pertaining to a migrant's immigration status that we think are important – and are frequently overlooked – both in theory and practice.

We aim to nuance the discussion about illegality in the employment of migrants, without creating a multiplicity of further categories and distinctions.

Table I shows survey respondents' self-reported immigration status and our evaluation of respondents' level of "compliance" in April 2004, i.e. just before EU enlargement. The figures in Table I come with a number of caveats. Asking migrants about their immigration status posed a number of challenges. The most fundamental problem was that, despite assurances of complete anonymity, respondents residing and/or working illegally could be expected to be reluctant to disclose information about their immigration circumstances. In order to address this issue, we carefully formulated and sequenced the relevant questions in order to encourage "matter of fact" answers rather than trying to induce, for example, blunt admissions of illegality. Interviewers were instructed to remain impassive and, if necessary, carefully prompt the various possible answers, none of which were intended to sound "better" or "more appropriate" than others. The aim was to establish as accurate a picture as possible about respondents' immigration circumstances by asking a set of questions whose answers could be checked for internal 'consistency'. The response rates to our survey questions about immigration were very high as very few respondents refused to answer the questions. This, arguably, suggests that our approach has worked reasonably well.

A second fundamental problem stems from the complexity of the various rules and conditions attached to immigration status. A significant amount of information – and, in some cases, more information than was possible to collect in our interviews – is required to assess whether a migrant complies with all these regulations or not. Given these challenges, it is important to emphasise that our empirical discussion of the concept of compliance using the survey data comes with a strong health warning about potential misclassifications. Compliance levels are a reflection of our best assessments based on the interview data rather than the result of a comprehensive evaluation of respondents' position. Whenever we were unable to make a decision, we assigned the category "compliance unknown". This included many migrants who reported their immigration status as dependant, asylum seeker; or who did not provide any information at all when asked about their immigration status.

Table I Respondents' imputed compliance by self-reported immigration status in April 2004

	Total	Compliance in April 2004				
		compliant	semi-compliant	non-compliant	compliance unknown	
Immigration status in April 2004	Self-employed	129		39	90	
	Au pair	100	20	66	6	
	Student	91	22	67	2	
	Visa expired	89			89	
	SAWS permit ¹⁰	49	43		6	
	Don't know	46			12	
	Other	37			8	
	Dependant	17				
	SBS permit ¹¹	9	5		4	
	Asylum seeker	5				
	Illegal	2			2	
	No answer	2				
	Total	576	90	172	129	185

Source: Survey interviews with migrants, April 2004 and 6-8 months later

Of the 576 migrants interviewed, at least 129 (22 percent) were non-compliant (i.e. without valid leave to remain in the UK) in April 2004. This included 91 respondents who described their immigration status as either “visa expired” or “illegal”; and another 38 respondents who we classified as non-compliant because the interview data clearly suggested that they had either overstayed their visas or that their reported immigration status was simply impossible (e.g. respondents suggesting that they had entered and been working in the UK on an Sector-based Scheme (SBS) permits since before May 2003, when the SBS scheme was introduced).

More than two-thirds of (self-reported) au pairs and students, and one-third of respondents who described their immigration status as self-employed, were semi-compliant (i.e. with leave to remain in the UK but working in breach of employment restrictions attached to their immigration status¹²). The semi-compliance of students and au pairs was primarily due to working for more than the legally allowed number of hours. Most respondents who did so, worked *significantly* more hours than allowed. Almost three-quarters of the 91 students interviewed reported to be working for more than 30 hours a week, often in multiple jobs. More than half of the 100 au pairs interviewed said that they worked for more than 30 hours a week. Fifteen au

¹⁰ The Seasonal Agriculture Worker Scheme (SAWS) is a guest worker programmes for employing non-EU nationals in agriculture on a short term basis (max 6 months).

¹¹ The Sector-based Scheme (SBS) is a guest worker programme for employing non-EEA migrants in selected low-skilled jobs in the hospitality sector and food processing sector (max. 1 year).

