27TH OCTOBER 2017

EEA-WORKERS IN THE UK LABOUR MARKET
Migration Advisory Committee Call for Evidence

Written submission by the Association of Labour Providers
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THE MAC CALL FOR EVIDENCE
In July 2017, the Government commissioned the Migration Advisory Committee (MAC) to advise on the economic and social impacts of the UK's exit from the European Union and on how the UK’s immigration system should be aligned with a modern industrial strategy.

The MAC approach to making recommendations about migration policy is based on maximising the "total welfare of the resident population", an objective focused on the welfare of people and on how migration affects the lives of individuals. The focus is on whether immigration is good for people rather than whether immigration is good or bad for business, the economy or specific sectors. A thriving business sector is important for the consequences it has for people’s lives.

The government has set a deadline of September 2018 for the MAC to report back.

ABOUT THE ASSOCIATION OF LABOUR PROVIDERS (ALP)
ALP (www.labourproviders.org.uk) is a trade association promoting responsible recruitment and good practice for organisations that supply the workforce to the consumer goods supply chain across the food processing, horticultural and wider manufacturing, industrial, warehousing and distribution sectors.

ALP member organisations supply approximately 70% of the temporary contingent workforce into the food growing and manufacturing supply chain. Many of these workers progress to form the permanent workforce for UK industry. All organisations that supply labour into these sectors are required to be licensed by the Gangmasters and Labour Abuse Authority (GLAA).

ALP’s members predominantly provide unskilled and semi-skilled workers. Market pressures mean that unskilled work is either at, or very close to, national minimum wage. For many years these irregular low-paid jobs have been largely filled by migrant workers, able to earn more than they can in their home country. Depending on region EAA workers make up between 70 and 100% of workers supplied by labour providers, the remainder being British nationals and those migrants from non-EAA countries with right of residence in the UK.

Labour providers operate in a very competitive market largely resulting from the downward pressure on costs exerted by the consumer goods supply chain. It follows that margins are thin, although just adequate to allow efficient businesses to continue. The actual hourly rate charged by a labour provider to the hiring client for the supply of temporary workers is ultimately a commercial agreement. Any agreed rate should take into account the particular costs of supply. Hirers of temporary labour that pay unrealistically low rates are knowingly or recklessly conniving in illegality as these rates can only be achieved either through worker exploitation or tax evasion or both.
ALP RESPONSE SUMMARY AND RECOMMENDATIONS

The food and agricultural sectors are facing the most severe labour shortages in living memory.

For economic, environmental, social and food security reasons, nationally and locally grown and produced food is good for the resident population. The UK needs a thriving food growing and producing sector to meet this demand. Horticultural and food manufacturing businesses need a workforce to grow, produce, pack and distribute this food. This in turn meets consumer demand by providing the resident population with choice and value.

On 17th October the Government stated that, “Our ambition is to be a world-leading food, farming and fishing nation – one that is innovative, productive and competitive and invests in its people and skills. Access to a sufficient and appropriately skilled workforce is essential for the whole food chain and we welcome the Committee’s recognition of the importance of this.”

Even with current full access to EEA workers, the UK food growing and manufacturing sectors are currently transitioning from a labour supply shortage to a labour supply crisis. This is neatly summed up by a quote in the 22nd September edition of the Food Produce Journal, “It is pretty clear that we are facing a complete trainwreck of a season next year. This season was hard, but 2018 will be a completely different ball game”.

A current and anticipated inability to access sufficient labour is leading growers to take decisions not to plant, to plant less labour intensive produce, or to plant overseas. It leads manufacturers to delay investment and growth decisions, incur additional costs, to invest in overseas manufacturing, to failures in supply and ultimately to business jeopardy and closure. All have negative impacts on the resident population, either directly, where employment is affected, or indirectly as consumers in the form of price inflation.

RECOMMENDATIONS:

1. Statistics used by the Government are unable to provide a proper indication of food manufacturing and agriculture’s labour needs. Defra should collaborate with sector representatives and commission robust official statistical data and evidence on which employment and immigration policies may be reliably based.

2. Those EEA nationals who are resident in the UK on the date the UK formally leaves the EU should be given the opportunity to apply for settled status. When they acquire this right will depend on how long they have been and remain resident in the UK. The process to achieve settled status should be as straightforward as the previous Workers’ Registration Scheme introduced for A8 nationals (Eastern European countries who joined the EU in 2004). Those who have already acquired permanent residence under EU law should automatically acquire settled status.

