

# **Points based system and salary thresholds**

**TUC response to Migration Advisory  
Committee (MAC) consultation**

**November 2019**

## Introduction

*The Trades Union Congress (TUC) exists to make the working world a better place for everyone. Working people joining together can change things. For more than 150 years, unions have fought for safer workplaces and wages you can build a life on. And today we're needed more than ever to make sure every job is a decent job and everyone at work is treated with respect. We bring together more than 5.5 million working people who make up our 48 member unions. We support unions to grow and thrive, and we stand up for everyone who works for a living. Every day, we campaign for more and better jobs, and a more equal, more prosperous country.*

The TUC welcomes the Migration Advisory Committee (MAC) call for evidence on salary thresholds and points-based systems.<sup>1</sup>

The TUC stands for workers from all countries. Migrant workers in our trade unions have helped improve conditions for all workers throughout our history. Migrant workers play a vital role in our economy, society and communities, help to keep our public services running and work in key roles in industry.

Neither the MAC's consultation document or the Home Office have provided information on what an 'Australian-style' points-based system might consist of in a UK post-Brexit context. Home Office officials have confirmed to the TUC that the government is still using

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<sup>1</sup> MAC (2019) 'Salary thresholds and points based system consultation', , available at:

<https://www.gov.uk/government/consultations/salary-threshold-and-points-based-system-pbs-commission-call-for-evidence>

the Immigration white paper published in December as the basis for its post-Brexit immigration plans.

Taking both the points-based system and white paper proposals together suggests the government intends to end free movement and introduce an immigration system where the government, rather than employers, assesses migrant workers on the basis of certain characteristics (as is the case in the Australian points based system), with a particular emphasis on skilled workers. The white paper states the government will allow an uncapped number of skilled worker visas but only permit a limited number of 12 month visas to jobs in low-skill occupations.

**The TUC does not believe the government should introduce any new points-based system for immigration or extend salary thresholds to EU workers.** As outlined in our report 'Building solidarity, stopping undercutting'<sup>2</sup>, the TUC is calling for the government to maintain free movement rights, provide a guaranteed right to remain for all EU citizens in the UK and enhance labour market protections and sectoral bargaining structures to guard against exploitation. This must be accompanied by major investment in skills, public services and an active industrial strategy so that everyone has the public services they need and the opportunity to get a decent job.

In our response to the MAC's consultation, we will provide answers to the consultation questions we are best placed to answer. The TUC supports the submissions of our affiliated unions to this consultation.

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<sup>2</sup> TUC (2019) 'Building solidarity, stopping undercutting', available at: <https://www.tuc.org.uk/research-analysis/reports/building-solidarity-stopping-undercutting>

## Current Tier 2 visa system

### 1. Please provide any views of Tier 2 (General) visa settlement

The TUC has overarching concerns about the indentured nature of the employment relationship for non-EU workers currently on Tier 2 visas. If a worker with a Tier 2 visa loses their job they only have a short time to find another job before they lose their legal status in the country. This disincentivises workers on Tier 2 visas from resisting poor treatment at work.

#### **Labour market shortages**

Trade unions have raised concerns to the MAC in the past that the Tier 2 system has not enabled labour market shortages to be filled effectively. In particular, unions believe there are shortages of a range of occupations not currently on the Shortage Occupation List such as school teachers, school leaders, paramedics, nuclear waste inspectors, seafarers and linesworkers. While it is important for recruitment from other countries to be possible to fill immediate vacancies, addressing these shortages in the long term will also require improving pay and conditions in jobs facing shortages. There is also a need for employers and government to significantly increase investment in skills, including the government providing bursaries for nurses and other health professionals.

#### **£35,000 threshold**

Trade unions have also expressed concern that in the current immigration system workers who do not earn £35,000 after five

years are not be able to apply for permanent residency. A significant number of public sector workers will not reach this level, leaving them at risk of losing their immigration status and more vulnerable to poor treatment by employers who know workers will be unlikely to leave their job if their visa is likely to expire.

### **Intracompany transfers**

Unions are concerned that multinational companies are currently using the Tier 2 Intra-Company Transfer (ICT) route to undercut resident workers. Employers have used this route heavily, particularly in the IT and telecommunications sector. This has meant that a significant number of workers are being brought into the country to work in sectors where there is not a demonstrable skills shortage and paid less than the collectively agreed rate.

The TUC believes that the intra-company transfer (ICT) route should be limited to occupations where there are genuine shortages in the resident labour market.

## **Points Based Systems**

The TUC does not believe the government should introduce any new points-based system for EU citizens after Brexit as this will increase risks of undercutting and staff shortages in the public sector, as well as undermining the prospects of the UK getting the Brexit outcome workers need.