¹² Importantly, for the purposes of this paper we do not consider the payment of national insurance as affecting compliance. Nevertheless it should be noted that, given that a condition of legal residence is that migrants are subject to the laws of the host state, it might be argued that those who are not paying tax for instance or in receipt of benefit or services to which they are not entitled are in effect breaching this condition of residence and might therefore be deemed not fully compliant. Thus our notion of semi-compliance is restricted to *employment*.

pairs also said that they were working outside the sector, i.e. outside private households. One-third of the respondents with a self-reported immigration status of “self-employed” were semi-compliant because they described their employment status/relation as “employee” rather than as “self-employed”.

The relatively high incidence of non-compliance and semi-compliance among our sample of migrant respondents is not surprising, given that before EU enlargement the opportunities for legal employment of migrants in low-waged jobs were extremely limited. The complexity of the UK’s immigration system further suggests that the phenomenon of semi-compliance in the employment of migrants is unlikely to be confined to our non-randomly selected sample of survey respondents but to be more widely prevalent.

4 Perceptions and functions of illegality

The remainder of the paper uses qualitative interview data to explore: how illegality is perceived by migrants, employers and the state; what functions illegality serves; when and how migrants and employers engage in employment relations that fall outside the space of legality; and how the state responds to it in practice. We are particularly interested in analysing whether the perceptions, experiences and potential functions of illegality, and the state’s enforcement measures, differ across different types of illegality. Does the semi-compliance distinction matter? In what ways do migrants and employers view themselves as victims of this categorisation and how and why are such categories possible to manipulate? How does the state view and react to semi-compliance and non-compliance in the migrant labour market?

4.1 Migrants

As described in section 3, most of the migrants interviewed in this study were young, without dependents and white. Most were in the UK to work, learn English and/or have a “new experience”. These characteristics and motivations are likely to affect migrants’ perceptions and experiences of risks associated with illegality. Crucially, because the majority of migrants interviewed in April 2004 were from the “A8 countries” that joined the EU in May 2004, they had the expectation of becoming EU citizens with easier access to the labour market and some social protection. This is likely to be a factor in understanding why a small number of A8 nationals professed themselves completely unconcerned with immigration status. Clearly, when interviewed

in April 2004, the space for A8 nationals to take strategic decisions about their immigration status was greater than the space for the comparison group of Ukrainians and Bulgarians who could not anticipate any state facilitation of change in status in the short term. One Polish man for instance was working on a visitors' visa and considered the possibility of switching to a self employed visa, but decided to work in breach of these conditions until EU Enlargement rather than pay the lawyer's costs and visa fees attendant on such an arrangement. Contrast this with a Ukrainian interviewee's assessment of his legal status:

"I do not know sometimes you try to look into the future and you see something, but sometimes you see only darkness. I do not know what will be tomorrow or a day after tomorrow."

Ukrainian male construction worker, aged 25

Moreover, as interviewees pointed out, there are differences in the extent to which individuals can tolerate "illegality" which are partly to do with personal assessments and implications of risk, but also with more complicated feelings:

"I could have lied, maybe to buy other passport like others do it now, but I can not lie like this."

Ukrainian male construction worker, aged 28

Some migrants clearly felt less deportable than others. In particular certain types of (non employment) visa were perceived as less risky to work on, that is, the negative correlation between security of residence and economic improvement was perceived as smaller for some statuses than for others. More specifically, the degree to which achieving economic objectives was perceived as risking security of residence was affected by the *particularities* of immigration status. Migrants differentiated between "types" of illegality, and perceived there to be more subtle differences of degree than are captured by a sharp legal/illegal dichotomy. Working on false/fraudulent documents or on a visitor's visa, illegal entry and overstaying were generally perceived to be unambiguously "illegal", including by those who were in this situation. However beyond this, the picture becomes more complicated. While "law on the books" deems migrants who breach these conditions as deportable, when it comes to migrants the "law in their minds" (i.e. migrants' perceptions of the law) clearly is more flexible.

