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EEA workers in the UK labour market

**TUC submission to the Migration
Advisory Committee
October 2017**

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 5.6 million working people who make up our 50 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. Join us.

The TUC represents trade union members who work in a wide variety of sectors and occupations. We mostly cover Great Britain, although several of our unions also have members in Northern Ireland.

The TUC welcomes the Migration Advisory Committee (MAC) call for evidence on EEA migrants in the labour market.¹ EEA migrants help keep our public services running and work in key sectors; make a net contribution to the Exchequer and are valued members of our communities. Unions have hundreds of thousands of EEA migrant members.

Bad bosses have used migration from the rest of the EU - as they have used migration for centuries - to undermine existing terms and conditions by exploiting the migrants, or to reduce training costs and investment by substituting skilled migrants or cheap labour.

TUC Congress 2017 adopted a position that calls for a managed migration system where migrants are treated on equal terms and conditions to the resident workforce, with adequate investment in services and skills to support all workers and communities.²

The TUC is concerned that gaps in the law on employment rights, combined with weak enforcement of employment rules and low collective bargaining coverage, has meant significant numbers of workers are at risk of exploitation. While migrant workers are particularly vulnerable to exploitation, UK workers employed on insecure contracts are also at risk.

The TUC is also concerned that the government and too many employers are using EEA and other migrant workers as a substitute for long-term investment in training.

In order to better protect workers and support an industrial strategy that boosts productivity and good jobs, the TUC believes the government must act to prevent undercutting and provide significantly more funding for training, industry and public services.

1 MAC (2017) Call for evidence on EEA migrants in the labour market, <https://www.gov.uk/government/consultations/call-for-evidence-and-briefing-note-eea-workers-in-the-uk-labour-market>

2 TUC (2017) General Council statement on Brexit, <https://www.tuc.org.uk/news/making-jobs-first-rights-first-brex-it-reality-general-council-statement-congress-2017>

The TUC is also calling for a guarantee that EEA citizens in the UK have the right to remain. These calls for action are outlined on pages 13-15. These actions would be fully compatible with the UK continuing to be a member of the single market, which the TUC believes in the best way to protect jobs and rights after Brexit, although we would be willing to consider any alternatives that delivered the same outcomes

In our response, we will provide answers to the consultation questions we are best equipped to answer.

Answers to consultation questions

Please provide evidence on the characteristics (e.g. types of jobs migrants perform; skill levels, etc) of EEA migrants in your particular sector/local area/region. How do these differ from UK workers? And from non-EEA workers?

1. Nationally EU and EEA migrants are most likely to be employed in manufacturing, agriculture and accommodation/food sectors (see Table 1 on page 4).
2. The distribution of migrants in different sectors varies considerably by region. For example, in the South East, there are 31,000 non-UK citizens working in health and social care compared to just 2500 working in the North East (see Table 2 on page 5). Meanwhile, employment of EU nationals in construction is much higher in London than in any other part of the country – in the capital half of all workers in construction are non-UK nationals.³
3. The TUC is concerned more broadly, however, that full portrait of where migrants are in the labour market is not captured accurately by official statistics – the Annual Population Survey does not record migrants working in undeclared employment or those living in accommodation for less than six months.⁴

Collective agreements

4. The TUC is concerned that in sectors where there is a low proportion of workers covered by collective agreements, EEA migrants, as well as non-EU migrants and UK workers on precarious contracts, are at risk of being used to undercut other workers.
5. Table 1 on page 4 illustrates that in sectors where the percentage of workers covered by collective agreements is higher, pay is also higher. It can be seen that while manufacturing and accommodation/food services employ similar levels of EU

3 CITB (2017), 'Migration and construction, <http://englishbulletin.adapt.it/wp-content/uploads/2017/07/citb-migration-research-exec-summary-june-2017-single-pages-2.pdf>

4 ONS (2017) Annual population survey, www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/qmis/annualpopulationsurveyapsqmi

workers, weekly pay in manufacturing is £339 higher. This can at least partly be accounted for by the fact that 21.9% of workers in manufacturing are covered by collective agreements while only 3.9% of workers in accommodation/food services are.