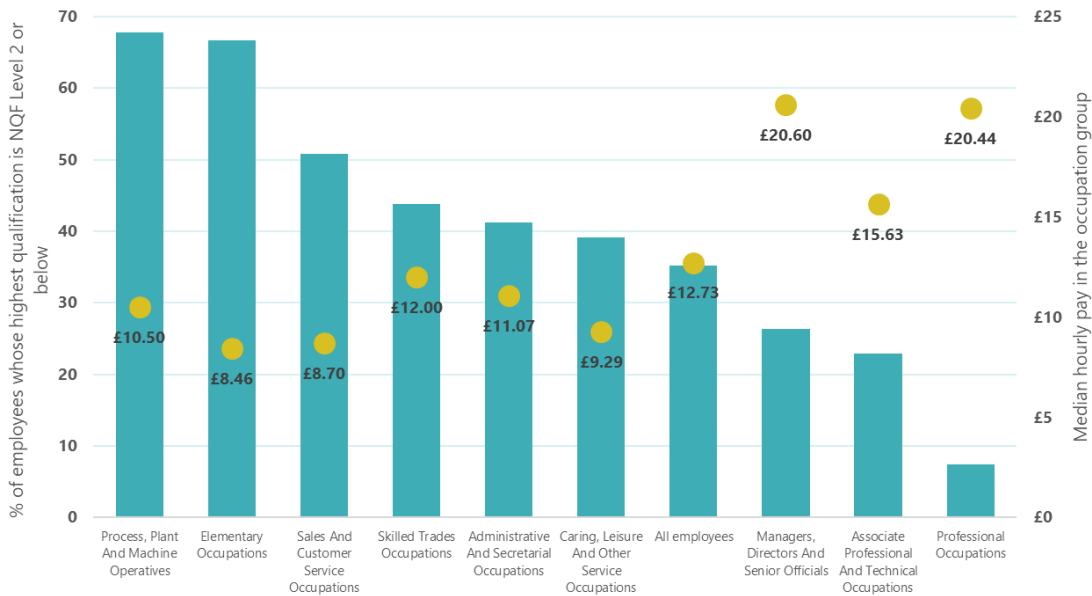
### *Increasing exploitation*

The TUC is concerned that the government's proposals in the immigration white paper to introduce time limited visas for EU

workers, particularly the proposed 12 month work visas for low skilled workers, will increase exploitation and undercutting.

EU workers on the 12 month low skill visa are likely to be employed in low paid jobs where they will be vulnerable to exploitation due to low trade union coverage. Table 1 shows that in sectors where the majority of jobs are classified as 'low skill' – process operatives, elementary occupations such as cleaning, agricultural work and sales/customer services - the median hourly pay is low. This is due to low union density and weak coverage of collective bargaining in these sectors.

**Table 1: Average pay and density of NQF Level 2-or-below employees, by occupation group (excluding apprentices)<sup>3</sup>**



If a worker stayed longer than 12 months on the new low-skill visa they would become undocumented and unable to claim rights at work. This is due to the fact that the Immigration Act (2016) made

<sup>3</sup> Labour Force Survey (2018, average of the four quarters); Annual Survey of Household Earnings (2018), available at: [.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/datasets/occupation4digitsoc2010ashtable14](https://ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/datasets/occupation4digitsoc2010ashtable14)

undocumented work a criminal offence. This means workers face a potential prison sentence if they report abuse to the authorities.

Bad employers are already using immigration rules to prevent undocumented workers from outside the EU claiming their rights. This was illustrated in 2016 when Byron Burgers called immigration officials to investigate workers who were attempting to build a union campaign for a living wage as they knew some of the workers in the campaign had uncertain immigration status. This resulted in immigration officials questioning and arresting key activists in the campaign, some of whom were subsequently deported. This was a blow to the campaign to increase wages for all workers.

Trade unions in Australia have documented that temporary visas in their points-based system have encouraged exploitation, particularly for workers on the Working Holiday visa. Holders of this visa can work in any job but cannot be employed on any job for more than six months. The ACTU union centre has highlighted cases of workers on Working Holiday visas in the agricultural and hospitality sectors being underpaid, housed in substandard accommodation and kept in debt bondage.<sup>4</sup> Evidence from the Australian Fair Work Ombudsman, meanwhile, revealed that in 2016 that 28 per cent of workers on the working holiday visa did not receive payment for work undertaken and 35 per cent stated they were paid less than the minimum wage.<sup>5</sup>

Past experiences with restrictive visas systems in the UK have also shown that workers on such visas often can't leave abusive employers without losing their legal status in the country. Between

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<sup>4</sup> ACTU (2016) 'Submission to working holiday visa review', available at: <http://www.agriculture.gov.au/SiteCollectionDocuments/ag-food/working-holiday/submissions/australian-council-of-trade-unions.pdf>

<sup>5</sup> ACTU (2018) 'Permanent vs. Temporary Migration', available at: [www.actu.org.au/media/1033807/a4\\_ctr\\_migration\\_briefing.pdf](http://www.actu.org.au/media/1033807/a4_ctr_migration_briefing.pdf)

2004 and 2013 the government ran a Seasonal Agricultural Workers (SAWs) scheme which issued work visas to workers from central and eastern Europe that were limited to jobs in agriculture. There were strict restrictions on the visa which made it almost impossible in practice for workers to change employer. This meant that employers were able to force workers on the SAWs scheme to accept abusive conditions and lower terms and conditions than other workers. Those who left abusive employers to find new work lost their status in the country which left them open to further exploitation.

