

This briefing paper explains the government's new points-based immigration system and the duties it imposes on colleges and universities. UCU is strongly opposed to the legislation which, we believe, discriminates against non-EEA nationals and damages the relationship of trust between staff and students. We also believe that it may be used to impose changes to staff contracts. UCU urges all members to join our campaign to change the law. Details of our online survey and model letters are contained within this briefing.

POINTS-BASED IMMIGRATION

what it means for colleges and universities

WHAT IS THE NEW POINTS-BASED SYSTEM FOR UK IMMIGRATION?

The Home Office has introduced a new points-based system for immigration. The system awards points to workers from outside the European Economic Area (EEA) for skills that reflect experience, age etc.

In terms of the education sector, the Home Office claims that there are two main aims to this legislation:

- 1 to reduce the number of illegal students and educational establishments
- 2 to keep a tight rein on who can enter the country and when.

Foreign nationals are now categorised as belonging to five levels or tiers:

- Tier 1** Highly skilled individuals
- Tier 2** Skilled workers with a job offer
- Tier 3** Limited numbers of low skilled workers
- Tier 4** Students
- Tier 5** Youth mobility and temporary workers

For FE and HE institutions, the new system will affect highly skilled staff (Tier 1), staff who are skilled workers with a job offer (Tier 2), students (Tier 4), and sponsored researchers (Tier 5).

WHAT DOES THIS MEAN FOR COLLEGES AND UNIVERSITIES WHO WISH TO EMPLOY OR RECRUIT NON-EEA STAFF OR STUDENTS?

As part of the system, colleges and universities wishing to employ staff or recruit students who are foreign nationals from outside the EEA will have to register as 'sponsoring institutions'.

They will then be responsible for monitoring the conduct of these foreign nationals and reporting to the UK Border Agency on aspects of their behaviour.

WHAT ARE THE SPECIFIC NEW DUTIES EXPECTED OF COLLEGES AND UNIVERSITIES?

Each college or university will now have to register as sponsors with the UK Border Agency and be issued with a sponsorship licence to employ or teach non-EEA nationals.

Employers will be expected to:

- issue certificates of sponsorship licences to their non-EEA employees
- issue confirmations of acceptance for studies to their non-EEA students
- maintain up-to-date records on non-EEA staff and students, in the case of students, for a period up to two years after the student is no longer sponsored
- keep copies of biometric passports
- alert the UK Border Agency to any non-EEA

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national staff member who:

- 1 fails to start work no later than 10 days after their start date
 - 2 is absent for a period of 10 working days without prior granted permission
- alert the UK Border Agency to any non-EEA national student who:
 - 1 fails to enrol no later than 10 days after the end of a prescribed enrolment period
 - 2 misses 10 expected interactions (for example, tutorials, submission of coursework etc)
 - 3 arouses suspicions that they are breaching the conditions of their leave to remain.

HOW DOES THE HOME OFFICE POLICE COMPLIANCE WITH THIS NEW EXPECTATION?

All employers will be subject to unannounced visits by enforcement teams from the UK Border Agency. The penalties on an employer for non-compliance can be revocation of the institution's sponsorship licence.

WHAT ARE UNIVERSITIES AND COLLEGES DOING TO ENSURE THAT THEY ARE ABLE TO COMPLY WITH THE NEW DUTIES?

Because the new points-based system carries new duties, colleges and universities are having to create the means of enforcing them.

Employers applying for sponsorship from the UK Border Agency have to appoint a number of key staff who will be responsible for maintaining records on sponsored staff and students. These might be personnel whose contractual duties already include such monitoring activities.

However, in practice, much of the day-to-day responsibility for monitoring staff and students and ensuring that their records are kept up to date will fall on ordinary academic and related staff members, for whom these might well constitute new duties.

Accordingly, some institutions are already making it clear that it will be the responsibility of all staff to ensure that monitoring and record-keeping are up to date.