Table 1: percentage of non-UK nationals employed, average weekly earnings and percentage of employees covered by collective agreements, by sector

Industry	total % non-UK employed	% EU workers	Average weekly earnings (£)	% employees covered by collective agreements
Manufacturing	13.4	10.9	589	21.9
Agriculture, forestry and fishing	10.1	10.1	399	*
Accommodation and food service activities	13.7	9.5	251	3.9
Transportation and storage	14.5	8.9	576	41.7
Construction	11.1	8.8	586	13.5
Financial and insurance activities	12.2	7.5	1165	20.6
Other service activities	9.3	5.6	384	11.1
Utilities	7.0	4.8	733	39.3
Public administration, education and health	7.7	4.0	445	44.8

* = sample size too small for reliable estimate

Source: Office for National Statistics⁵; BEIS⁶

5 ONS (2016), Number of UK nationals, EU nationals and non-EU nationals in employment by industry and region, www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/adhocs/006641numberofuknationalseunationalsandnoneunationalsinemploymentbyindustryandregionoctober2015toseptember2016uk

6 BEIS (2016), 'Trade union statistics', <https://www.gov.uk/government/statistics/trade-union-statistics-2016>

Table 2: EEA adult care and NHS workers in English regions

Region	Adult social care		NHS		Total number workers (rounded)
	Number	% of workforce	Number	% of workforce	
East of England	11,700	8%	6,554	6%	18,300
East Midlands	6,300	5%	2,741	3%	9,000
London	21,600	13%	18,528	10%	40,100
North East	1,400	2%	1,089	2%	2,500
North West	6,000	3%	5,098	2%	11,100
South East	22,300	10%	9,542	6%	31,800
South West	11,200	8%	5,450	4%	16,700
West Midlands	5,500	4%	3,242	3%	8,700
Yorkshire and Humber	4,200	3%	2,741	2%	6,900
All England	90,200	7%	54,985	5%	145,200

Source: Skills for Care and NHS Digital⁷

6. Collective agreements also lead to good treatment and help secure a level playing field between migrants and UK workers, as illustrated in Box 1. The TUC is concerned that not enough employers collectively bargain with unions to guarantee decent conditions and pay.
7. There are also other reasons wages are held back that must be factored into this analysis. These include company profitability and, particularly important in the public sector, government policy. Unions are concerned that the government's policy of pay restraint has held back wages in public administration, health and education since 2010.

⁷ Skills for Care (2016) 'The state of the adult social care sector and workforce in England'; and NHS Digital, 'Staff groups by nationality and HEE region, September 2015'

Box 1: Collective agreements preventing undercutting

Unite's agreement with BMW

BMW's plant at Cowley produces the iconic Mini cars. Workers from the plant come from many different countries and this diversity is reflected in the shop stewards' committee. The shop stewards' committee was involved in Unite's national negotiations with BMW that led to a collective agreement with the company on agency workers – a high number of whom come from other countries - and skills development for all its factories in the UK.

The agreement said that after a period BMW would pay agency workers at the same rate as those directly employed. BMW also agreed with Unite to run classes for agency and directly employed staff in skills such as literacy, numeracy and English. This has helped migrant workers integrate into the workforce and adult learners progress in their jobs. This agreement has been good for BMW's business. It has increased retention and quality of production and developed good relations between workers from many different countries at the factory.

Unite and GMB's agreement on Ferrybridge Multifuel 2

Unite and GMB agreed with the two Polish companies involved in constructing the Ferrybridge Multifuel 2 power station in West Yorkshire that they would follow the National Agreement for the Construction and Engineering Industry (NACEI). Part of this agreement says that 'posted' and other workers recruited from abroad must be paid and treated on the same terms and conditions as local workers. This meant that when the companies brought Polish workers on 'posted' contracts to work on the site, they were treated equally with other workers. This has fostered solidarity between workers on the Ferrybridge site, supported by Unite and GMB recruiting many Polish workers into both unions. These workers are supported by union officials based on site who are helped by Polish workers who assist with translation.