3. The future immigration system must not impose a skills threshold for EEA nationals looking to work in the UK and should enable industry to access non-skilled and non-graduate workers.

4. The UK horticultural sector needs a non-EEA seasonal workers scheme for the 2018 season. This should not repeat the flaws of the previous Seasonal Agricultural Workers’ Scheme but should be piloted as a model for seasonal worker schemes that may in future be deemed necessary for other sectors.

5. MAC should incorporate into its recommendations a process to regularise the many hundreds of thousands of undocumented workers currently resident in the UK either illegally accessing work using false/forged documents or working in the black economy.

6. The future immigration system should introduce time limited, non-EEA sector based schemes, which meet the resident population test, to fill non-graduate semi and non-skilled shortage occupations. To qualify, users of such schemes must demonstrate a time bound roadmap using the apprenticeship levy to meet their future staffing requirements from the resident population.
ALP SUBMISSION

1. CURRENT AND FUTURE SUPPLY OF AND DEMAND FOR LABOUR

The sector is greatly challenged by the paucity of official data. The April 2017 Environment Food and Rural Affairs Committee Report “Feeding the nation: labour constraints” stated that, “It is apparent that the statistics used by the Government are unable to provide a proper indication of agriculture’s labour needs. The Government responded to this report on 17th October 2017 but failed to address this issue.

Data from the Office for National Statistics (ONS) does not include temporary, seasonal or those workers living in communal accommodation.

There has not been any official research on the levels of temporary labour within the UK food and drink processing and agriculture sectors since Defra commissioned work prior to the formation of the Gangmasters Licensing Authority in 2004. The Defra study in 2004 found in primary agriculture, horticulture and co-located primary processing that “labour providers will need to turnover 4.5 times the number of workers (over a period of a year) in order to be able to supply 100 thousand temporary workers in an average month”. In the secondary stage food manufacturing sector, it was found that “labour providers will need to turnover around three times the number of workers (over the period of a year) in order to maintain the supply of 40 thousand workers in an average month”. In 2004 around three quarters of temporary workers were supplied by labour providers and the rest, in addition to these figures, recruited directly.

There has been considerable growth in the number of temporary workers supplied by labour providers into secondary stage food manufacturing sector since this research was conducted.

Labour providers report that over 90%, with a range of 70-100% of the temporary agency workers supplied into agriculture and food and drink manufacturing are non-UK born, EEA nationals.

Of the two million EEA nationals working in the UK, one in five, or 400,000 currently work in the food and drink supply chain. EEA workers make up

- 30% of the food and drink manufacturing workforce
- 38% in roles that require no qualifications.

As per the NFU July 2017 paper ‘Access to a Competent and Flexible Workforce’, Defra 2015 figures estimate that there are 67,000 seasonal agricultural workers, though industry research indicates that is a significant underestimate with the horticulture sector alone needing 80,000 seasonal workers a year to plant, pick, grade and pack fruit, vegetable and flowers. Approximately 75% of these seasonal workers are currently recruited from Romania and Bulgaria (A2 countries) and the remainder largely from Poland and other A8 countries. However, there are many gaps in this data and no research is available currently which details:

- Whether this 80,000 worker number accounts for churn, and if not, how many workers in total are required to be recruited over the season.
- The expected shortage of seasonal workers in 2018
- What time of year these shortages are expected to happen
- Expected regional variations in shortages
- The impact of these expected shortages on planting decisions
Poultry industry research has found that around 13,000 seasonal workers are needed in that sector for the Christmas run up primarily in the processing of turkeys, and 58% of these are from outside of the UK.

Around 63% of the 75,000 total workforce in meat processing plants are from the EU27 countries, primarily, from Central and Eastern Europe.

**In February 2017 the ALP conducted a survey of its labour provider members:**

- 21% said that they did not expect to be able to meet Summer 2017 needs
- Subsequently, a June 2017 BBC survey of growers found that 21% had fewer seasonal workers than they needed for the start of the main picking season

**In July 2017 the ALP conducted a further survey of its labour provider members:**

- 30% said that they did not expect to be able to source and supply sufficient workers for the remainder of the Summer 2017
- Subsequently, October 2017 data from the NFU’s monthly labour survey showed that the shortfall of seasonal workers on farms in England and Wales hit 29.3 per cent in September 2017

**The July 2017 ALP survey also identified that:**

- 45% of labour providers do not expect to be able to source and supply sufficient workers for the 2017 Christmas peak

The April 2017 Environment Food and Rural Affairs Committee Report “Feeding the nation: labour constraints” said that “The current problem is in danger of becoming a crisis if urgent measures are not taken to fill the gaps in labour supply.” The Government response to this report failed to address this concern.

