

Changes to freedom of movement after Brexit – implications for Wales

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Evidence from Wales TUC

About the Wales TUC

The Wales Trades Union Congress is the voice of Wales at work, our aim is to make Wales a fair work nation. As the largest democratic membership based civic body in Wales, we speak for approximately 400,000 union members of our 49 affiliated unions.

Proudly part of the TUC and the wider international union movement, the Wales TUC is the devolved authority for unions in Wales.

Our biennial Welsh Congress of unions decides on Welsh policy and elects the Wales TUC General Council to oversee delivery through the Wales TUC General Secretary and his staff.

Below are our responses to the consultation questions. Please get in touch if there's anything you'd like us to expand on or if you'd like us to arrange further consultation with some or all of our member unions.

What is your assessment of the implications for Wales of the UK Government's White Paper proposals on immigration after Brexit?

Migrant workers make a valuable contribution to our society and economy, whether it is leading trade union campaigns for dignity at work, working in key roles in the NHS or in manufacturing jobs where unions' collective agreements guarantee that all workers are paid the rate for the job.

Some workers worry about how migrant workers have been used to undercut other workers where there is no union agreement to guarantee decent pay and conditions, as well as lack of investment in local skills and pressures on public services caused by over a decade of public sector cuts. Rather than address these concerns, the UK government's plans for a post-Brexit immigration system would exacerbate them, concentrating power further in the hands of exploitative employers, increase discrimination and strains on public services as well as shortages in key public sector jobs. The Immigration and Social Security Coordination Bill would repeal EU laws on free movement and social security coordination. This would enable the government to introduce the system of time-limited permits for EU workers post-Brexit that was outlined in the white paper.

This proposed work permit scheme would fuel undercutting. As we've seen before when schemes like this are introduced, bad employers would be able to use EU

workers' fear of losing their legal status in the country to force them to stay in a job with abusive conditions and low pay. This would undermine conditions for all workers, particularly those who are already working in sectors such as hospitality and care, where precarious conditions are common. This is evidenced by parts of the world that have already introduced these policies. Trade unions in Canada and Australia (see text box below) have documented how their temporary visa schemes that restricted migrant workers' ability to change employer also led to abuse and undercutting.

Canada

In 2015, the Canadian government introduced significant restrictions to its temporary foreign worker programme including strict quotas and restricting the ability of workers on these visas to change employers. Trade unions in Canada raised concern that these visas increased exploitation of migrant workers, particularly in agriculture and care, as workers were too afraid of losing their legal status to leave abusive employers. The United Food and Commercial Workers (UFCW) union in Canada described that this visa scheme created an "atmosphere of fear" amongst migrant agricultural workers and that "our staff at the migrant worker support centres often report incidences of untreated illness and injury because of the fear associated with accessing medical benefits that could signal to their employer possible productivity losses, and trigger repatriation." As a result of public and union opposition, the temporary foreign worker programme was overturned and a less restrictive system that provided routes to permanent residency was introduced in 2017.

Australia

Workers under 31 years of age can work in Australia for a year on a Working Holiday visa. Holders of this visa can work in any job but cannot be employed on any job for more than six months. Trade unions in Australia have documented that the temporary nature of this visa has been used systematically by some employers to abuse workers. The ACTU union centre has highlighted cases of exploitation of workers on working holiday visas in the agricultural and hospitality sectors, with cases of underpayment, substandard accommodation and debt bondage. Evidence from the Australian Fair Work Ombudsman 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.

The UK government's immigration proposals also stand to increase discrimination across society. The Home Office's own research has found that BME groups are already disproportionately targeted in the document checks introduced or expanded by the Immigration Acts of 2014 and 2016.¹ As the proposals would require EU workers to demonstrate they had the correct visa to access employment, healthcare, banking and housing, the number of document checks is likely to increase. This, in turn, risks a significant increase in discrimination

¹ <https://www.gov.uk/government/publications/evaluation-of-the-right-to-rent-scheme>

against BME groups and place these groups at further risk of losing access to vital services.

Rather than policies which scapegoat migrants and fuel discrimination, we need a new approach built on strong rights at work so that everyone is treated decently and paid fairly. As recommended by the Fair Work Commission, there must be support for trade unions to collectively bargain with employers, so that workers can claim their rights and stop undercutting. We've welcomed the Welsh Government's commitment to reverse the decline in collective bargaining coverage and call on the UK Government to echo this commitment. We need proper investment in public services and skills so that everyone can progress at work, and for workers to continue to be protected by EU levels of rights post-Brexit. We fear that the proposals undermine this final point by introducing a restrictive immigration system which would appear to be incompatible with Single Market membership which, along with membership of a customs union, is probably the best way to ensure UK workers continue to be protected by the same level of rights as workers in the EU, protect jobs and protect peace between Northern Ireland and the Republic of Ireland.

Is there a case for allowing the devolved nations to do things differently in relation to immigration policy after Brexit?

We have not made a thorough assessment of this as we would have to weigh up the opportunity for devolved nations to create a fairer immigration system that minimises opportunities for exploitation with the potential impact this could have on the free movement of labour between the devolved nations. We have concerns about an immigration system that links immigration status to one geographical locality as migrant workers would risk losing their legal status and rights if they travelled to another part of the country, and that a regional immigration system might link some areas to lower pay requirements that could depress pay across the country.

