



Submission to Migration
Advisory Committee
consultation on Minimum
Salary Thresholds for Tier 2

June 2015

I. Introduction

The Trades Union Congress (TUC) has 52 affiliated unions, representing almost six million members, who work in a wide variety of sectors and occupations.

The TUC believes in a managed migration system where non-EU migrants with skills needed by the economy have a route into the country and are treated on equal terms and conditions to the resident workforce.

The TUC welcomes the Migration Advisory Committee (MAC) call for evidence on minimum salary thresholds for Tier 2¹ as **we believe employers'** use of migrants to undercut resident workers needs to be addressed. We protest strongly about the timetable for this review (which we understand was set by Government rather than the MAC), which means that we have only been able to submit a rapid response – a longer timetable might have produced a more detailed submission.

The TUC also has concerns about the overall framing of this consultation. The government has stated its intention and the broader review of Tier 2 is to 'advise on what more can be done to reduce levels of work migration from outside the EU.'²

The TUC is opposed to setting a cap on the number of non-EU migrants that can enter the country as it limits recruitment of migrant workers where there are skills gaps in the labour market. By suggesting that migration is a problem that should be limited across the board only increases discrimination against migrant workers and stokes social tension.

Furthermore, limiting the number of migrants from outside of the EU entering the country will not address the most abusive cases issues of undercutting in the labour market taking place in low-skilled occupations by employers recruiting migrants mostly from the EU to undercut local workers.

We support some of the proposals in this consultation to raise salary levels for Tier 2 migrants to tackle undercutting, however, it is important that the levels continue to be linked to national agreements negotiated between employers and unions to ensure workers are treated equally and the staff whose skills are needed can continue to be recruited.

In this submission, the TUC will outline our key concerns regarding undercutting in the workforce before providing responses to those consultation questions we are best placed to answer.

We also wish to endorse the Unison submission made separately.

1 <https://www.gov.uk/government/consultations/call-for-evidence-review-minimum-salary-thresholds-for-tier-2>

2 <https://www.gov.uk/government/news/pm-announces-migration-advisory-committee>

II. Undercutting

The TUC is concerned **that employers are taking advantage of Britain's** deregulated labour market and relative vulnerability of migrant workers to undercut resident workers in both high and low skilled jobs.

In the skilled sectors covered by Tier 2, the TUC is aware of a number of cases where migrants are being employed over local workers as a cheap form of labour, particularly in the IT and telecommunications sector where the 25th percentile salary threshold is significantly lower than the rate for many jobs in the sector.

We are also concerned that multinational companies have been using the Intra-Company Transfer (ICT) route to undercut resident workers. As the consultation document makes clear, employers have used this route heavily – in 2014 more than double the number of Tier 2 migrants were recruited through the ICT route than the Tier 2 General route. The minimum pay level for ICT visas is set at £24,800 for short term staff and £40,000 for long term staff which constitute low salary levels for these jobs. This is particularly concerning in the IT and telecommunications sector which has brought in a large number of workers into the country through the ICT route. Meanwhile, as the ICT route does not require employers to go through the Resident Labour Market Test (RLMT), workers are being brought into the country without a demonstrable skills shortage in the sector.

Undercutting is most prevalent, however, in low-skill sectors which are not addressed by this consultation. The most serious cases of abuse take place in sectors such as agriculture, food processing and care where EU migrant workers are frequently being hired in ways which undercut local workers. The TUC welcomed the in-depth discussion of this issue provided by the MAC's 2014 **report into 'Migrants in low skill work'**.

This undercutting often occurs due to low levels of union membership and collective bargaining, compounded by a lack of enforcement by government agencies of employment regulations which means employers can get away with paying migrant workers under the National Minimum Wage. The abolition of the Agricultural Wages Board in 2013 also took away an important means of regulating pay in the sector, working with employers and unions.

Migrants across all sectors, whether high- or low-paid, are particularly vulnerable to exploitation as they feel afraid to speak out against undercutting for fear of losing their job or right to stay in the country.