Even with full access to EEA workers, the UK food growing and manufacturing sectors are currently transitioning from a labour supply shortage to a labour supply crisis.

**2. CONSEQUENCES OF LABOUR SHORTAGES ON THE RESIDENT POPULATION**

Whilst labour supply shortages have many negative impacts on business efficiency, confidence and profitability, the principle consequences on the resident population are:

1. Increased food prices as a consequence of increased production costs due to:
   - Reduced productivity as a smaller pool of workers to select from results in a lower quality workforce and
   - Increased labour costs due to increased labour sourcing, advertising and recruitment costs to attract the same number of workers; increased wage rates to attract and retain a labour force. In the July ALP survey over 40% of labour providers report that their client businesses have had to increase wage rates to attract workers;
   - Increased overtime costs to meet labour shortfalls

These labour cost increases compound the labour cost increases of the national living wage - 5 years of around 7% per annum; the accelerator effect of the national living wage increases across the whole pay bill; pension auto-enrolment and apprenticeship levy costs.
ii. Health and wellbeing

- To deliver, quoting the NFU, “A traceable, safe and affordable domestic supply of food, which the public trusts. If we undermine our food security by reducing our capacity to produce food at home, we instead rely on imports produced to different environmental and welfare standards and under food safety systems over which we have little or no control.”

iii. Increased potential for loss of jobs through business failures and relocations

- The FDF chaired UK Food Supply Chain Workforce Strategy Group, of which ALP is a member, published a food and drink supply chain workforce report in August 2017 entitled ‘Breaking the Chain’. This identified that 36% of respondent businesses across the food chain would become unviable if their company did not have access to (non-UK) EEA nationals and 17% would relocate overseas.

iv. Contribution to economic wealth of the nation

- The domestic food industry employs over 3.8m people and, as the UK’s largest manufacturing sector, generates £109bn in value for the UK economy.

- Lost opportunities for import substitution and export, through labour shortages preventing expansion, particularly in a time of favourable exchange rates. This is contrary to Government policy to put trade at the heart of its agenda and the ambitions and objectives of the International Action Plan for Food and Drink, the International Food Plan and the Great British Food Unit.

v. Reduction in consumer choice

- Growers are making decisions now not to plant labour intensive, low margin crops.

- Labour shortfall to meet the Christmas 2017, Summer 2018 and future peaks will result in supply failures and impact on availability and consumer choice.

3. DOMESTICALLY SOURCED LABOUR

Evidence from the Gangmasters and Labour Abuse Authority licensing standards non-compliances since 2006, the MAC’s 2014 report Migrants in low-skilled work and the EHRC’s 2016 research: ‘Examining employers practices and attitudes to recruiting UK born and foreign born workers’, all demonstrate that labour providers in the food manufacturing and agricultural sectors do not discriminate against domestic workers.

Labour providers seek to attract local labour by advertising vacancies at job centres, branch windows, the internet and local press in an attempt to recruit local candidates. The response from the local population is very limited with a preference from UK born nationals to work in non-food manufacturing, distribution and warehousing.

In the July 2017 briefing and position paper, ‘Addressing UK Labour Constraints’ the ALP proposed a broad spectrum of national policy options pre and post EU Exit to increase access to a domestic workforce and to assist in tackling the current labour shortage.

At a time of near full employment UK born nationals generally are not attracted by seasonal and temporary food and agricultural work, with perceptions (sometimes unfounded) of poor pay, low skilled repetitive work, cold and physical conditions, in rural and remote locations, irregular, shift and weekend work and lacking career prospects.
Despite numerous initiatives over the last thirty years and longer, the industries have failed to address these negative perceptions even for permanent roles and make food manufacturing and agriculture career sectors of choice for younger workers. The sectors have declined in popularity this century for domestic workers of all ages. There is no evidence that any of the current initiatives are generating any significant success in reversing this.

The BRC, FDF, NFU, the MAC itself and recent reports from the House of Lords and House of Commons EU Committees, and the House of Commons EFRA Committee, all state that there is no evidence that resident UK workers will eventually fill the jobs vacated by EEA workers particularly for seasonal work.