Many of the migrants we interviewed actively engaged with immigration laws in order to reach a situation where they could both work and maximise security of status. Although for most access to work was an overriding objective, active attempts were made to move to less risky

immigration statuses, to be in a position which migrants interpreted as *bending* rather than breaking the immigration rules. Some people actively engaged with immigration frameworks from the start: they did not “want” to be an au pair or student, and chose that mode of entry, but they selected an au pair or student visa as the most desirable of possible *visa* (rather than employment or life) options, typically because certain visas enabled relatively easy entry to the UK, and some restricted form of working. Au pair visas for instance were often considered an easy way of entering the UK, and while some went on to spend time as au pairs, others never had any intention of doing this. As noted above, a significant proportion of those on student visas were working hours considerably in excess of those permitted by their immigration status and in depth interviews indicate that some migrants seemed to be using student visas effectively as a means of working legally rather than coming specifically to study.

Engagement with the immigration system does not have to stop on entry. Switching status while in the UK, which is possible for certain nationalities, was common among our sample. With the exception of Ukrainians, all of the nationalities studied could move from visitors to self-employed visas. Thirty nine percent of the survey respondents on self-employed visas in April 2004 had switched to self-employed status after initially entering the UK on visitors’ visas. Some in-depth interviewees described themselves as entering on visitors’ visas with the intention of applying for a visa as self-employed once in the UK. Most seem to view this as in effect a relatively easy means of “self-legalisation”, a means of securing legal residence and working legally, rather than a distinctive career choice. These are not necessarily people who would, all things being equal, “choose” to be self employed. Moreover, a worker with self-employed immigration status is not necessarily in a self-employed contractual relation at work. 30 percent of all respondents reporting to be on self-employed visas in April 2004 described their employment status in their primary job as “employee”, suggesting semi-compliance. Thus while it might be argued that some interviewees selected certain types of visa because they facilitated “semi-compliance” as they never intended to keep to the conditions of entry, more typical was a process of “slipping into” semi-compliance. If one is not committed to being a student, self-employed, or an au pair in the first place, but is simply concerned with ease of entry and legal residence, then breaking the rules attached to these forms of immigration status arguably becomes more likely.

This slippage also suggests that certain groups felt relatively secure in their balancing of residence and employment choices¹³. A Czech au pair who took on additional cleaning work

¹³ This does not mean that their employment is effectively unrestricted by immigration status of course. While an au pair might be able to take on work in a local restaurant she is unlikely to be applying for employment as a directly employed secretary.

described this as “slightly illegal but tolerated”, while a Polish waitress working 47 hours a week described herself as “employed legally – maybe for a little bit more than the law on students’ employment allows”. Indeed many interviewees working in the hospitality sector did not express any concern about working on student visas, even when they were working full time.

Most of the migrants interviewed did not perceive illegality in employment as directly leading to labour market outcomes worse than those of legally employed migrants. Two people suggested that lack of enforceability of contracts meant that settlements about non-payment for example had to get made “in your own way”, and there was some suggestions that illegal residency meant that migrants could only go to particular agencies or had more limited job options. This does not mean that interviewees did not feel exploited, but rather that this was not simply felt to be a function of “illegal” immigration status. Having work experience, education, English language skills and “get up and go” were perceived as important in combating the difficulties of being a migrant, of whatever status, in the UK labour market. These perceptions are confirmed by analysis of the determinants of survey respondents’ earnings before and after EU enlargement, which finds that illegal status is not among the primary factors explaining this group of migrants’ outcomes in the labour market (Ruhs 2007).

Similarly, most migrants we interviewed did not perceive illegality as leading to an unacceptably low level of social integration. It was their economic priorities, long hours and low pay, rather than concern with security of residence that was perceived to have a significant impact on this aspect of their lives. It was not unusual for interviewees to express frustration about the people they met through work – the philosophy graduate who complained about the “low intellect” of other builders; the waitress who felt her job was unambitious, her customers unappreciative – but this was primarily to do with the labour market sector they worked in rather than their legal status.