What are your views on the proposal for a Wales-specific Shortage Occupation List ("SOL")?

We note the Migration Advisory Committee recommendation² to introduce a Wales specific SOL and agree that this may be necessary, particularly if freedom of movement for EU citizens is abandoned. Wales experiences unique shortages, it has a devolved public sector, a distinct economy and divergent industrial strategy (e.g. the bigger role played by manufacturing), as well as differences in the existing skills base.

While we know from the Scottish experience that there may not be substantial differences, the Scotland-specific SOL has allowed for the inclusion of specialist medical roles that were critical to the delivery of vital public services.² However,

² <https://www.gov.scot/publications/shortage-occupations-list-2018-9-call-evidence-scottish-governmentresponse-health-social-care/pages/3/>

we are conscious that this could be viewed as a medium- or long-term solution to shortages, rather than addressing what has caused them, including through improving terms and conditions and better workforce planning.

What are your views on the proposal to bring EU nationals into an expanded Tier 2, and ending any distinction between EU and non-EU workers?

We are concerned about any policy changes which introduce additional restrictions on workers, rather than promotes the rights of workers. This proposal would apply significant restrictions to EU nationals who are currently able to benefit from the freedom of movement policy. We are especially concerned about the impact this will have on marginalised groups in the labour market, such as women, who will be unfairly disadvantaged by the criteria for Tier 2 immigration such as the salary threshold. In our response to the Immigration and Social Security Coordination Bill we set out how this and other proposals will be bad for *all* workers as it risks increasing exploitation, discrimination, increasing pressures on public services and exacerbating skills shortages.³

What are your views on the salary threshold of £30,000 for Tier 2 immigration and its implications for Wales?

Unions are very concerned about the salary threshold requirement for Tier 2 migrants as it does not reflect longstanding issues with low pay in our labour market. The cap has been in place for seven years, and we have not observed it have a positive impact on pay generally (as the MAC has suggested it could). Given that only around one in five EU nationals working in the UK earns £30,000 or more, we have very serious concerns about how this would impact on these workers and their workplaces. The proposal appears to fail to recognise the role played by EU nationals working in the UK.

The threshold will also make it harder to recruit workers for roles facing shortages that have been subject to public sector pay restraint. We have called for this threshold to be removed in order to address short term shortages, however, we have made clear that in the medium and long term this must be addressed by raising public sector pay. It is also worth noting that the median annual salary in Wales in 2018 was approximately £21,630– significantly lower than the suggested threshold.

We welcome further consideration of the threshold by the Migration Advisory Committee as it may be too high for parts of the country with lower average pay rates, such as Wales, and would therefore fail to address short term shortages.

We are concerned that the MAC's recommendation (and UK government proposals) that the UK should have an immigration system that is more restrictive for 'low skill' migration and extends temporary visa schemes will increase the

³ https://www.tuc.org.uk/sites/default/files/Buildingsolidarityreport.docx_.pdf

chances of workers becoming undocumented and subject to exploitation. Previous experiences of 'tied' visa schemes, such as the Seasonal Agricultural Workers scheme that was run for A2 workers between 2007 – 2011, has shown that restricting the legal means by which migrant workers are employed increases the chance of exploitation and the risk that workers become undocumented. This is due to the fact workers on 'seasonal' temporary visas are likely to lose their immigration status if they leave abusive employers. As workers without legal status in the UK have no legal right to protections at work, they are extremely vulnerable and at risk of some of the worst forms of labour exploitation, including modern slavery.

How well is the EU Settlement Scheme operating? Is there more that the Welsh Government could be doing to ensure that EU nationals resident in Wales are registering under the scheme?

The Welsh Government has been proactive in trying to maximise the number of EU nationals registering under the scheme, using its networks to reach those it applies to. This has included work with trade unions, as well as third sector organisations. It has also invested in resources to raise awareness and understanding, and provide specialist legal advice.

Despite our serious concerns about the EU Settlement Scheme,⁴ including around the evidence requirements and the fact that this may disadvantage vulnerable workers, we have worked to support Welsh Government in this area by raising awareness of the scheme amongst trade unions officers and reps. However, this work is at a relatively early stage, so we are not yet able to assess how well it is going.

We do not believe that there is much more that Welsh Government could be doing now to increase registration figures. Rather, there is more that the Home Office could be doing – such as the accessibility of document scanning centres throughout Wales – to ensure that all those eligible can register.

Are there any other issues relating to immigration policy after Brexit that you would like to bring to the attention of the Committee?

We would highlight our response to the Immigration and Social Security Bill which provides more detail on many of these answers, which is available here: https://www.tuc.org.uk/sites/default/files/Buildingsolidarityreport.docx_.pdf

We would also like to restate our endorsement for the position set out in the Welsh Government's Brexit and Fair Movement of People policy paper, which states that exploitation is the fault of unscrupulous employers – not immigration

⁴ <https://www.tuc.org.uk/blogs/brexit-and-eu-citizens-why-ministers-are-playing-poker-peoples-lives>

policy – and that tackling exploitation will benefit the whole workforce. This can be achieved by stronger enforcement by public agencies, the extension of collective bargaining coverage and greater access to trade unions.⁵

⁵ <https://gov.wales/sites/default/files/publications/2018-10/brexit-and-fair-movement-of-people.pdf>