4. REGULARISING UNDOCUMENTED WORKERS RESIDENT IN THE UK

For want of more current data, the London School of Economics research put the number of illegal workers in the UK at the end of 2007 at 618,000, with a range of 417,000-863,000.

A June 2017 Civitas report, *The Politics of Fantasy*, authored by the previous deputy CEO of the UK Borders Agency and Director General of Immigration Enforcement estimates the number of additional migrants entering the UK illegally at 150,000 a year.

As a general rule, asylum seekers are not allowed to work in the UK, but they can apply for permission to fill a shortage vacancy if they have been waiting for over 12 months for an initial decision on their asylum claim. Attempts were made during the passage of the Immigration Bill 2015-16 to relax these restrictions, but they did not have Government support and were unsuccessful.

Whilst politically sensitive, Government cannot forever ignore the existing and growing number of undocumented workers in the UK and has the ideal opportunity now to demonstrate coherent joined up policy through addressing this issue and tackling the labour shortfalls in many UK business sectors.

Government should re-examine the ability of refugees and asylum seekers to access work.

Government should develop a strategy and series of policies to regularise and enable access to work for those individuals that have entered or remained in the UK illegally and for whom there is no reasonable prospect of agreed deportation.

5. CURRENT EEA NATIONALS LIVING IN THE UK

There is a broad consensus that there should be “no change for EU citizens already lawfully resident in the UK. These EU citizens will automatically be granted indefinite leave to remain in the UK and will be treated no less favourably than they are at present”. Polling for British Future found that 84% of the British public supports letting EU migrants stay – including three-quarters (77%) of Leave voters – with any future changes applying only to new migrants.

The stated objective of the British position is ‘to ensure continuity in the immigration status of EU citizens and their family members resident in the UK before [the UK’s] departure from the EU (including their ability to access benefits and services)’ (*The United Kingdom’s Exit from the European Union - Safeguarding the Position of EU Citizens Living in the UK and UK Nationals Living in the EU* par.15). The British Government’s position is the conferment of settled status on EU citizens. This would be about indefinite leave to remain, and would grant its beneficiaries rights (to work, benefits, pensions, healthcare) that are identical to those of UK nationals.

Those EU nationals who are resident in the UK on the date the UK formally leaves the EU should be given the opportunity to apply for settled status.
The Home Secretary, Amber Rudd MP, in her commissioning letter to the Migration Advisory Committee in July 2017 said, “We do not envisage moving to that future system in a single step when we leave the EU. It will be in the interests of migrants, employers and the UK authorities, to have a predictable, well understood process which moves gradually from the free movement regime to a new set of arrangements.”

Specifically, with regards to transitional arrangements, the letter states, “As part of a smooth and orderly transition as we leave the EU, the second phase of our immigration proposals is based on a temporary implementation period to ensure there is no cliff-edge on the UK’s departure for employers or individuals. This includes the ‘grace period’ during which those EU citizens who arrived before the specified date will have time to obtain their documentation from the Home Office. During this period there will also be a straightforward system for the registration and documentation of new arrivals (as well as for those who arrived after the specified date but before exit, if appropriate). A registration system that enables EEA citizens to demonstrate their right to live and work in the UK is the basic requirement to be able to operate any system of immigration control.”

The administrative process to achieve settled status should not be overly burdensome or costly so as to deter EEA nationals from applying. The process to achieve settled status should be as straightforward as the previous Workers’ Registration Scheme introduced for A8 nationals in 2004.

The date on which EEA nationals acquire this right will depend on how long they have been and remain resident in the UK. Those who can demonstrate that they have been resident in the UK for five years or more and those that have already acquired permanent residence under EU law should automatically acquire settled status.

6. FREE MOVEMENT OF EEA AND UK WORKERS POST EU EXIT

Free movement of EEA and UK workers is the outcome to be desired, however it is understood that any long-term commitment to this post-EU exit is politically challenging in a referendum in which immigration and control over borders was a central theme and in the context of Government policy to reduce net migration to the tens of thousands.

The cliff edge of barring access to EEA workers to work in the UK from the date of EU exit will wreak havoc on the UK food supply chain and many other sectors.