4.2 Employers

Knowingly employing “illegal” workers is a criminal offence in the UK. Employers are under a legal obligation to check the documentation of all job applicants to ensure that they are legally permitted to work in the UK. Thus those who wish to employ migrants legally must ascertain their immigration status. Having kept a record of such a check serves as a statutory defence, meaning that employers will not then be convicted of employing a migrant without permission to work.

Employers' knowledge about a migrant's immigration status is key to appreciating the relation between immigration status and employer demand for labour, as is the specific immigration status that the worker has. However assessing knowledge is not straightforward, and there are multiple ways in which some employers may "choose not to know":

"They come with their letter and their student visa in their passport and their letter of acceptance for their course. And you think 'I've never heard of that university'... they're just an excuse to give people letters... so fine, let's give them two or three days' work. Make use."

Hospitality employer

Construction employers described using the Construction Industry Scheme (CIS) registration card when checking migrants' documentation. Possession of a CIS card does not serve as proof that the migrant has the *legal* as opposed to *taxation* status of self-employed. Neither does it prove that he or she has that *immigration status*. Several of the construction employers who were interviewed nevertheless used the CIS card as proof that a person has a right to work under immigration laws:

"They have all the relevant paperwork. How they get it, I do not know. You ask them for the CIS tax card, they have all those tax cards. From my point of view, as long as they have got one of those tax cards, it is not a problem."

Construction employer

Employers often presented themselves as having to work within an unnecessarily stringent and burdensome immigration law that caused trouble for them and for migrants. Like migrants employers and host families typically seemed to feel that they were bending rather than breaking the law. They not only bend the rules by claiming ignorance, but also by omitting to uncover relevant information. Semi-compliance appears to play an important role in this strategy. Employers can satisfy themselves that they are not employing illegal residents, but they do not feel they have to go further and check migrants' compliance with the conditions attached to the migrant's immigration status. Semi-compliance might be likened to the status of "good enough" as far as employers are concerned. Several of our employer interviewees expressed reluctance at checking documents at all – because of time, complexity and a sense that "it is not really our job". Migrants also suggest that there can be certain employers who "turn a blind eye".

Engaging in employment relationships that could be classified as semi-compliance is not the only way employers have of negotiating legal status. Those who are concerned about the possibility of employer sanctions sometimes prefer to use labour provided by employment

businesses¹⁴ rather than directly employ migrants themselves, as it is the employment business in this case that must take responsibility for checking workers' documentation. Several interviewees in both the agricultural/food processing and hospitality sectors were clear that this was a distinct advantage, and even a motivating factor in using workers provided by employment businesses. They would claim that certain segments of work tend to be dominated by people with no permission to work, but that they do not themselves directly employ such workers.

Of course labour demands differ over time and between employers: sometimes employers/labour users require workers that they know are going to be there for a set period of time, others are looking for highly flexible labour that can be hired by the hour or by the day. Semi-compliance as well as agency labour can be useful for "managing illegality" under the latter circumstance. This hospitality employer for example, found that student visa holders could be prevailed upon:

"There's times when you do twist it a bit... will you work an extra couple of hours, you know, nudge, nudge and so on"
Hospitality employer

How legal status, semi-compliance and illegality shape workers so that they are regarded by employers as more or less suitable for the job in hand depends very much on the characteristics of the job and on the restrictions placed on visas for particular sectors. The most reliable way for an employer to be assured of a migrant's status is to facilitate their entry – on a work permit for example, or as a seasonal agricultural worker. This method of ensuring legal status typically ties an employer into certain types of employment relation which can be advantageous to the employer. Indeed for certain types of labour requirement such a relationship can be positively welcomed by the employer – if they are concerned with retention for example, a migrant who is restricted to a particular employer or type of employment can become a worker with a very good "work ethic", a catch all term employers frequently use to explain their preference for migrants over British workers. In other words, immigration controls do not just enable the employer to recruit additional labour, but forge conditions which ensure that migrants are "good workers" (see Anderson 2007; Matthews and Ruhs 2007).