More ominously, legal advice issued to employers recommends that they 'amend employment contracts to take account of PBS changes', so that they include 'an obligation to reveal changes in circumstances'. (Taylor Wessing, 'Law at Work', July 2008, page 4.)

WHAT KIND OF NEW DUTIES MIGHT I BE ASKED TO PERFORM?

- You might be asked to publish or make available registers of attendance of students in your classes or lectures, possibly just international students, but probably all students.
- If you already keep such records as part of your normal duties, these might now be passed to the Home Office.
- You might be asked to complete an online diary of your activities.
- You might be asked to assist in immigration checks on members of staff by making copies of visas in passports and sending them to personnel departments.

These are just a few examples, but others will undoubtedly emerge as the procedures become clearer.

WHAT IS UCU'S POSITION?

UCU opposes the new system on four grounds:

- It turns our members into an arm of the UK Border Agency.
- We believe that it discriminates against non-EEA nationals.
- The requirements of the new system may be used to impose changes to contractual duties on large numbers of staff
- We believe that it will damage the relationship of trust between staff and students, undermining our ability to perform our professional pedagogical duties.

WHAT CAN INDIVIDUALS DO? IMPORTANT ADVICE FOR EVERY UCU MEMBER

Politically, UCU is absolutely opposed to this legislation and we know that many members have strong and principled moral objections as members of society and as professional educators.

We know that very many members are disgusted by this legislation and do not want to have any part of implementing any of the associated duties.

However, members need to be clear that these duties are part of a legal obligation on universities and that the union's protection of members cannot extend to endorsing a breach of the law relating to PBS or defending members who do so.

UCU is campaigning with NUS and some universities and colleges to change the law. We are encouraging

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every member to get involved in campaigning at every level to achieve this. Members can engage in lobbying politicians or can help form local campaigning coalitions against the legislation.

But employers are bringing in new policies and procedures to implement their new duties now and because these policies involve new duties beyond those in current employment contracts, they have potentially profound implications for every member. That means we need to provide practical advice to members now on what to do if they are asked to undertake new duties.

We also provide advice on how to ensure that the employers are fulfilling all their duties in terms of negotiating any changes in contracts with trade unions, assessing the impact of new policies in terms of race and safety in the workplace and protecting staff from breaching equality law.

This advice is about protecting members, but it's also a crucial part of the campaign.

We need to ensure that universities and colleges understand that they cannot simply impose these changes without discussion.

So if members follow this advice and take the recommended actions, they are not only defending themselves, they are assisting the campaign.

We need to expose what steps the employer has taken to fulfil their duties as a responsible employer.

TELL US WHAT YOUR UNIVERSITY/COLLEGE IS DOING

Once you find out what is happening at your institution, please tell UCU. You can do this by filling in UCU's online survey at:

www.ucu.org.uk/index.cfm?articleid=3698

WHAT DO THESE NEW DUTIES MEAN FOR MY CONTRACT OF EMPLOYMENT?

You may well be approached by your institution or your line manager and asked to undertake some or all of these new duties. For example, you may be asked to put attendance registers online or on an intranet. Or you may be asked to validate or assess the residential status of a non-EEA national applicant to an academic post at your college or university as part of an immigration check to enable payments to be made by the employer.

If you undertake these duties, your employer can imply from this that you are practically consenting to a change in your contractual duties.

WHAT CAN I DO IF I AM ASKED TO UNDERTAKE ANY OF THESE DUTIES?

If you are requested or instructed to undertake any new duties, you should not refuse to do so. Doing so could be construed as refusal to undertake a reasonable request and as such, would leave an individual open to the charge of taking industrial action.

We recommend that you write back saying that you will undertake them under protest but that you do not accept these duties and your performance of them should in no way be taken as consent to a change in contractual duties. You must also seek union advice immediately.

MODEL LETTER

Dear

I am writing further to the advice circulated/given which requires staff to [insert details of policy or procedure].

