

POINTS-BASED IMMIGRATION

What it means for colleges and universities

This briefing paper explains the government's new points-based immigration system and the duties it imposes on colleges and universities and is designed to reflect the wishes of members as expressed at Congress 2009. The annual Congress debated a range of motions opposing the new system from different institutions and from the National Executive Committee. All were passed overwhelmingly, as were the amendments to them from other institutions (see Appendix 1). 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. Details of our online survey (see Appendix 2) and model letters are contained within this briefing.

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 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?

In line with UCU policy branches and local associations are asked to bear the following in mind:

- that we are not contracted as immigration officers for the UK Borders Agency, and cannot, under the terms of our contracts, be asked to act in that capacity;
- that the confirmation of another person's identity on the basis of official documents, and the declaration of satisfaction regarding their right to residency or employment, are difficult judgements that require substantial training and much experience, and are now highly charged legal affirmations;
- that it could be judged a criminal offence for any individual employee to make a mistaken confirmation of another person's identity or eligibility;
- that handling, requesting or supplying documents for this purpose would be to make oneself personally complicit in its implementation, irrespective of whether you are required make the judgement of eligibility,
- that there are highly damaging educational consequences that will result from this process, including deterrence of overseas students and of overseas colleagues, the

creation of a climate of suspicion between students and students and between staff and students, the undermining of trust between staff and students, and the undermining of that collegiality and common purpose shared between staff in an educational institution on which a scholarly community depends.

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, you should make it clear that you are only willing to do so without admission that such duties can be reasonably required of you under the terms of your contract.

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

- Branches and local associations are urged to organise a members meeting to discuss how they are going to respond to this new situation from September, and to seek the advice of an RO/RSO as part of their deliberations. The issue of the new points based immigration system and its potential/real impact must be raised within the branch/local association in order to develop a collective response to take to management. If you are requested or instructed to undertake any new duties you should be aware that refusal to undertake a reasonable request might leave you open to disciplinary action or to a charge of taking unprotected industrial action. This is why the issue should be first discussed in your branch and raised as a collective issue with the management.
- Members are urged to complain about any instructions to collect and report information about students or overseas colleagues which would, in their view, take them beyond the terms of their contracts with the University, and where compliance with such instructions might be taken to be tacit agreement to the alteration of their contractual terms. In all such instances members must consult and act in accordance with the advice from the branch/local association.
- Where there already exist attendance monitoring processes for students (for educational reasons, or for reasons of accountability for public funds) colleagues are urged TO CONTINUE existing practice at this time and not to vary those processes or to intensify them without direct instructions since all such alterations would constitute collusion in the PBS process. In particular, colleagues are urged not to vary the frequency of reporting on attendance, or the provision of any attendance records that are currently kept.
- In respect of staff, unless expressly instructed, members are urged not to request or receive or pass on or check the passports of their visiting colleagues, whether for the purpose of external examining or being a visiting speaker for research seminars or conferences, or for teaching. If you are arranging such a visit, you are very strongly

recommended, in the interests of fairness and courtesy, to advise any visiting colleagues to check with the University how they will be paid their fees and expenses in the absence of such documentation, should they decline to provide it.

- In some schools and faculties, members have been required in the past to check passports (to confirm the identity of a registering student), or to check overseas qualifications, often presented in a different language (to confirm eligibility for enrolment). In the new circumstances, these duties now take on an altogether different significance. Members who have not been trained to identify fraudulent documents (or who cannot even read the relevant languages) cannot reasonably pass judgement on identities and entitlements, and should not be asked to do so.
- If you are asked to perform any of the above by your line manager, you are advised to explain politely that you think those duties to be outside of your contractual terms, and that you are referring the matter to your trade union for advice.
- If you are a UK national, and you are also a visiting speaker elsewhere, or are yourself acting as an external examiner or otherwise contracted to another UK university, you are asked to consider whether you should provide your passport to the host institution.

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 oppose and campaign against changes that have implications on workloads.

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.

It is also advisable for branches to request copies of equality impact assessments undertaken by the institution related to the implementation of the points based system. (see below, *Request information on Equality Duties*)

Branches should also establish strong campaigning links with sister unions to build an institution wide response opposed to the points based system.

Branches and local associations are also urged to hold members meetings to discuss the new regulations, to agree the appropriate collective branch/LA response in conjunction with the regional official, to inform management of UCU's position and to explain the position to the other campus trade unions and to the local students union.

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 one of the recognised unions 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 / university'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.

HEALTH AND SAFETY

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.

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:

- Ensuring that the risk assessment has the objective of eliminating any identified risk rather than just minimising it
- 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
- 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.

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 constitute a significant risk to the personal security of those people engaged in such activity and therefore are 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

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.

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

BUILDING A CAMPAIGN LOCALLY

Branches/local associations are encouraged to raise the profile of their opposition to the points based system by building alliances with local community groups and trades councils forming a broad based consensus.