¹⁴ In the UK employment businesses employ workers directly and then hire out their labour to "labour users". In contrast, employment agencies place people who are then in the employ of someone other than the employment agency (this includes the placement of self-employed people).

4.3 The State

Combating illegality in migration and the employment of migrants has been an integral component of the Government's Managed Migration policy agenda, or at least of the policy rhetoric associated with it (see, for example, Home Office 2007b). It appears that the emphasis on "preventing abuse" is deemed necessary to politically sustain a labour migration system that has facilitated a rapid increase in the number of economic migrants coming to the UK. In almost all of the government papers and policy documents on "illegal immigration" in recent years (see, for example, Home Office 1998, 2002, 2004, 2005a, 2006b, 2007b, 2007c), illegal immigrants are depicted, in a somewhat contradictory fashion, as both criminals who "abuse" and "take unfair advantage" of the UK's migration system, and as "victims" of the global labour market who are "ruthlessly exploited" by unscrupulous employers. If taken at face value, this approach suggests an alignment of the enforcement of immigration controls with the protection of workers' rights. In practice, the government's emphasis on labour market de-regulation resulted in a policy focus on enforcing immigration laws rather than protecting workers' rights in the labour market (see Ryan 2006).

The definition of illegality in the UK's current immigration and employment laws makes no distinction between non-compliance and semi-compliance. If a migrant violates conditions of entry or conditions attached to a legal immigration status, they can be removed and the employer can be fined under Section 8 of the Asylum and Immigration Act 1996¹⁵. 'Section 8' makes it a criminal offence to employ an individual over the age of 16 who does not have the entitlement to be in the UK or whose status precludes them from undertaking the employment in question. In other words, current law and regulations do not recognize the "shades of grey" identified in this paper in the employment of migrants; according to the "law on the books" no one breach of immigration and employment laws is worse than another.

However, the government's recent policy announcements and discussion papers suggest that the government's operative understanding of illegality in the migrant labour market is more nuanced. There has been a clear evolution of how illegality is perceived by the state, and especially of what types of illegality are considered more problematic than others (e.g. illegally employed asylum seekers in *Secure Borders, Safe Haven* published in 2002; and migrants abusing the student visa route to illegally access the UK labour market in *Confident Communities in a Secure Britain* published in July 2004). The shifting emphasis on enforcement against different types of illegality is, in part, a reflection of and response to the "politics of the day". It also suggests that the

¹⁵ As amended by section 147 of the Nationality, Immigration and Asylum Act 2002

government's understanding of illegality is becoming more refined. In particular, *Enforcing the Rules* (Home Office 2007b) explicitly recognizes the wide range of violations of immigration laws including various types of offences which could be classified as semi-compliance.¹⁶ Given the complexity and range of offences, *Enforcing the Rules* suggests that enforcement of immigration laws will focus on types of illegality that cause the most "harm", where harm is defined to include "all the potential negative consequences of illegal migration" (Home Office 2007b, p.10). The document then specifies a list of examples of harm, starting from most to least serious (see Table 2).

Table2: Ranking of types of harm in *Enforcing the Rules*

Increasing seriousness of harm ->	<ul style="list-style-type: none"> • Threats to national security, such as involvement in terrorism • Committing serious or violent crimes • Organised crime such as human trafficking into forced labour and involvement in drug trafficking • Knowingly employing illegal workers where it combines abuse of individuals, tax evasion, undermining the minimum wage and fair competition • Fraudulent access to benefits • Reduced community cohesion • Health tourism • Undermining public confidence in the immigration system • Creating a "systemic pull" for more illegal migrants to follow
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Source: Home Office, 2007b, p. 11

Although the notion of "harm" suggests a cost only, the government's discussion of the level of harm caused by different types of illegality, contained in *Enforcing the Rules*, makes clear that policy thinking on illegality in the migrant labour market is significantly influenced by its perceived costs and benefits to the UK. For example, overstayers are considered harmful, but less so if they come from relatively rich countries (p. 10) - because migrants from poor countries are thought to have a greater propensity to remain in the UK and to claim asylum. The perceived low level of harm associated with overstayers from high-income countries may also be influenced by the fact that the largest number of "over-stayers" is likely to come from the US which provides the largest number of visitors to the UK.