I would like to make clear that I consider these duties to go beyond those set out in my contract of employment. As such, I would prefer not to perform them until an agreement to alter the terms of my contract is reached through negotiation with my union.

While I will reluctantly perform these duties, I will do so only under protest.

My performance of these duties must in no way be interpreted as constituting consent to alter the duties contained in my contract of employment, implicitly or otherwise.

Yours sincerely

DOESN'T THIS NEW SYSTEM RAISE EQUALITY ISSUES FOR UNIVERSITIES AND COLLEGES?

Institutions are also expected to treat people fairly and equitably. The Race Relations Act makes it unlawful for an organisation to treat people differently on the grounds of race or nationality (direct discrimination) or to operate practices or procedures which unjustifiably disadvantage people of one race rather than another (indirect discrimination). Institutions also have a duty to positively promote equality of opportunity and race relations.

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There is clearly a tension between the objective of applying the new duties to staff and students from outside the European Economic Area and ensuring that staff and students are not discriminated against.

According to the Equalities Challenge Unit, employment of staff and recruitment of students overseas must be carried out in a fair and equitable manner.

This means, for example, that decisions to reject or dismiss an individual must be based on their immigration status and not their race.

It also means that practices or procedures which unjustifiably disadvantage people of one race rather than another are illegal.

This would clearly embrace procedures for monitoring and recording information on staff as part of the points-based system.

The difficulty is that in order to protect members of staff and institutions from allegations of discrimination, any procedures put in place would have to be 'equality-proofed' in such a way as to ensure that they do not practically discriminate against a particular group on the grounds of race, for example. This would seem fraught with difficulty and there is little evidence that anything like this has been done anywhere. Some employers may apply the monitoring procedures to all staff and students rather than targeting those from outside the EEA.

WHAT SHOULD BRANCHES DO?

Branches should be looking to intervene in the process of implementing the new duties as a matter of urgency.

The immediate priority, is to expose what steps the employer may or may not have taken to prepare for the new duties.

The second priority is to make it clear that UCU will not allow changes to be imposed, implicitly or otherwise.

1 Request information on changes to contracts and workloads

Branches should immediately write to their managements setting out UCU's position, laying out our concerns and asking for information concerning any potential changes to contracts of

employment and assessment of the effects on staff workloads.

MODEL LETTER

Dear

I am writing to you to ask for information on this college/university's implementation of the new points-based system for UK Immigration.

As the recognised union for negotiating and collective bargaining at this college/university, we are deeply concerned about the implications of this new system for staff at this institution.

I would be grateful if you would forward me details of any assessment that has been made of necessary changes to contracts of employment, particularly with regard to contractual duties, as a consequence of the college's plans to implement the new points-based system.

Further, please also forward me the details of any assessment made of the implications for staff workloads.

Please forward this information to me within five working days. I will contact you again if I have not received more information from you within this time.

Yours sincerely

2 Request information on risk assessments

The new points-based system places new responsibilities on our members to monitor the attendance of non-EU students which threatens the relationship of trust on which education is based. This could well have an impact on their personal security at work.

Under the Management of Health and Safety at Work Regulations of 1999, employers have a duty to ensure that any new work processes undergo a risk assessment before they are implemented.

Our first objective must be to expose whether or not any risk assessment has actually taken place as this is a statutory duty.

Branches should immediately write to management asking for disclosure of the details of any risk assessment undertaken on the new work processes.

continued

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MODEL LETTER

Dear

I am writing to you with regard to the proposed new procedures for implementing the new points-based system for UK Immigration at this college/university.

I am concerned that the procedures for monitoring staff and students and updating their records constitutes a significant risk to the personal security of those people engaged in such activity and therefore is a risk to their safety in the workplace.

As you will be aware, there is a statutory duty on the employer to consult in good time before introducing any measure that may substantially affect the health and safety of employees under Safety Representatives and Safety Committee Regulations 1977, Reg 4A(1) (a).

