

Briefing



Labour Party Review: Points-Based System Engagement

Submission from the Trades Union Congress

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Response from the Trades Union Congress

The TUC is the voice of Britain at work. We represent more than 5.5 million working people in 48 unions across the economy. We campaign for more and better jobs and a better working life for everyone, and we support trade unions to grow and thrive.

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.

The TUC campaigns for a humane immigration policy that includes safe legal routes for refugees and asylum seekers to enter the UK. We have strongly opposed the government's current approach to immigration in the form of the illegal immigration bill, which breaches the UK's international commitments.

The risks of exploitation for migrant workers

The TUC believes that any immigration system must protect workers against the risks of exploitation inherent in the UK's current approach.

Systems that categorise workers according to their skills can create a tiered workforce in relation to access to core employment rights protections. People working under a visa scheme are less likely to have access to the full range of employment rights. They are less likely to be able to seek enforcement of the few employment protections that they do have. And these systems risk leading to the creation of a two-tier labour market, where workers with skills that are undervalued – including complex caring skills, receive lower rights, protections and status, than those who have skills which can command a higher wage.

Seasonal workers and overseas domestic workers on extremely short-term visas are effectively tied to one employer and not able to change which sector they work in. Not only do these workers have fewer employment rights than permanent 'employees', the few rights that they do have are practically unenforceable. These workers are unlikely to bring a complaint, as they risk losing their employment. And the current labour market enforcement system is so weak that complaints are unlikely to be resolved swiftly, or before the worker has to return to their country of origin.

The exploitation of workers on short term visas is also fuelled by the Immigration Act (2016) which made it an illegal offence to work outside the terms of a visa. This means that undocumented workers who are being exploited won't go to the authorities as they risk being imprisoned by revealing that they do not have legal status.

Seasonal workers

There are multiple known risks to workers on the seasonal workers visa. At the point of recruitment they risk being charged unfair and unlawful recruitment fees and incurring high debts. In the UK they can be subject to abuse, unsafe accommodation, withdrawal of work as punishment, and barriers to changing employer.

The government has utterly failed these workers and failed to protect them from exploitation. A damning indictment from the ICIBI report:

“Home Office compliance officers identified “significant [welfare] issues”. Reports included summaries of interviews in which some workers told compliance officers that they were treated poorly, discriminated against on the basis of nationality, had received incorrect pay, were living in damp, poor-quality and unsafe accommodation, or had been obstructed from accessing healthcare. At best, reports were fed back to scheme operators months later. At worst, they were not fed back at all. The Home Office stated that no further action could be taken because it did not seek evidence to corroborate the allegations made, and that all allegations had to be investigated thoroughly before action could be taken.”

Overseas domestic workers

Overseas domestic workers face horrific physical and sexual abuse from their employers, in addition to wider non-compliance with core workplace rights such as breaches of the National Minimum Wage¹. The Low Pay Commission has also recommended that the National Minimum Wage legislation is reformed to remove a loophole that allows domestic workers to be paid below the relevant National Minimum Wage rates.²

Health and care workers

Unions representing workers using the health and care worker visa report that their members face exploitation and high visa fees. Many migrant healthcare workers are expected to sign contracts which require them to repay recruitment and training costs to their employers if they leave their post within a few years. UNISON is coming across many shocking examples of their use including many instances where migrant health workers are effectively being blackmailed by employers into accepting poor working conditions with the threat of taking on a large debt if they leave.

UNISON is also hearing from migrant workers arriving on the new route for social care workers who are experiencing exploitative working practices, harassment, substandard accommodation and threats of deportation and penalty clauses.

Teachers

The National Education Union has also provided some specific examples of exploitation of their members that arises from the current immigration system:

The poaching of teachers from developing countries

In February 2023, the government introduced a new approach to ensure that teachers from around the world (not only those from the EEA, Australia, Canada, New Zealand and the US) are able to apply for UK QTS (qualified teacher status) on entering the teacher workforce in England.

The NEU is concerned that this will encourage the poaching of teachers from developing nations. The NEU does not blame the individuals who seek better pay and opportunities in the UK, but the exploitation of their desperation by the UK government will have a significant impact on

¹ <https://uklabourlawblog.com/2022/04/06/trapped-in-cycles-of-exploitation-the-uk-overseas-domestic-worker-visa-10-years-on-by-virginia-mantouvalou-and-natalie-sedacca/>

² <https://minimumwage.blog.gov.uk/2021/12/13/not-so-equal-is-excluding-au-pairs-from-the-minimum-wage-still-the-right-thing-to-do/>

the education of children in their home countries. In any event, looking abroad reflects a failure by the government to make teaching in England an attractive career choice.