Tackling such undercutting requires more resources and powers to be provided to enforcement agencies such as HMRC, the Gangmasters Licensing Authority (GLA). The GLA should be extended to cover more sectors where vulnerable forms of employment are common, such as care and cleaning. Employers also need to bargain with unions to establish a floor level of pay and conditions for both migrant and local workers.

III. Responses to consultation questions

What types of jobs and occupations are done by highly-specialised and/or highly-skilled experts, and is pay a good proxy for this high level of specialisation or skill?

The TUC has concerns that an increasing number of workers are not paid at levels commensurate to their skill level which means pay is often not a proxy for level of skill.

Workers in the public sector have had their pay subjected to a public sector pay policy based on a two year pay freeze from 2010, followed by a 1% pay cap. ASHE data reveals that pay in the public sector has fallen by 8.4% in last four years.³

The present government has stated it intends to continue the pay freeze in the public sector until the government achieves a budget surplus, by 2017/18 under current plans, which will mean levels of pay become further divorced from the skill level of the job, as well as creating further hardship and low morale for workers.

Pay for workers in the private sector has fallen almost as dramatically as pay in the public sector, dropping by over £2,000 a year in real terms between 2010-2014.⁴ Only 15% of workers in the private sector belong to a union which means workers have little voice to challenge low levels of pay and employers have increasingly been able to employ workers on precarious contracts without prospects of a pay increase.

Differentials in pay between public and private sector can largely be explained by compositional factors, with the concentration of higher skilled occupations within the public sector producing a higher average pay figure for the public sector. The differentials vary significantly between different types of workers, with low skilled workers in the public sector paid at a higher rate than private sector counterparts, while higher skilled workers in the public sector tend to earn less.

What would be the impact of increasing the thresholds to a level that better aligns with the salaries of highly-specialised and/or highly-skilled experts?

Sectors not covered by national agreements

The TUC believes that raising the threshold of pay for salaries not covered by national agreements would play an important role in preventing employers from using non-EU migrant workers to undercut skilled workers in the resident labour market, [subject to protection for existing migrant workers as discussed above](#).

It is important that if these thresholds are increased, however, the positions of Tier 2 workers who are already in the country when the rules change are

³ <https://www.tuc.org.uk/economic-issues/britain-needs-pay-rise/average-wage-worth-£2500-less-year-cameron-became-pm-says-tuc>

⁴ Ibid

protected. Even if the revised arrangements only apply on renewal of visas, or on **individuals' settlement**, transitional arrangements will be required to minimise the risk of people having to leave the country should their salary not be as high as new salary thresholds that are introduced. We understand that, on settlement, the code of practice pay rates are re-consulted as there is a possibility that the rates have increased since the individual's **previous application but their salary has not** increased at all or enough and is hence at that point below the rate.

Sectors covered by national agreements

It is important that the thresholds in sectors where there are national agreements, including education and health, continue to be set in line with these agreements. Breaking the link between pay and national agreements would have serious consequences for key public services to recruit much needed staff.

In the health sector if the threshold for Tier 2 salaries was significantly raised from the present threshold of £20,800 it would not be possible to recruit nurses, midwives, paramedics and allied health professionals from outside the EEA because many of their salaries start on Band 5.16 on Agenda for Change which is very close to the current Tier 2 minimum salary threshold (see Appendix 1).

Furthermore, because the Agenda for Change pay rates are different in each devolved nation, there is a risk that if the minimum salary threshold is raised to £21,500 - for example - that an employer in England, Scotland and Wales would be able to recruit overseas nurses, midwives and allied health professionals but not an employer in Northern Ireland (see Appendix 2).

What would be the impact of increasing the thresholds to a level that restricts the route to occupations which are experiencing skills shortages skilled to NQF level 6 or higher?

The TUC believes that there would be serious economic and social costs to restricting the number of migrants that can enter occupations that are experiencing skill shortages.

There are already reported shortages of nurses, occupational therapists and paramedics in the resident labour market that necessitate non-EU recruitment.