APPENDIX 1:

CONGRESS RESOLUTIONS

30 Points-based system for immigration - Composite (West Midlands Regional Committee, National Executive Committee, Academic-related Staff Committee)

Congress strongly condemns the points-based system for immigration (PBSI), which requires international staff and students to carry biometric ID cards and institutions to monitor them, report absences to the Home Office and check biometric data bases.

Under the PBSI, HE and FE Institutions are mandated to have a UK Border Agency sponsor's licence effectively making them agents of the Home Office.

As a result individual UCU members (both academic and academic-related) will be required to carry out policing and surveillance duties on behalf of the Home Office. Individuals could be liable to substantial fines and possible jail sentences for failure to comply.

This UK Border Agency-directed policy will impose additional workloads on UCU members and will ride roughshod over any individual's moral objections to collaborating in such distasteful surveillance activities

Colleges and universities are being forced to police the movement of international students and staff - or lose the ability to recruit internationally. International staff and students form an essential part of world class teaching and research. This system makes educators into immigration snoopers which could damage UK education irreparably.

Congress believes PBSI is:

1. discriminatory and an attack on the civil liberties of international staff and students
2. likely to lead to draconian absence and sickness policies being introduced and members being disciplined if they do not report absences of international staff and students
3. likely to severely damage the international status, and quality of education and research in institutions due to the loss of overseas staff and students
4. counter to our core values of academic freedom and equality
5. not part of our duties.

Congress deplores this pandering to anti-immigration racism and agrees to:

- campaign against the implementation of the points-based immigration system
- lobby government to explain the detrimental impact on key sectors
- lobby all relevant bodies and individuals to secure short-term amendments of PBSI legislation to ensure that UCU members are released from the existing requirements to act as unpaid and unconsulted agents of the UK Border Agency

- instruct the NEC to campaign jointly with S/TUC, NUS, employers, and other organisations to put pressure on the government to repeal this legislation
- work with all relevant groups to continue the campaign against ID cards
- The UCU immediately launching a campaign of non-compliance with all such policing and surveillance duties (including recording details from foreign national students; supplying personal details to other institutions in our capacity as external examiners, assessors and lecturers; and refusal to request such details on behalf of our own institutions from external examiners, assessors and lecturers). The UCU will give unqualified support to any member disciplined or victimised as a result of this campaign.

Congress agrees to assist branches in supporting members in their refusal to monitor or track international students and staff.

UCU will provide all possible support for any member who refuses to implement the processes of the PBSI.

31 Points based immigration - University of Brighton, Falmer

Congress condemns the points based immigration system

- monitoring and tracking international staff and students is implicitly racist, undermines civil liberties, and could produce draconian absence and sickness policies
- biometric ID cards for international staff and students is a backdoor route to their general introduction
- losing students could threaten the survival of many educational institutions
- employees could face intimidation for refusing to monitor or inform on colleagues.

Congress agrees to:

- campaign with others against this system, and to monitor its impact
- advise members that they are not contracted as immigration officers of the Border Agency or informants for the special branch
- to assist branches in supporting members in their refusal to monitor or track international staff and students
- write to principals and vice-chancellors encouraging them publicly to oppose to this xenophobic and proto-racist measure
- intensify the recruitment of international staff eligible for membership
- urge the TUC to condemn this system.

32 The campaign against points-based immigration - National Executive Committee

Congress strongly condemns points based immigration and believes PBI is against our core values of academic freedom and equality.

Congress instructs NEC to

1. campaign jointly with TUC, NUS, employers, and other organisations to put pressure on the government to repeal this legislation

2. make public statements opposing PBI
3. submit a motion to TUC condemning PBI and asking TUC and its affiliates to join the campaign
4. directly inform all members of UCU policy on PBI, encouraging them to use passive resistance and other creative and legal acts of non-participation to show that the system is unworkable
5. to encourage branches to ballot to boycott PBI
6. organise a national demonstration and lobby of parliament and encourage a sympathetic MP to put up a private member's bill
7. produce campaigning resource materials for branches and actively recruit international staff and students.

33 Opposition to new Home Office regulations on international students - Goldsmiths University of London

We wish to express our opposition to the new Home Office regulations that require staff to monitor the attendance of international students. We are opposed to these regulations for the following reasons.

First, they represent a possible breach of Article 8 (right to privacy) and Article 3 (degrading treatment) of the ECHR and the 1998 Human Rights Act.

Second, such regulations will harm the relationship of trust between students and lecturers.

The regulations treat international students as potential suspects who have come to the UK with the specific goal of abusing the immigration system.

Third, the work involved in monitoring international students will add unnecessarily to our workloads.

Congress agrees

1. to reaffirm its opposition to the new Home Office regulations
2. to ask members not to commence implementation of these regulations until the human rights and workload issues that arise from the new regulations are appropriately dealt with.

APPENDIX 2

UCU PBI survey Snapshot at 07 September 2009

Has your college or university provided information on the points based system and details of how they plan to implement it?

Yes		32.4%	61
No		67.6%	127

Have you been asked to take part in its delivery at your college or university?