HRF's agreement with hotel employers in Sweden

In Sweden the majority of the economy is covered by sectoral collective agreements, including in the hotel sector where a high number of migrants are employed. The union HRF negotiated a collective agreement with hotel employers association Visita which guaranteed both directly employed and temporary staff were all paid at least a living wage. The union also negotiated improvements for all workers' entitlements to take carers' leave.

Abolition of wages councils

8. In the past, sectors of the economy less likely to be covered by collective agreements had fair conditions and pay secured by wages councils that involved unions and employers. However, all wages councils except the Agricultural Wages

Boards for England and Wales, Scotland, and Northern Ireland, were abolished by the Conservative government in 1992. In 2013, the Conservative-Liberal Democrat government abolished the Agricultural Wages Board for England and Wales. Pay and conditions have deteriorated as a result. Unite conducted a survey of its members in England six months after the Agricultural Wages Board was abolished. They found that the majority of respondents received no sick pay and were working 40 hours instead of 39 hours before overtime. 44% also reported that they had not had a pay rise – whereas 100% would have received a pay rise if the Agricultural Wages Board had not been abolished.

Inadequate enforcement of employment rules

9. In sectors where there is low collective bargaining coverage and less union visibility, such as accommodation/food and agriculture, EEA migrants as well as other workers are at risk of being exploited due to inadequate enforcement of employment rules.
10. The TUC is concerned that government agencies tasked with ensuring employment rules are followed – such as HMRC, the Employment Agency Standards Inspectorate (EASI) and the Gangmasters and Labour Abuse Authority (GLAA) – do not have the resources to enforce employment rules adequately. New resources for minimum wage enforcement and for the GLAA have been welcome, but more will be needed, as the number of workers covered by the minimum wage is growing rapidly. The EASI is under-resourced, having seen its budget cut in half to £500,000 over the last five years. EASI currently has just eleven inspectors to cover the entire country.

To what extent are EEA migrants seasonal; part-time; agency-workers; temporary; short-term assignments; intra-company transfers; self-employed?

11. The TUC is concerned that EEA and other migrants employed in some sectors are likely to be on seasonal and temporary contracts where they can be exploited.
12. This is due to gaps in the law – discussed below - that have allowed employers to take on workers on zero-hours contracts and other insecure temporary contracts to undercut workers on more secure contracts.
13. However it is not just migrant workers but all those on temporary contracts that are at risk of being exploited in this way. TUC analysis shows 810,000 are now employed on zero-hours contracts, 730,000 are in low paid temporary work such as

agency/casual and seasonal work.⁸ The Social Market Foundation, meanwhile, estimates that 1.7 million people are in low paid self-employment.⁹

Posted workers

14. Due to the UK government's limited application of the EU Directive on posted workers, EEA workers brought in on short term 'posted' contracts are only required to be paid the minimum wage rather than wages secured by collective agreements.¹⁰ This obviously has more of an impact where wages are generally well above the statutory minimum wage. In construction, for example, GMB and Unite are currently campaigning against two Danish-owned firms working on major energy construction projects that are bringing in posted worker on wages that are 61% lower than the pay rates of industry collective agreements.¹¹

Zero hours contracts

15. Significant numbers of EEA migrants are employed in the sectors that make the most use of zero hours contracts, namely accommodation/food and health and social care.
16. Those on zero hours contracts often miss out on key employment rights, including family friendly rights, redundancy pay and sick pay as they are classified in law as 'workers' rather than 'employees'.¹² Workers on zero hours contracts are also likely to be lower paid: the median hourly rate for zero hours workers is £7.25 whereas it is £11.23 for permanent workers.