### *Increasing discrimination*

The government's plans to extend visa requirements to EU citizens would increase the number of document checks taking place across society. This risks significantly increasing discrimination against BME groups. We know that BME groups have been disproportionately targeted in the document checks for banking, health services, employment and housing that were introduced or expanded by the Immigration Acts 2014 and 2016. These acts were introduced as part of the intention Theresa May declared, while still home secretary in 2012, to create a "really hostile" environment through immigration policies.<sup>7</sup> Recently the High Court ruled that the document checks required for landlords by the Immigration Act 2014 were discriminatory and breached human rights laws, as evidence showed BME groups had been disproportionately targeted.<sup>8</sup>

The document checks introduced by the Immigration Acts, combined with the Home Office's failure to keep accurate records of immigration status, has led to many cases of BME workers losing their jobs and being denied health care and housing as exposed in the 'Windrush' scandal that broke in the media in 2018. The additional document checks required by the government's new immigration regime would mean BME groups were put at further risk of losing access to vital services and their jobs.

The TUC has also raised concerns that the document checks rolled out by the Immigration Acts of 2014 and 2016 have led to workers in



health, housing, education and banking being told by employers to check people's documents ahead of providing them with care or a service. In the case of health workers, such demands undermine their ability to fulfil human rights obligations to provide care to those in need. The TUC is concerned that further requirements for document checks through the governments new immigration proposals would only increase the pressure on workers to be border guards, rather than providers of vital services.

### *Increasing public sector shortages*

The TUC is concerned that restricting the number of visas available for low skill jobs will increase shortages in key public sector roles where workers are not required to have level NQF Level 3 or above qualifications. The TUC echoes the concern raised by UNISON to this consultation that the care sector will be particularly badly impacted. They highlight that vacancy rates in the care sector now stand at 8 per cent, up from 6.6 per cent in 2017, equating to 110,000 jobs. To address these shortages in the medium and long term, unions are calling for low pay and poor conditions to be addressed. The government must ensure funding is available to enable social care to improve their pay offer. There is predicted to be a shortfall in funding in social care of £3.5 billion by 2025 although the sector is already consuming 40 per cent of local authority budgets.<sup>6</sup>

However, in the immediate term, it is also important the government ensures that workers can continue to be recruited from other EU countries to fill vacancies in the care sector. Given that a third of

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<sup>6</sup> NIESR (2018) 'Brexit and the Health and Social Care workforce', <https://www.nhsemployers.org/-/media/Employers/Documents/Cavendish-Coalition/NIESR-Report-Brexit-Health-and-Social-Care-Workforce.pdf?la=en&hash=5A65C9F729C9CED9E55FA42E9B9A1D92F4441EF0>

jobs in the care sector currently do not require qualifications higher than NVQ 2,<sup>7</sup> it is clear that restricting visas for supposedly 'low skill' roles will cause vacancy rates to increase. This will further undermine the care services that are vital to the most vulnerable and frail in our society.

### *Undermining a good Brexit outcome*

Ending free movement and introducing a points based immigration system and salary thresholds for EU workers goes against single market rules. The TUC believes that membership of the single market and a customs union with the EU must be part of any Brexit outcome to ensure there will be barrier free trade, on which millions of jobs depend, and that UK workers continue to be protected by EU levels of rights. Being part of the single market and a customs union is also the only way to prevent a hard border between the Republic of Ireland and Northern Ireland and uphold the Good Friday agreement. This is essential to preserve peace. Thus, if the government were to introduce these proposals for post-Brexit immigration which would prevent the UK continuing to be a member of the single market, the UK would not be able to secure a Brexit outcome that met the TUC's tests to protect rights and jobs.<sup>8</sup>

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<sup>7</sup> IPPR (2018) 'Fair care: a workforce strategy', available at: <https://www.ippr.org/files/2018-11/fair-care-a-workforce-strategy-november18.pdf>

<sup>8</sup> TUC (2019) General Council statement on Brexit, available at: <https://www.tuc.org.uk/news/tuc-general-council-statement-brexit-no-no-deal-future-fit-working-people>

## Salary thresholds

2. To what extent would the organisations you have engaged with agree or disagree with the following statements: (strongly agree, agree, neither agree nor disagree, disagree, strongly disagree)
- There should not be a minimum salary threshold above the legal requirement (the national minimum wage) *Strongly agree*

The TUC does not believe salary thresholds should be extended to EU workers. Unions have expressed concern that if the salary threshold requirement for non-EU workers - £30,000 for all workers except new entrants that must earn at least £20,800 – were extended to EU workers will it harder to recruit workers for public sector roles such as scientific researchers, nurses and teachers. For example, the current starting salary for a newly qualified teacher (outside London) is £24,373 per annum.

