



## **Unite Submission to the Home Affairs Committee Inquiry on Managing Migration: the Points Based System (June 2008)**

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**This submission represents the views of Unite. Unite is the UK's largest trade union with 2 million members working in a range of sectors including manufacturing, building services, hospitality, construction, local government, IT, financial services and transport.**

**Unite welcomes this opportunity to contribute written evidence and would welcome further opportunities to provide oral evidence and/or additional written submissions to the Committee.**

### **Introduction**

The new points based system embodies dramatic changes in the UK's political and social attitudes to immigration. A number of new barriers, demands and responsibilities are in the process of being placed on migrant workers through the workings of the new system.

Unite believes that the Home Affairs Committee should examine closely the implications of the PBS for the welfare, employment and human rights of workers who depend on opportunities to work abroad to increase their life chances.

Unite further believes that the Committee should carefully consider whether the PBS will help or hinder the development of skills, a robust employment rights framework and social and racial cohesion in the UK.

### **1. Executive Summary**

**1.1** The current regime of employment rights enforcement is insufficient and will not be able to deal with the challenges involved with the increased powers and duties given to employers through the operation of the PBS. A more robust framework of employment rights for all vulnerable workers, including migrant workers, as recommended by the report of the Commission on Vulnerable Employment, is urgently needed.

**1.2** The PBS should not impede the training of resident workers but should complement the existing and anticipated supply of skills and demand for training locally and nationally. There is a need to strike the right balance between enabling employers to recruit or transfer skilled people from abroad and protecting job opportunities for resident workers

**1.3** Proposals for bonds and fees payable by 'at risk groups' and for a separate migration fund to alleviate pressures on public services should be abandoned as there is no compelling evidence or research to demonstrate that there is any need for these measures.

**1.4** Proper consideration ought to be given to a scheme of regularisation of undocumented workers currently living in the UK through the new Citizenship, Immigration and Borders Act.

**1.5** The UK PBS mirrors points based migration systems introduced in Australia, New Zealand and Canada. Unite is concerned that the UK has not paid due attention to the inadequacies and instances of exploitation in these systems. The Committee should examine closely the affect of points based migration in these countries.

**1.6** The use and operation of intra company transfers is of particular concern to the Electronics, Electrical Engineering and IT sector of Unite. Arrangements for Migrant Domestic workers also merit special consideration.

**1.7** Encouraging migrant workers to learn and improve spoken and written English is welcomed, especially when health and safety at work is an issue. However, Unite has concerns about linking entry to ability to speak English rather than ability to learn.

**1.8** The timescale for the introduction of the PBS, which runs concurrently with the Committee Inquiry, is unrealistic and does not provide enough time for proper scrutiny of the tiers and their operation. The phasing in of the PBS should be suspended until proper scrutiny has taken place. The operation of Tier 2 should be delayed until relevant issues have been resolved.

## **2. Sponsorship**

**2.1** Unite has a number of concerns about the new roles and powers which will be given to employers by the PBS, particularly through the arrangements for Tier 2 which is due to begin at the end of 2008. Workers entering the UK through this tier will have a job offer from a sponsoring employer.

**2.2** Sponsoring employers will have a number of new powers and responsibilities, including duties to conduct document checks and to report to the Home Office if a worker fails to turn up for work. Tier 2 workers will be unable to switch employers and their ability to remain in the UK is contingent on continuing work with their sponsoring employer.

**2.3** Unite believes that giving employers responsibilities that have been traditionally carried out by the immigration authorities is an unwise move as migrant workers coming to the UK under Tier 2 arrangements are less likely to have or accrue employment rights such as protection against unfair dismissal.

**2.4** Sponsorship arrangements have the potential to unbalance employment relationships further in favour of employers who may make unreasonable

demands on workers under threat of losing their jobs and therefore their ability to remain in the UK.

**2.5** The proposed grading system for employers, which denotes employers who have a good record of compliance with immigration controls (Group A) and those who have limited experience in this area or have incurred infractions (Group B) does not take into account if an employer has failed to comply with employment rights or national minimum wage legislation in the past or if they have been subject to an investigation by the GLA or HMRC.

**2.6** It is also unclear who will be able to apply to become a sponsor and if sponsorship implies an employment relationship will exist between the worker and their sponsor. In particular, clarification is needed as to whether employment agencies can apply to become sponsors.