Also, under the Safety Representatives and Safety Committee Regulations 1977 (SRSCR), Reg 4A(1)(b) the employer has an absolute duty to consult in good time with safety representatives (i.e. with the union) on the arrangements for the appointment or nomination of competent persons appointed under Regulation 7(1) of the Management of Health & Safety at Work Regulations to conduct risk assessments.

UCU is not aware of any risk assessment having taken place with regard to these new procedures. Please forward me the details of any risk assessment that has taken place, including all significant information, such as hazards identified, persons affected and measures proposed to eliminate these hazards.

If no risk assessment has taken place, please forward me details of why this is the case.

Please forward this information to me within 14 days. I will contact you again if I have not received more information from you in this time.

Yours sincerely

There is a statutory duty on the employer to consult in good time before introducing any measure that may substantially affect the health and safety of employees under Safety Representatives and Safety Committee Regulations 1977, Reg 4A(1) (a).

There is also a statutory duty on employers to consult with safety reps as to the appointment of competent people to conduct the risk assessment, under the Safety Representatives and Safety Committee Regulations 1977, Reg 4A(1) (b)

If branches or safety reps are consulted on a risk assessment taking place now, they should firstly ensure that it is being undertaken properly. This means:

- 1 ensuring that the risk assessment has the objective of eliminating any identified risk rather than just minimising it
- 2 ensuring that records are kept of the significant findings, including hazards identified, persons affected, calculation of the level of risk and the control measures used to reduce or eliminate the risks
- 3 ensuring that employers inform employees about potential risks, about what measures have been put in place to control them, and that they provide training in safe working practices during paid working hours.

The employer has a duty to permit safety reps to inspect and take copies of any document that the law requires the employer to keep. The risk assessment duty includes recording the main points of the assessment, so this should be disclosed to safety reps.

3 Request information on Equality Duties

As noted above, there is a clear tension between the objectives of putting in place procedures to implement the new monitoring duties on staff, and the general duties under the Race Relations (Amendment) Act (RR(A)A) to eliminate unlawful racial discrimination, and promote equality of opportunity and good relations between persons of different racial groups.

Under the RR(A)A, the employer has a specific duty to assess the impact of their policies on students and staff of different racial groups. They also have a duty to monitor, by reference to their impact on such staff and students, the admission and progress of students, and the recruitment and career progression of staff.

Any new policy must therefore be subject to an impact assessment and the findings of the impact assessment published.

Branches should write to their managements asking, in the first instance, for details of any impact assessment that have already taken place of the new procedures.

continued

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MODEL LETTER

Dear [insert name of College Principal or Vice Chancellor]

The Race Relations (Amendment) Act 2000 requires public authorities, when carrying out their functions, to have due regard to the need to:

- eliminate unlawful racial discrimination
- promote equality of opportunity
- promote good relations between persons of different racial groups

I am concerned that [insert name of public authority] hasn't given due regard to their general duties to eliminate unlawful racial discrimination, promote equality of opportunity and to promote good relations between persons of different racial groups in one of its functions. I refer specifically to the duties allocated to staff in furtherance of the new points-based immigration system [give details of particular policy/functions].

The Race Relations Amendment Act 2000 requires you to consider race equality in relation to everything you do and the conduct of an impact assessment is the means by which you can ascertain how to comply with this duty.

Please can you indicate how you have had due regard to the need to promote equality of opportunity and good relations between persons of different racial groups in your decision to implement these new policies/procedures [insert details].

In particular, can you send me a copy of the race equality impact assessment you conducted before taking this decision. If you have not conducted such an assessment, please indicate why not.

Please forward this information to me within 14 days. I will contact you again if I have not received more information from you in this time.

Yours sincerely

You can find detailed guidance on the conduct of impact assessments, including a pro-forma on the procedure for completing an assessment in our pack 'Implementing the equality duties: a toolkit for UCU branch and LA officers'. You can download this here: www.ucu.org.uk/index.cfm?articleid=2131