Self-employed contracts

17. Significant numbers of EEA migrants are employed in the sectors that make the most used of low-paid self-employed contracts (which can sometimes be bogus

8 TUC (2016), 'Living on the Edge',

<https://www.tuc.org.uk/sites/default/files/Living%20on%20the%20Edge%202016.pdf>

9 Social Market Foundation (2016), 'Tough gig: Tackling low paid self-employment in London and the UK',

<http://www.smf.co.uk/wp-content/uploads/2016/10/Social-Market-Foundation-SMF-Tough-Gig-Tackling-low-paid-self-employment-in-London-and-the-UK-October-2016.pdf>

10 TUC (2016), 'Guten Tag, Pet: reforming the posted workers directive',

<http://touchstoneblog.org.uk/2016/03/guten-tag-pet-reforming-the-posted-workers-directive/>

11 TUC (2017), 'Pay the rate: stop Danish construction firms undercutting UK pay rates',

<https://campaign.goingtowork.org.uk/petitions/pay-the-rate-stop-danish-construction-firms-undercutting-uk-pay-rates>

12 TUC (2016), 'Living on the Edge',

<https://www.tuc.org.uk/sites/default/files/Living%20on%20the%20Edge%202016.pdf>

self-employed contracts), namely construction, transport and storage, and wholesale.¹³

18. Self-employed workers also have no right to a minimum wage, sick pay or holiday pay. Many self-employed workers are also low paid. The Social Market Foundation estimate that 45% of self-employed workers are paid below £7.20 an hour.¹⁴

Swedish derogation

19. Undercutting and insecurity has also been facilitated by other loopholes in the law such as the so called 'Swedish derogation', whereby agency workers directly employed by their agency may be paid less than other workers and put on worse terms and conditions. Even the Taylor Review proposed closing the loophole but the government have yet to make proposals to that effect.

What information do you have on their skill levels? To what extent do these differ from UK workers and non-EEA workers?

20. In spite of the fact the majority of EEA workers have medium to high levels of skills, they are disproportionately likely to be employed in occupations requiring low levels of qualification. 40% of workers from 'A8' countries¹⁵, 37% of workers from 'A2' countries¹⁶ and 37% of workers from the other 'EU15'¹⁷ countries are more qualified than their jobs require.¹⁸ This is due to the fact that migrants, particularly those from poorer countries, often need to take a job to secure an income quickly and 'low skill' work is more available. Lack of language ability and difficulties in getting qualifications recognised can also prevent migrants gaining skilled employment.

13 TUC (2016), 'Living on the Edge',

<https://www.tuc.org.uk/sites/default/files/Living%20on%20the%20Edge%202016.pdf>

14 Social Market Foundation (2016), 'Tough gig: Tackling low paid self-employment in London and the UK',

<http://www.smf.co.uk/wp-content/uploads/2016/10/Social-Market-Foundation-SMF-Tough-Gig-Tackling-low-paid-self-employment-in-London-and-the-UK-October-2016.pdf>

15 Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia and Slovenia

16 Romania and Bulgaria

17 Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, Netherlands, Portugal, Spain and Sweden

18 ONS (2016), 'International immigration and the labour market, UK',

www.ons.gov.uk/peoplepopulationandcommunity/populationandmigration/internationalmigration/articles/migrationandthelabourmarketuk/2016#how-skilled-were-non-uk-nationals-living-in-the-uk

21. It should be noted, however, that an increasing number of UK workers are also facing difficulties getting skilled jobs. TUC research shows that one in three graduates are now doing non-graduate jobs.¹⁹
22. This represents a waste of the skills and talent that could be contributed to the economy, were there more skilled job opportunities.

To what extent has EEA and non-EEA migration affected the skills and training of UK workers?

23. The TUC is concerned that employers and government have cut funding for skills and are using migration too often as a substitute for long-term investment in training.
24. The government's adult skills budget was cut by 41% between 2010/11 and 2015/16.²⁰ The government's decision to scrap bursaries for nurses, midwives and allied health professionals (such as radiographers, chiropodists, dieticians, occupational therapists, physiotherapists and podiatrists) in 2016, meanwhile, has already led to reductions in the numbers of UK students applying to study for these careers, many of which are facing significant shortages.
25. Table 3 shows that in some sectors facing high skills shortages, like agriculture, employer investment in training has also fallen in the last four years. With the exception of the utilities sector, meanwhile, none of the sectors with the highest skills shortage rates – construction, transport (including maritime)/communications and manufacturing – witnessed any significant increase in employer investment.