The government has, through its commissioning of the Migration Advisory Committee, signalled its intention to adopt an evidence based approach to the setting of immigration policy and quotas post EU exit. Specifically, the letter states of the evidence gathering and consultation process, “Only when all of this concluded, and we have the MAC’s advice, will we determine what the future long-term immigration rules for EEA citizens should be.”

Political policy on immigration should be supported by a wide ranging and pioneering programme of social policy initiatives to drive community cohesion. A fundamental foundation of such a strategy, and one which will also increase the available workforce is the ability to speak English of all non-UK born nationals who have been given permanent leave to remain; those seeking residency, those EEA nationals seeking to remain and those seeking to work in the UK in the future.

7. SEASONAL WORKERS’ SCHEMES

Seasonal Workers’ Schemes satisfy the dual objectives of meeting industry’s urgent need for a workforce without increasing net migration flows. The United Nations definition of an immigrant requires someone to stay in another country for at least 12 months. The ONS follows this definition and so Seasonal Workers’ Schemes do not impact on net migration figures. Evidence shows that seasonal workers return to their home nation at the end of the season of work.
Many EU nations source non-EEA seasonal workers from a variety of countries.

The EFRA Committee Report ‘Feeding the nation: labour constraints’, “noted the Home Office’s assertion that a new SAWS could be introduced very quickly—in five or six months—once the need for such a scheme had been identified.”

A non-EEA Seasonal Workers’ Scheme is needed for the 2018 season in the UK horticultural sector and to achieve this the Government needs to approve this before Christmas 2017.

The Home Office should convene a multi-stakeholder group in the immediate future, comprising Defra, industry and trade association representatives to input to the design of a new Seasonal Workers’ Scheme so that this is ready for implementation once the political decision is made.

A new Seasonal Workers’ Scheme should, through its structural design, correct the failings of the previous Seasonal Agricultural Workers’ Scheme (SAWS) which was abolished in 2013, particularly with regard to the prevention of exploitation of workers. The ALP, in its paper “Building a Model Seasonal Workers” Scheme”, lays out many of the considerations to be taken account of in designing a new scheme.

Users of such a scheme above a certain size threshold should be required to provide a proportion of work opportunities to socially disadvantaged and/or long term unemployed members of the resident population.

There are also potential needs for Seasonal Workers’ Schemes in summer salad and meat packing, Christmas poultry processing and other more specialised sectors.

The need for such permit based quota schemes should be evidence based, recommended by the Migration Advisory Committee for specific sectors that can demonstrate a seasonal or other peak workers requirement which cannot be met through local supply and be able to be approved or withdrawn without excessive legislative bureaucracy.

8. SECTOR/SKILL PERMIT BASED SCHEMES

Defra should work with Lantra, The National Skills Academy for Food & Drink and others to agree a complete, national classification of roles in the UK food manufacturing, agricultural and land based industries.

Defra should conduct a national consultation to evidence shortage occupation lists across these roles and industries.

Where evidence supports that a shortage occupation exists, the future immigration system should allow MAC to authorise licensed businesses, including labour providers, a time limited non-EEA sector/skill permit based scheme to address industry’s needs to fill these shortage occupations where they meet the resident population test.

Shortage occupations should not have a qualification threshold imposed and should enable industry to access non-graduate, semi-skilled and non-skilled industry specific roles.

Employers wishing to engage workers through a sector/skill permit based scheme should be licensed and be required to meet certain conditions such as:

- All vacancies sought to be filled through sector/skill permit based scheme must be advertised locally and nationally through the Jobcentre for at least one month.
Employers above a certain size threshold must be able to demonstrate that, for the shortage occupation roles that they are seeking to fill through the scheme, they are using the apprenticeship levy to address this occupational shortage and to meet their future workforce requirements.

Each employer wishing to engage workers from the sector/skill permit based scheme is assigned a Department of Work and Pensions (DWP) account manager to be working together proactively to provide work opportunities within the local community, to regions where unemployment remains high and to engage with DWP schemes to provide employment opportunities to harder to reach sectors of society.

Macro skills and education policy should be developed to address these skills shortages in the medium to long term.

Defra, Lantra, The National Skills Academy for Food & Drink, devolved administrations, trade bodies and industry representatives should collaborate to:

- Form a future vision for promoting UK food and farming sector careers.
- Determine future skills and training policies.
- Ensure that the apprenticeship levy is used to attract young people to come into the industry on apprenticeship schemes that start at the lower skilled end of the spectrum.

This should be appropriately funded.