Semi-compliance, except where it involves significant breaches of employment restrictions attached to immigration status, is also considered to entail relatively low harm. For example, although "bogus" educational institutions and migrants on student visas with no intention of

¹⁶ "Illegal migration is a collective term for many forms of abuse of the immigration rule. It may be entering the country illegally or by breaking the immigration rules in the UK – by working full time having been allowed in to study, or by failing to leave at the end of their stay." (Home Office 2007b, p.8)

studying at all are deemed to generate significant harm, students who are studying but working for more hours than legally allowed – and even those overstaying their student visas – are considered less harmful. “A legitimate student may overstay their visa or spend a higher proportion of their time working than the rules permit, where the harm chiefly lies in undermining the integrity of the system” (Home Office 2007b, p.13). Students are known to make a significant contribution to employment in the UK, especially in the hospitality sector (Matthews and Ruhs 2007).

Although policy thinking “on paper” has clearly moved on from simple dichotomies of legal/illegal, a lack of detailed enforcement data makes it difficult to assess how the government reacts to illegality in the migrant labour market in practice. Given that there are an estimated half a million illegally resident migrants in the UK (Woodbridge 2005), the available data could be interpreted to suggest a still relatively low but increasing level of enforcement activity over the past few years, but mainly against migrants rather than their employers (compare Ryan 2006). The total numbers of removals increased considerably over the last ten years (but so has immigration), from about 27,000 in 1996 to 58,000 in 2006.¹⁷ The total number of persons proceeded against for offences under immigration acts also increased from an annual average of less than 500 in the late 1990s to over 1,000 per year since 2004. However, enforcement against employers who employ migrants illegally has been very low. Between 2001-2006, only 50 employers were proceeded against for illegally employing migrants, of whom 28 were found guilty (Home Office 2007d, 2006c). More than half of all convictions in 2004-05 resulted in fines of less than £700, with four employers fined the maximum of £5,000 (Home Office 2005b).

The data available do not tell us what types of illegality, e.g. semi-compliance or non-compliance, the enforcement actions have targeted. However, the cumulative evidence based on immigration laws, policy announcements as well as available enforcement data suggests that there is a recognition of various types of illegality, and its differentiated impacts, but that enforcement focuses on non-compliance rather than semi-compliance. This is supported by our interviews with East European migrants, employers and host families which suggest that for this group of migrants employment relations characterised by semi-compliance incite less fear of removal and sanctions than those involving non-compliance.¹⁸

Unless there is a complete disconnect between current policy thinking and implementation in practice, our analysis suggests at least some degree of policy intent behind both the relatively low level of enforcement against employers and the prioritization of non-compliance over semi-

¹⁷ In 2006, 34,825 persons were removed “at ports”, and 22,840 individuals were removed from within the UK (Home Office 2007d).

¹⁸ It is possible that the views and experiences of other non-EU migrants and their employers differ. See, for example, Jordan and Duvell (2002) whose analysis of irregular migration in the UK includes migrants from Turkey and Brazil.

compliance. It could be argued that semi-compliance provides a cheap pool of labour that facilitates the “flexibility” of the labour market while appearing to be “legal” and sometimes with a fairly low level of access to benefits. What the public thinks – and the extent to which it *knows* – about semi-compliance is less clear. Furthermore, enforcement measures against semi-compliance may require what may be perceived as heavy-handed monitoring of individuals, and not only of migrants. As such, enforcement against semi-compliance may not always be popular with non-migrants, especially when it affects the private homes of citizens (as it would in the case of enforcement against semi-compliant *au pairs* for instance).