¹⁹ TUC (2016), '1 in 3 graduates doing non-graduate jobs is a massive waste of talent, says TUC', <https://www.tuc.org.uk/economic-issues/labour-market/industrial-issues/education-and-schools/1-3-graduates-doing-non>

²⁰ IPPR (2017) 'Another lost decade? Building a skills system for the economy of the 2030s', www.ippr.org/files/2017-07/another-lost-decade-skills-2030-july2017.pdf

Table 3: Employer spending on workforce training by sector (2011 and 2015) and skills shortage vacancy density (2015)

Sector	2011 (£ billions)	2015 (£ billions)	Skills shortage vacancy density (2015-2016) ²¹
Utilities	0.3	0.7	35%
Construction	2.5	2.5	35%
Transport/Communications	3.1	3.4	31%
Manufacturing	3.4	3.2	30%
Business services	8.3	9.8	26%
Agriculture	1.1	0.6	22%
Financial services	1.5	1.6	21%
Arts & other	2.3	2.6	21%
Health/social care	5.2	6.1	21%
Retail/wholesale	5.1	5.1	20%
Accommodation/food	3.0	3.3	19%
Education	4.9	4.6	16%
Public administration	3.1	1.9	9%

Source: Employer Skills Survey 2015, UKCES, May 2016²²

26. Research from IPPR shows that UK employers invest half as much in vocational training per employee as the EU average. Countries such as Belgium, Germany and Sweden spend well above the average.²³ These countries also have significant numbers of migrants in their labour force but they are clearly not being used as a substitute for investing in training.²⁴

21 Skills shortage vacancies are defined as those vacancies that are hard to fill due to a lack of skills, experience or qualifications among applicants. The “skills shortage vacancy density” rate is the total number of skills shortage vacancies expressed as a proportion of all current vacancies in each sector.

22 www.gov.uk/government/uploads/system/uploads/attachment_data/file/525444/UKCESS_2015_Report_for_web_May.pdf

23 IPPR (2017) ‘Skills 2030: Why the adult skills system is failing to build an economy that works for everyone’, https://www.ippr.org/files/publications/pdf/skills-2030_Feb2017.pdf

24 OECD (2017) ‘International migration outlook’, http://www.oecd-ilibrary.org/social-issues-migration-health/international-migration-outlook_1999124x

27. Part of the reason why training policies in countries such as Belgium, Germany and Sweden are more effective at support industrial strategies is that they take a social partnership approach. The TUC is concerned this is lacking in the UK. Since 2010, UK governments have withdrawn support from sector skills bodies that involved trade unions and union representation on many of the remaining bodies has been weakened. Appointments to the board of the Institute for Apprenticeships earlier this year did not include anyone with a union background.

What are the impacts of EEA migrants on the labour market, prices, public services, net fiscal impacts (e.g. taxes paid by migrants; benefits they receive), productivity, investment, innovation and general competitiveness of UK industry?

28. The TUC values the contribution made by EEA migrants, as well as migrant workers from other countries, to the economy and society. EEA migrants work hard in stretched public services and fill crucial jobs in manufacturing and services.
29. A comprehensive analysis by UCL in 2014 calculated that EEA migrants contribute £2 billion net to the Treasury every year.²⁵
30. However this income has not been invested in public services, jobs or skills in many parts of the country. Instead the government's austerity agenda has meant cuts to health, education and housing services across the country while pay has dropped in real terms.
31. Many areas outside the South East also continue to experience industrial decline which has diminished the number of decent jobs available. Low levels of pay and investment in industry are amongst the reasons why productivity in the UK is poor by international comparisons.²⁶
32. The TUC is calling for a renewed and expanded migration impacts fund to ensure that funding is provided to areas where there has been migration and that have experienced cuts to services and deindustrialisation. This funding should be used to invest in industry, create decent jobs, provide key services such as education, health and housing as well as funding skills training.²⁷

25 See Dustmann and Frattini (2014) <http://www.cream-migration.org/files/FiscalEJ.pdf>

26 TUC (2015), 'Productivity: no puzzle about it', <https://www.tuc.org.uk/sites/default/files/productivitypuzzle.pdf>

27 TUC (2016), 'A fairer deal on migration' <https://www.tuc.org.uk/sites/default/files/A%20fairer%20deal%20on%20migration.pdf>

Action needed to ensure a fair migration policy and support industrial strategy

EEA migrants play an important role in keeping our public services running and working in other key sectors, as well as being our co-workers and neighbours. However, for too long, bad employers have been able to use migrants, as well as UK workers on precarious contracts, to drive down pay and conditions in certain sectors. Free movement in the single market only functions properly when there is a level playing field in the labour market.