In nursing, shortages have been caused by the government's decision to cut training places for nurses in 2010. The number of training places has now increased but these students will not be qualified until 2016. These shortages were brought into focus by the Francis review into Mid Staffordshire which identified low patient to staff ratios as a contributory factor to poor patient outcomes and led to many NHS organisations recruiting more nurses, largely depending on agency labour.

It is not viable to address this shortage by recruiting nurses from the EEA due to shortages of nurses across these countries.

Furthermore a new English language requirement being introduced by the National Medical Council may make recruitment more difficult from the EEA. Meanwhile, changes to immigration rules introduced in 2011 that are now coming into effect will cause the shortage of nurses to increase as they require

nurses recruited from outside the EEA to return to their home country after 6 years if they do not earn over £35,000. Unions estimate over 3,000 nurses may fall into this category.

The TUC is concerned that if the threshold of pay is raised to a level which restricts the recruitment of skilled workers in the health, education and other parts of the public service, patients will be put at risk and it will have a detrimental impact on the community as a whole, particularly vulnerable groups.

In order to maintain safe and appropriate staffing levels in public services, the government may be forced to employ agency staff which would create significant additional burdens on public finances.

What would be the impact of increasing the Tier 2 minimum thresholds from the 10th to the 25th percentile for each occupation for new entrant workers?

The TUC believes that the 25th percentile salary rate for electrical engineers of £35,600 is very high for new entrants and may result in discrimination against migrant workers. We believe there is a case for considering a rate closer to 20th percentile for new entrant electrical engineers.

The TUC's **affiliated unions** can comment on whether the threshold should be raised from the 10th to the 25th percentiles in other sectors.

What would be the impact of increasing the Tier 2 minimum thresholds from the 25th to the 50th or 75th percentiles for each occupation for experienced workers?

The TUC believes that raising the threshold of pay for salaries not covered by national agreements would play an important role in preventing employers from using non-EU migrant workers to undercut skilled workers in the resident labour market.

In particular, we believe that, with employers tending to look at the 50th percentile **(the median) as the benchmark 'market' rate, the Tier 2 minimum threshold** should be raised to the 50th percentile. This is, by definition, the rate for the job and the rate at which experienced workers might therefore expect to be paid. Moving the threshold in this way would both prevent the exploitation of migrant workers (by preventing them from being brought in at levels lower than might be expected for a similarly-qualified worker in the domestic market) as well as support the employment of domestic workers by preventing their being undercut.

Furthermore, ensuring that the threshold is set at this rate sends the appropriate signals to labour market institutions.

At the same time, however, we are not sure of any sustainable case to raise the threshold to the 75th percentile. Such a requirement would, in general, simply lead to an innovative form of discrimination against migrant workers – they would find it hard to get jobs because it would be too expensive to employ them.

Are there additional national pay scales or sources of salary data that should be used to set the thresholds?

What other appropriate measures would you like to see for determining the minimum salary thresholds?

The TUC believes national agreements should be used as the benchmark for salary levels where they exist, and calls for the national agreements in health and education to continue to be used as the source for salary levels in these sectors. The MAC should also take evidence from trade unions about the rates of pay in companies recruiting non-EU migrants to add detail to the information provided by ASHE.

Should the minimum salary threshold take account of variations in regional pay? If so, how?

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.

Appendix 1

Agenda for Change band 5 pay rates

Point	England	Scotland	Northern Ireland	Wales
16	£21,692	£21,818	£21,478	£21,692
17	£22,236	£22,458	£22,016	£22,236
18	£23,132	£23,363	£22,903	£23,132
19	£24,063	£24,304	£23,825	£24,063
20	£25,047	£25,298	£24,799	£25,047
21	£26,041	£26,302	£25,783	£26,041
22	£27,090	£27,361	£26,822	£27,090
23	£28,180	£28,462	£27,901	£28,180

Appendix 2

Agenda for Change high cost area supplement

Area	Level (1 April 2015)
Inner London	20% of basic salary, subject to a minimum payment of £4,117 and a maximum payment of £6,342
Outer London	15% of basic salary, subject to a minimum payment of £3,483 and a maximum payment of £4,439
Fringe	5% of basic salary, subject to a minimum payment of £951 and a maximum payment of £1,649