The TUC believes that in the medium and long term the government must increase pay for public sector to fill positions facing shortages, as discussed above.

Extending salary thresholds to EU workers to jobs is also not an effective tool to prevent undercutting. As the TUC has demonstrated in our evidence to the MAC on EEA migration<sup>9</sup>, undercutting takes place in sectors where there is low coverage of collective agreements, a prevalence of workers on temporary

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<sup>9</sup> TUC (2017) 'Submission to MAC consultation on EEA migration', available at:

<https://www.tuc.org.uk/sites/default/files/TUC%20submission%20to%20MAC%20EEA%20consultation%20final%20formatted.pdf>

contracts who can be used to undercut those on permanent contracts and weak enforcement of employment rights. Properly addressing undercutting and exploitation requires stronger workers' rights and enforce these rights through more resources and powers to enforcement agencies. There must also be an extension of collective agreements across more workplaces and sectors to ensure a decent floor level of pay and conditions. In countries such as Sweden where collective agreements have been extended to cover sectors that employ significant numbers of migrant workers, such as agriculture, there has been far less exploitation and undercutting.<sup>10</sup> The TUC has detailed these proposals in our report 'Building solidarity, stopping undercutting'.<sup>11</sup>

The TUC welcomed that the MAC recommended increasing union coverage and ensuring stronger enforcement of employment rights to prevent undercutting in its 2013 report 'Migrants in low skill work'.

The TUC also believes there should be no extension of salary thresholds to EU workers as this would be a violation of single market rules, undermining the UK's ability to get a good Brexit outcome, as discussed above.

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<sup>10</sup> Herzfeld Olsson, P. (2018) 'Towards protection of vulnerable labour migrants in Sweden' in "Towards a decent labour market for low wage migrant workers", available at: <https://www.jstor.org/stable/j.ctv6hp34j> Migrationsverket (2019) 'Work permits for berry pickers' <https://www.migrationsverket.se/English/Private-individuals/Working-in-Sweden/Employed/Special-rules-for-certain-occupations-and-citizens-of-certain-countries/Berry-pickers.html>

<sup>11</sup> TUC (2019) 'Building solidarity, stopping undercutting', available at: <https://www.tuc.org.uk/research-analysis/reports/building-solidarity-stopping-undercutting>

**3. If there were tailored salary thresholds, to what extent would the businesses/organisations you have engaged with agree that they should be varied by: (strongly agree, agree, neither agree nor disagree, disagree, strongly disagree)**

- Sector – *strongly disagree*
- Region/country – *strongly disagree*
- New entrants/young workers – *strongly disagree*
- Occupation – *strongly disagree*

The TUC does not believe tailored salary thresholds should be introduced for EU workers as this would be incompatible with single market rules, and thus would undermine the possibility of the UK achieving a Brexit outcome that protects jobs, rights and peace.

**4. What do you think should be counted towards the salary for assessing whether an individual meets the threshold? (Please select all that apply)**

- *Company car/ travel allowance*
- *Pension contributions*
- *Employee equity ownership schemes*
- *Part-time working patterns*
- *Commission*
- *Housing allowances*
- *Other cash/non-cash remuneration*

As outlined above, the TUC does not believe salary thresholds should be extended. More generally, the TUC believes in the principle that there should be no additional 'offsets' added to wage laws than those currently permitted in National Minimum Wage

legislation where only accommodation offsets are allowed. The TUC believes, furthermore that any accommodation provided in any offset is regulated and inspected to ensure it is safe and of a high standard. The TUC has concerns that in the employers have used accommodation offsets to control and abuse workers. This was shockingly illustrated with the recent case of the systematic abuse of 400 workers by labour providers uncovered by the authorities in July.<sup>12</sup>

### **Are there any other issues we should consider?**

The TUC does not believe pay should be set by region. We believe people should be paid for the job they do, not where they live. Setting the pay thresholds lower for migrants recruited into jobs in certain regions may encourage employers to situate themselves in lower paying regions, encouraging undercutting.

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<sup>12</sup> The Independent (2019), 'UK's largest modern slavery gang trafficked more than 400 victims', online at: <https://www.independent.co.uk/news/uk/crime/modern-slavery-ring-victims-human-trafficking-uk-poland-a8990151.html>