**2.7** Unite is also concerned that sponsorship arrangements under Tier 2 will leave workers open to the sort of exploitation that has been experienced in other countries which operate similar systems. The Australian 457 visa, which mirrors the UK's Tier 2, has led to cases of visa smugglers charging huge bonds to prospective migrant workers wishing to come to Australia, mainly from China.<sup>1</sup>

**2.8** The proposed Tier 2 Statement of Intent states that migrants will need to show that they have £800 available to them over a 3 month period. This could lead to an unacceptable level of employer intrusion into the private financial affairs of migrant workers. Furthermore given that there will be a requirement for sponsorship from an employer there would not be any fallback on public funds as the migrant worker continues to be employed by the sponsoring employer.

**2.9** The 'rate for the job' is crucial to ensure that migrant workers are neither exploited nor used as a means of undercutting pay and employment prospects of resident workers. For example, Paragraph 37 of the Tier 2 Statement of Intent indicates that the minimum rate for the job will be determined from the Annual Survey on Hours and Earnings (ASHE) data, supplemented by minimum salary figures from Jobs4U.

**2.10** Unite believes that this is completely inadequate for certain sectors, and that this would lead to a significant decrease in the level of protection of the resident labour market. Evidence from Australia suggests that employers have been taking advantage of the points based system to suppress wage claims from organised resident workers. This has led to an erosion of skill levels in certain sectors.<sup>2</sup>

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<sup>1</sup> See:

[http://www.workpermit.com/news/2006\\_09\\_11/australia/immigrant\\_abuse\\_457\\_visa\\_defense.htm](http://www.workpermit.com/news/2006_09_11/australia/immigrant_abuse_457_visa_defense.htm)  
<http://lifeinaustralia.wordpress.com/2007/09/29/457-visa-workers-left-penniless-homeless/>

<sup>2</sup> See: <http://backontrack.asn.au/files/skilled-migration-0706.pdf>

**Recommendations:**

**2.11** Migrant workers should have access to temporary support services, akin to those available to victims of trafficking, in situations where employer malpractice is suspected or being investigated.

**2.12** Changes to the law are required so that issues of employment rights and residency are treated separately. All workers, regardless of residency status, should have the same minimum level of employment rights.

**2.13** The UK should, at the earliest possible time, ratify the UN Convention on the Protection of the Right of Migrant Workers and Members of their Families.

**2.14** Sponsoring employers should be subject to periodic monitoring to prevent and identify employment rights abuses. Employers who have failed to comply with employment legislation and the requirements of the Points Based System should be barred from obtaining a licence to sponsor migrant workers.

**2.15** The mechanism for ascertaining the 'rate for the job' should be urgently reviewed as soon as possible and should take into account current existing arrangements in specific sectors.

**2.16** A regulatory regime is required to ensure that market wages are not being undermined that equal pay for equal work is respected.

**2.17** After entering the UK, Tier 2 workers should be able to switch employer during their period of residence without having to reapply through the PBS.

**2.18** The proposed requirement for a migrant worker to provide bank statements showing that they have had £800 available to them for at least 3 months should be dropped.

**2.19** Employers in shortage occupations must demonstrate a commitment to upskilling resident workers, for example, through apprenticeship schemes.

**3. The English test**

**3.1** The English test which applies to most applicants for Tiers 1 and 2 at the point of entry presents particular problems. The ability to learn languages is discounted in the PBS and means that the system is, broadly speaking, biased in favour of migrants from English speaking countries and against those from the developing world.

**3.2** In recent years there have also been significant reductions in funding for ESOL/ELT. If speaking and learning English is to be a cornerstone of future immigration policy, cuts to the funding of language teaching are an additional barrier to migrant workers who demonstrate an ability to learn.

**3.3** The Australian government has recognised that additional resources are required to help migrant workers to improve their English and has committed AUS\$50 million over the next four years to English language programs.

## **Recommendations**

**3.4** The requirement to understand and speak English at the point of entry is unreasonable and should be reviewed.

**3.5** The government should restore funding to ESOL and ELT courses and increase access to these courses.

## **4. Migrant Domestic Workers**

**4.1** Unite (formerly T&G) has organised, represented and campaigned with and for migrant domestic workers for more than 20 years. The new rights introduced in 1998 after sustained campaigning by the union together with Kalayaan, Anti-Slavery International and others ended the bonded labour status of these mainly women workers.

**4.2** More recently the new points based system proposals threatened to re-introduce bonded labour and to undermine these important achievements. However, we strongly welcome the government's announcement on the 25<sup>th</sup> June 2008 that the rights and protection contained in the overseas domestic worker visa are to be preserved. This commitment has followed further sustained campaigning by Unite, Kalayaan, Anti-Slavery International and others, together with recommendations from the TUC Commission on vulnerable workers and the Oxfam/Kalayaan report "The New Bonded Labour?"

## **Recommendations**

**5.3** The government continues to work with Unite, Kalayaan and others to ensure that the important rights and protections introduced in 1998 are preserved.