Successive governments and employers have also failed to adequately invest in training and industry. These factors must be addressed in the government's industrial strategy to improve the UK's productivity as well as providing workers with more opportunities to get skilled, decently paid jobs.

In order to deliver a fair migration policy, the TUC urges the Migration Advisory Committee to support the calls for action listed below.

Right to remain

The government should:

- Guarantee all EEA citizens the right to remain in the UK. This should be a unilateral offer made by the government rather than being subject to negotiations. People's lives should not be used as bargaining chips. It is unacceptable that over three million EEA citizens still have no security about their future over a year after the EU referendum.

Stopping exploitation

The government should:

- End the 'Swedish derogation' so that workers employed by agencies receive the same pay and conditions as those directly employed;
- Ensure that workers posted to the UK are paid the collectively bargained rate for the job in their sector, in line with the intentions of the Posted Workers Directive.
- Create a legal presumption that everyone qualifies for the full set of employee rights, placing the onus on the employer to prove that this is not the case;
- Ban the regular use of zero hours contracts, and ensure all workers receive premium pay for any non-contract hours and compensation when shifts are cancelled at short notice;
- Support local authorities and other commissioning bodies to use their commissioning and procurement practice to ensure collective bargaining, decent terms and conditions, pay and training and development opportunities for all staff providing those services. This should include a requirement that all construction projects should be built utilising national agreements such as NAECI and CIJC;

- Establish sectoral bodies to bring together unions and business to ensure decent treatment and standards. These should be piloted in sectors with low levels of collective agreements and low pay where migrants and other workers are at particular risk of exploitation;
- Increase funding for enforcement bodies HMRC, the GLAA and EASI where they are found to need more resources;
- Extend the GLAA's remit so that new sectors such as social care, construction and hospitality come within the licensing scheme;
- Take a 'joint and several liability' approach to enforcement, so that employers are held responsible for compliance throughout their supply chain. Lessons could be drawn from the approach adopted in the Modern Slavery Act, which seeks to improve transparency throughout supply chains with a view to preventing slavery and the trafficking of workers in these supply chains;²⁸
- Promote awareness of employment rights and the importance of joining a trade union – the TUC has produced guidance in 21 languages online.²⁹

Public services

The government should:

- Increase investment in public services including health, education and community services, particularly in areas that have experienced recent increases in migration;
- Invest in substantial council housebuilding as well as affordable housing programmes and crack down on rogue landlords;
- Scrap the public sector pay cap and ensure new pay awards provide an element of catch up, recognising the loss of earnings over the last seven years;
- Eradicate poverty pay by ensuring that no public service worker earns less than the real Living Wage;
- Allow employers and unions to freely determine pay awards through collective bargaining or independent pay review bodies. It is important that the government properly funds pay awards so that public sector employers can afford to pay decent wages.

Skills

The government should:

- Increase investment in both workforce and out of work training to the EU average within the next five years and English language skills for migrants;

28 TUC (2017), 'The gig is up', <https://www.tuc.org.uk/sites/default/files/the-gig-is-up.pdf>

29 TUC (2017) 'Working in the UK guide', www.tuc.org.uk/workingintheuk

- Introduce a right to a mid-life career review, and face to face guidance on training;
- Introduce a new life-long learning account, providing the opportunity for people to learn throughout their working lives;
- Introduce a new targeted retraining programme aimed at certain groups (e.g. those facing redundancy due to industrial change);
- Give trade unions a proper voice in the reformed apprenticeship system;
- Establish revitalised sectoral skills councils with representation from unions and business that would look at how to drive up pay, conditions, skills and productivity across an industry;
- Restore training bursaries for nurses, midwives and allied health professionals.