Yes		26.3%	49
No		73.7%	137

Comments:

- No training. We've asked repeatedly for clarity, none received. (University of Glamorgan)
- How is that possible when the system isn't fully in place yet? And the IT to support it isn't expected to be fully operational till the autumn? (anonymous)

Has the UK Border Agency visited your college or university to check the status of employees and or students?

Yes		11.0%	14
No		89.0%	113

Has your university or college requested evidence of your status in the UK?

Yes		28.7%	50
No		71.3%	124

If you are a non EU national have you had to provide biometric details to the UK Borders Agency?

Yes		12.0%	10
No		88.0%	73

Has your university or college amended the arrangements for monitoring staff attendance?

Yes		15.7%	20
No		84.3%	107

Comments:

- My department has been put on alert to monitor more closely international students who don't turn up. (University of Liverpool)

Has your university or college amended the way in which student attendance is monitored?

Yes		31.1%	42
No		68.9%	93

Comments:

- The university has asked for details of the attendance of groups of Foreign National Students to be collected and forwarded to management. (University of Ulster)
- There is a requirement that international students be monitored but no-one has explained how, nor more importantly, what the devastating consequences to a student could be by reporting them. We have been asking for clear policies and warnings to staff about the importance of checking and double-checking thoroughly before reporting a student but we've had no response.(University of Glamorgan)

Has the introduction of this system had an impact on your workload?

Yes		23.9%	28
No		76.1%	89

Comments:

- Greatly increased administrative burden to take copies of passports and visas for all new staff, including PhD students who have contracts to act as tutors and demonstrators. We have still to revise monitoring arrangements, which we anticipate will require more resource. (University of Edinburgh)
- Immense. I work with International Students and anything that has to do with their status will go through us. However, this is not the point. I don't believe that the importance is on practicalities of the implementation of the system. It is the whole rationale behind, which reduce the role of the universities and of the academic and supporting staff to the agents of the state. (Queen Mary, University of London)

Have you witnessed a downturn in student numbers?

No		81.4%	96
Yes - down 5%		1.7%	2
Yes - down 10%		11.0%	13
Yes - down 15%		2.5%	3
Yes - down 20%		3.4%	4

Comments:

- Our postgraduate students will decrease by about 75% (St Andrews)
- The university is very worried and expects numbers to fall. Overseas students represent ~35% of students, pg and ug.(UCL)
- American candidates will be far less likely to apply to UK institutions. (University of Wales, Lampeter)
- There's no way that students will be able to meet the financial requirements - so I expect a significant drop in international students. (University of Kent)
- Maybe a marginal decline at first, but accelerating as alternative study countries gain ground as more friendly regimes! (Lancaster University)

Do you have any concerns about the new points based immigration system?

Yes		82.1%	115
No		17.9%	25

Comments:

- It is not a fitting basis for the relationship between an educational institution and its employees and their students (University of Lincoln)
- It has cost me approximately £3000 in fees to the UKBA and a solicitor to get my Tier 2 visa approved. It has seriously sidetracked a major research project (funded by a Research Council), prevented me from participating in two international conferences, and impacted my ability to complete my job to the level expected. The British taxpayer (including myself) did not get value for money for what they paid me these past ten months as an academic because I was preoccupied trying not to get deported rather than doing my job. Is it too much to ask that the UKBA be able to do its job competently and that one branch of Government not implement policies without considering their impact on the goals of other branches of Government, not to mention the people themselves? (Royal Holloway, University of London)

- If the government did its job properly, there would be no need for universities to take on this task. The need to keep detailed attendance records for every module will put considerable extra pressure on already over-stretched administrative staff. Is the government going to give universities money to employ additional administrators? (Lancaster University)
- We rely on overseas students for 75% of our teaching income. If the numbers fall because of poor immigration procedures, we will have to cut even more. (Leeds University)
- I consider this a racist system, likely to lead to problems for our non-EU students, particularly those who have language problems. (University of Ulster)
- That it shifts the boundaries of trust between universities and students. That we have no control over UKBA processes - so for example if a mistake was made, a 'tag' might remain on someone's visa preventing them obtaining visas and work permits in the future.

That is extended to foreign national staff, and universities reduce their employment of people on work visas. That fieldtrips are phased out as it becomes difficult for students and staff to leave the UK and feel secure that they will be let back in. That a culture of distrust arises. That staff abuse these powers and report a student they are in a disagreement with - ending their chances for visas/work permits in the future. (Birkbeck)

- I am concerned that ordinary citizens are being asked to police their fellows without training and at enormous risk. (Edinburgh University)
- Yes, for all the reasons outlined in the preamble to this questionnaire. Also, in light of the UK-US special arrangements for linking up data-bases and for the draconian border controls based on biometrics at UK borders with the EU. Being finger-printed is not far away in the UK situation. Travellers are not criminals-in-waiting. I could go on but you get my drift.
- Finally these measures are always coupled with increases in Visa fees and some pretty unsavoury surveillance practices (insidious vs. obvious) on 'foreigners'. International students I have had in my short time in the UK express various degrees of pressure and stress e.g. not being able to travel as the Home Office holds onto their passports for weeks. I believe that this is actually contrary to EU regulations. (Goldsmiths)