Nevertheless, one cannot simply conclude that the existence of illegality in the UK’s migrant labour market is simply a reflection of the state’s toleration of it. The degree to which varying levels of enforcement against different types of illegality is an outcome of “policy intent” is an empirical question. It can only be addressed through in-depth research of the internal dynamics of the various government departments responsible for immigration matters, and of the political economy considerations that shape the making and implementation of policies on illegality in the migrant labour market. The complexity of the current immigration rules – arguably an at least partly unintended consequence of policy-making in recent years – has certainly created space and scope for individual enforcement officers to exercise significant levels of discretion in their work. This may have led to some unintended policy outcomes. It also seems clear that enforcing the law against migrants and employers that engage in employment relations that are characterized by semi-compliance is much more difficult – and more resource intensive – than those that involve non-compliance. The complexity of the immigration rules, and the generic confusion in employment relations in certain sectors suggest that enforcement measures against semi-compliance could create prohibitively high costs.

5 Conclusion

To better understand illegality in migrant labour markets in high-income countries, it is necessary to explore its various types, consequences and functions for employers, migrants and the state. This requires an analytical approach that goes beyond the legal/illegal dichotomy that is still common in most policy debates on migration, and that recognises the various objectives, the complex bureaucratic processes, and the external factors influencing policy-making and enforcement. It also necessitates theoretical and empirical analysis of the degree of agency that migrants and employers exert *vis-à-vis* the state’s legal migration frameworks and, more

specifically, when and how illegality may become a strategic choice for some migrants and employers.

Our empirical analysis has identified semi-compliance – defined as the employment of migrants who are legally resident but working in violation of the employment restrictions attached to their immigration status – as an important but much under-researched space of illegality in the UK’s migrant labour market. Semi-compliance is a contested space of (il)legality that allows migrants and employers to develop strategies for “managing” (il)legality to, for example, reduce the threats of removal (migrants) and financial sanctions (employers and migrants), while at the same time maximizing economic benefits from employment. We have also shown that the government recognizes, at least in recent policy documents, that there are different types of illegality with differentiated impacts in the migrant labour market. In practice however the enforcement of immigration laws appears to focus on non-compliance rather than semi-compliance, at least for the group of East European migrants studied in this paper. The UK government’s enforcement strategies against illegality are clearly influenced by its perceived economic costs and benefits. However, the complexity of the process of making and implementing the UK’s immigration laws and the costs of enforcement, suggest that the presence of semi-compliance cannot simply or solely be explained by pointing to the state’s “toleration” of illegality.

Semi-compliance exists and is likely to persist because it constitutes an equilibrium which serves the interests of migrants and employers and is in practice difficult for the state to control. Semi-compliance also gives the state considerable room for maneuver in prioritising enforcement based on the perceived *net* benefits of illegality, where the evaluation of costs and benefits includes economic impacts as well as political considerations that can be influenced by public opinion. At least to some degree, semi-compliance is a structural feature of the economy in the UK and, in all likelihood, in other high income countries: it is a logical result of the tension between migrants who are, on the one hand, welcomed as sources of labour for a flexible labour market and, on the other hand, treated as subjects of immigration control whose employment the Government wishes to closely monitor.

To avoid making homogenizing statements about illegality, it is important to ask whether and to what extent our conclusions are generalisable for other groups of migrants in the UK and elsewhere. As emphasised at various points in the paper, the migrants we interviewed were young, white, without dependents, and two thirds of them knew that they would soon become EU nationals. Although most of our interviewees had entered the UK before they could have known that they would be given free access to the UK labour market post Enlargement, these characteristics undoubtedly influenced the degree of agency we identified in their behaviour when

we interviewed them in April 2004. However, there may well be other groups – such as some of the Ukrainians and Bulgarians interviewed in this study – who find themselves in similar situations. There is a spectrum of agency with different migrants groups and individuals located at different points at different times. Exploring the agency of different groups, and their dynamic engagements with the state's legal migration frameworks, should, in our view, constitute one of the main areas of future research on illegality in the migrant labour markets in high-income countries.

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