False and/or misleading advertising by international recruitment firms

The NEU is concerned about the activities of some international recruitment agencies and their practices abroad, which we suspect are largely unregulated. By way of example, the NEU recently received this concern from an overseas trained member:

*"The international recruitment advertisement was the reason I contacted the international team, who then misled me to the point where I am at right now. The international recruitment advertisement said that **"We are able to offer a relocation package to support flights and accommodation. We will also be able to provide sponsorship for a 3-year work visa and support with costs towards this."** However, in the end I ended up paying 50% of my visa application fee. In addition the company itself, although not actually paying the sponsorship in full, confidently stated that it was."*

Fear of asserting employment rights while subject to immigration control

Where the employer is also the 'sponsor', as is often the case in the education sector, there is a very real risk that a work visa may not be renewed if the worker asserts their employment rights. For example, during its recent strike action, the union received a number of queries from members subject to immigration control who first questioned their right to strike and then feared antagonising their employer by going on strike. Some were even told by their employers that the terms of their work visa prevented them from going on strike.

Protecting workers from exploitation

Better labour market protections and sectoral bargaining structures (such as fair pay agreements) are required to protect workers, including migrant workers, from the risks of 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.

The TUC believes that in order to protect both migrant and domestic workers from exploitation, significant employment safeguards must be in place. Most importantly, employers must not be allowed to compete in a race to the bottom on wages and rights. Ensuring fair pay agreements at industry level, as set out in Labour's New Deal for Workers, is a key tool in ensuring an immigration system that works for everyone.

The TUC has identified several urgent reforms to the current system that could provide some mitigation against the risks of exploitation. The Government should:

- Ensure that employers can only source workers from abroad where they agree to adhere to a robust and comprehensive set of decent work standards, established through collective bargaining with trade unions represented within that sector.
- Separate employment rights and immigration status to ensure undocumented workers can claim their rights. The Immigration Act (2016) which criminalises undocumented working should be abolished.
- Establish a clear employer transfer pathway. On the seasonal workers scheme, this must include options to switch between Scheme Operator and should be communicated to workers at point of recruitment. Workers should not be responsible for paying the costs of a transfer (eg transport costs). The UK government should clarify arrangements around

payment for time between jobs. Workers should have options to work in different sectors if there is no work available via their Scheme Operator. There must be guidance making clear that if an Operator loses their license for any reason workers who they have sponsored will be transferred to a different Scheme Operator and will not lose out on work.

- Scrap short term work visas. This is one of the key drivers of exploitation of workers. Workers on short term visas have little to zero chance of having their employment rights enforced in such a short space of time.
- Allow all visas to be easily renewable subject to ongoing employment. There should be a route to settlement.
- Permit workers to have recourse to public funds so they have a safety net if work is withdrawn by the employer.
- Run mandatory information sessions in the UK for workers prior to them starting their employment. In relation to the seasonal workers visa, these sessions should be run independently of Scheme Operators or sponsors or the Home Office (ideally by trade unions or civil society organisations with relevant expertise) and focus on the rights available to workers in the UK, what support is available, and practical steps workers can take when their rights are not being upheld. There needs to be a fast track enforcement route so workers on the scheme can enforce their rights.
- Establish clear independently-run complaints mechanisms which are informed by the needs of workers to make sure they are accessible and enforceable in practice.
- Provide an independently managed emergency fund for workers who have not received adequate work, or for whom the work has not been as described, who need to be able to return home and repay expenses.
- Introduce minimum standards for accommodation through regulations, with ongoing monitoring and prohibit employers from charging workers for accommodation or utilities/other associated costs if for any reason their wages drop below the real living wage.
- Ensure monitoring of compliance with any relevant collective agreements in the sector. Where collective agreements are not in place, ensure compliance with the National Living Wage and the provision of a minimum paid hours a week with compensation mechanisms in place if work is not available at any point during the visa.
- Increase the resources for labour market enforcement to ensure there is capacity to conduct regular proactive inspections. There should be a focus on compliance with all employment laws, rather than only on breaches which reach the threshold of Modern Slavery.
- Require scheme operators under the seasonal workers visa to receive a compliance visit from the GLAA before being given a HO licence and subsequently on an annual basis.
- Ensure secure reporting mechanisms and a separation between the enforcement and monitoring of working conditions and immigration enforcement, recognising that people on insecure and temporary immigration statuses are often reluctant to report abuse due to fear of facing immigration consequences. This means that monitoring of employment conditions and investigations into breaches of employment rights should be conducted by Labour Market Enforcement agencies without Home Office Involvement. Nor should Home Office be involved in farm inspections, under the seasonal worker visa scheme.
- Provide for an income guarantee at point of recruitment, for a minimum amount of work over a minimum period.

- Ensure that migrant workers are not paying any unfair/unlawful recruitment costs to work in the UK. The ILO General principles and operational guidelines for fair recruitment state that '[n]o recruitment fees or related costs should be charged to, or otherwise borne by, workers or jobseekers'.
- Remove the visa fees payable by workers.
- Implement a separate mobility deal with the EU which allows UK workers to work across EU countries, and EU workers to work in the UK, and allows workers in creative industries to transport equipment between multiple countries.