**5.4** The wider group of migrant domestic workers beyond those covered by the overseas domestic worker visa are potentially highly vulnerable to abusive practices and trafficking and their specific situation needs to be recognised within all measures addressing this.

## **6. Intra company transfers**

**6.1** The Intra-Company Transfer (ICT) scheme will continue under the new Points-Based System. Some multinationals use their UK operations to sponsor overseas nationals to build up client-specific knowledge for export overseas. ('knowledge transfer'), and this may have an adverse impact on the resident UK labour force.

**6.2** Under existing arrangements, all work permit applications require the employer to sign a declaration stating that: *'The employer... knows of no suitable 'resident worker' who will be displaced or excluded as a result of them employing the person who is the subject of this application'* There appears to be no corresponding requirement on employers under the PBS. Furthermore, the existing requirement for Intra Company Transfer work permits only to be granted to employees with "essential company knowledge" has been removed.

**6.3** In November 2006, Unite presented a dossier of complaints to the Home Office which identified a number of specific cases and companies where workplace representatives reported that there was misuse or abuse of the work permits system.

**6.4** The Home Office sampling study prepared in November 2006 in response to Unite's report showed nearly 1 in 6 (15%) of work permits approved breached their own minimum pay rules as set out in the Occupational Guidance for caseworkers.

### **Recommendations**

**6.5** The Home Office should carry out a review of the Intra-Company Transfer (ICT) scheme, particularly as it is operated for skilled professionals, to ensure that the ICT scheme is being operated fairly and consistently and is not merely a tool in the business model of companies to offshore knowledge, skills and jobs from the UK.

**6.6** There is a need for the current ITCE Sector Panel to continue after the introduction of the Points Based Scheme in order to provide the Border and Immigration Agency with access to industry and to expert advice on sector issues, and to provide industry representatives with access to relevant information on policy and related immigration matters.

**6.7** The UK Borders Agency should publish on its website on a quarterly basis numbers of all work permits applied for and all work permits approved, broken down by individual employer, as is done in Ireland by the Department of Enterprise, Trade and Employment.

## **7. Tier 3**

**7.1** If/when Tier 3 does become operational it will be a very restrictive and potentially exploitative route. Tier 3 workers will only be able to enter for a maximum of 12 months under schemes run by agencies and will not be able to switch to an alternative operator. The power that is given to agencies and operators under Tier 3 raises concerns about the capacity of organisations such as the GLA to monitor working conditions and enforce employment rights.

**7.2** These workers will have no routes to settlement and will not be able to reapply and switch to Tier 1 or 2. Furthermore, a restricted stay of 12 months, tied to one employer is unlikely to provide migrant workers with a sufficient incentive to remain within the legal system of migration.

**7.3** Remittances to developing countries totalled over \$167 billion in 2005, twice the level of development aid given. For Tier 3 workers to obtain an adequate return for their initial investment in migration, it is likely that, in the absence of legal means of remaining in the UK, a large number would turn to the informal economy. It is thought that there are already nearly half a million undocumented workers in the UK working in construction, hospitality,

agriculture and social care. These workers could be making tax and national insurance contributions and benefit from protection under the law.

### **Recommendations**

**7.4** Workers entering under Tier 3 should have the same rights as those entering under Tiers 1 and 2 such as longer periods of leave to remain and defined routes to settlement.

**7.5** More funding is needed for enforcement agencies to monitor the activities of agents and operators supplying lower skilled labour.

**7.6** The Government should seriously consider provisions to regularise undocumented workers already resident in the UK.

### **8. The migration fund**

**8.1** A number of studies and reports by organisations such as the TUC, the Work Foundation and from government departments such as DWP recognise the contribution that migration makes to the public purse.

**8.2** Research from the Home Office which examined data from 1999-2000 found that migrant workers make a net contribution of around £2.5 billion to the UK economy.<sup>3</sup> IPPR has also found that immigrants consistently make higher net annual fiscal contributions compared to British born residents.<sup>4</sup>

### **Recommendation**

**8.3** There is no compelling evidence to support the contention that migration presents a burden to public services that should not instead be tackled by planning and rebalancing of regional budgets. Proposals for a migration fund paid for by immigrants should be abandoned.

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<sup>3</sup> The Migrant Population in the UK: Fiscal effects (2002) available from <http://www.homeoffice.gov.uk/rds/pdfs/occ77migrant.pdf>

<sup>4</sup> Paying their Way, IPPR 2005 available from: <http://www.ippr.org.uk/members/download.asp?f=%2Fecomm%2Ffiles%2FPaying+Their+Way%2Epdf>

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