

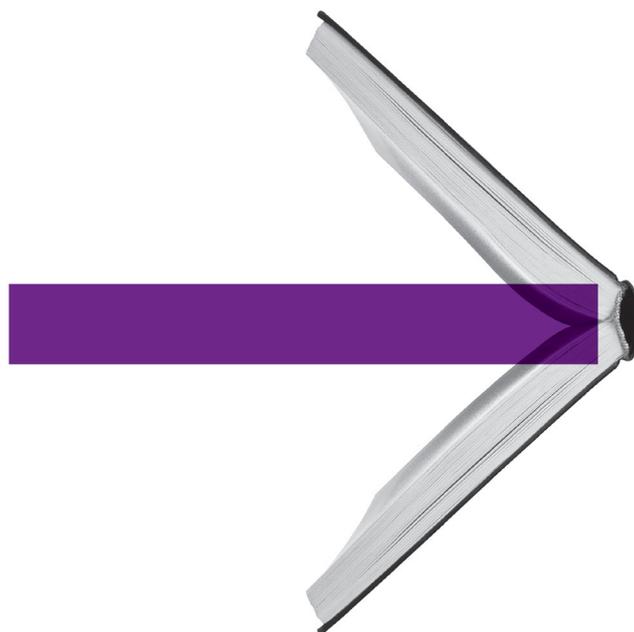


## **Brexit and the Future of UK Immigration**

A report from Eversheds  
Sutherland LLP

February 2017





## Executive summary

Following the Prime Minister's recent speeches on Brexit, immigration policy is clearly at the very heart of Brexit negotiations. Accordingly, it is becoming more apparent that a 'clean' Brexit will mean a revised UK immigration system that applies to both EU and non-EU nationals. We know that Home Office policy writers are designing plans for our future immigration system at this very moment and so when the Home Affairs Select Committee recently called for evidence for their inquiry into developing a consensus on an effective UK immigration policy, Eversheds Sutherland took the opportunity to collectively speak on behalf of UK employers of their concerns, their observations and their recommendations. We were only one of two law firms to take this opportunity and we were the only law firm to truly represent the opinions of UK business by reporting back our findings of an online survey of employers that we conducted in preparation for our submission.

We would like to take this opportunity to thank the hundreds of representatives of UK businesses who responded to our survey and those who took the time to speak to us about how Brexit is affecting them presently and how it is likely to affect them in the future. Our list of respondents is a list of a multinational, large-scale businesses who employ hundreds of thousands of workers in the UK and whose contribution to the UK has made the UK what it is today. We think that our report succeeds in drawing a consensus across a wide range of diverse industries and sectors and importantly we believe that it opens an important conversation between UK businesses and the UK government that we are keen to facilitate and continue. It is our aim as a leading global law firm to lead on lobbying the Home Office on a UK immigration system that works best for UK companies and the UK economy, so if you would like to speak further about our report or would like to speak further about ways in which we can further influence the government on this issue, please get in touch.

*“We provide a service to clients across the whole of Europe, if my UK based workforce cannot travel and work in mainland Europe, as is expected to be the case, then I must increase the number of EU nationals that work for my business who can service my EU clients.”*



## Introduction

Eversheds Sutherland is one of the largest full service law firms in the world with 61 offices, 450 partners and 2400 legal advisers in 29 countries. In 2016, Eversheds Sutherland featured in 92 categories in Chambers Europe with nine top tier rankings while also featuring in 154 categories in the Legal 500 EMEA with 12 top tier rankings. We have one of the largest employment teams in the UK, managing over 5,500 employment cases every year, including supporting UK companies with sponsoring overseas workers under the UK Immigration Rules. We consider ourselves very well positioned, therefore, to be able to offer a submission to the Home Affairs Select Committee in terms of the UK immigration system with regards UK employers and overseas workers that is representative of the views of these employers.

In order that our submission is fully informed, we have canvassed opinion across our database of UK employers with a survey on their views of the current immigration system for migrant workers and also their thoughts and concerns for a future UK immigration system resulting from the UK leaving the European Union.

We received over 200 responses to our survey from respondents from a wide range of sectors, from highly skilled sectors such as Education, Financial Services, Technology, Engineering and Aviation to lower skilled sectors such as Manufacturing, Retail and Tourism. Most of our respondents are multinational and most would be classified as 'large-sized' companies with several being in the FTSE 500. Combined employee numbers of all of our respondents would be in the tens of thousands if not hundreds of thousands.

In this submission where reference is made to EU workers/nationals this does not include UK workers/nationals.

*"Simplification of the visa requirements should be encouraged. Adding additional layers of complexity would be restrictive to the business. Implementation period needs to be carefully considered to ensure that businesses and employers can get fit for this."*

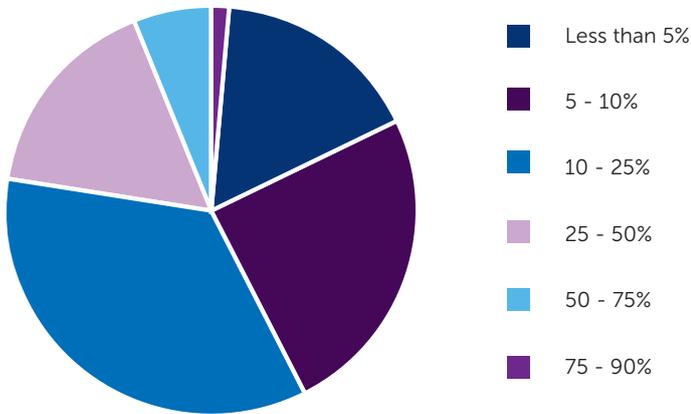


## Current and Future Status of EU Workers

### Workforce demographics

35 percent of respondents to our survey indicated that their workforce comprised between 10 and 25 percent of EU nationals. 16 percent of respondents indicated that their EU nationals comprise as high as between 50 and 75 percent of their total UK workforce.

At present, what percentage of your UK workforce would you estimate is from EU (excluding UK)?



### Impact of immigration system on UK worker salaries

If a future UK immigration system treats non-EU and EU workers in the same way 73 percent of our respondents do not believe that this will lead to a rise in the salaries of British nationals. The idea that EU nationals work for a lower rate than British workers and thereby prevent British nationals from being employed for the same jobs is not supported by our survey with 93 percent of respondents disagreeing that a reason that they recruit EU nationals above British nationals is owing to lower salary demands.

In the eventuality that EU workers become subject to the same immigration requirements as non-EU workers:



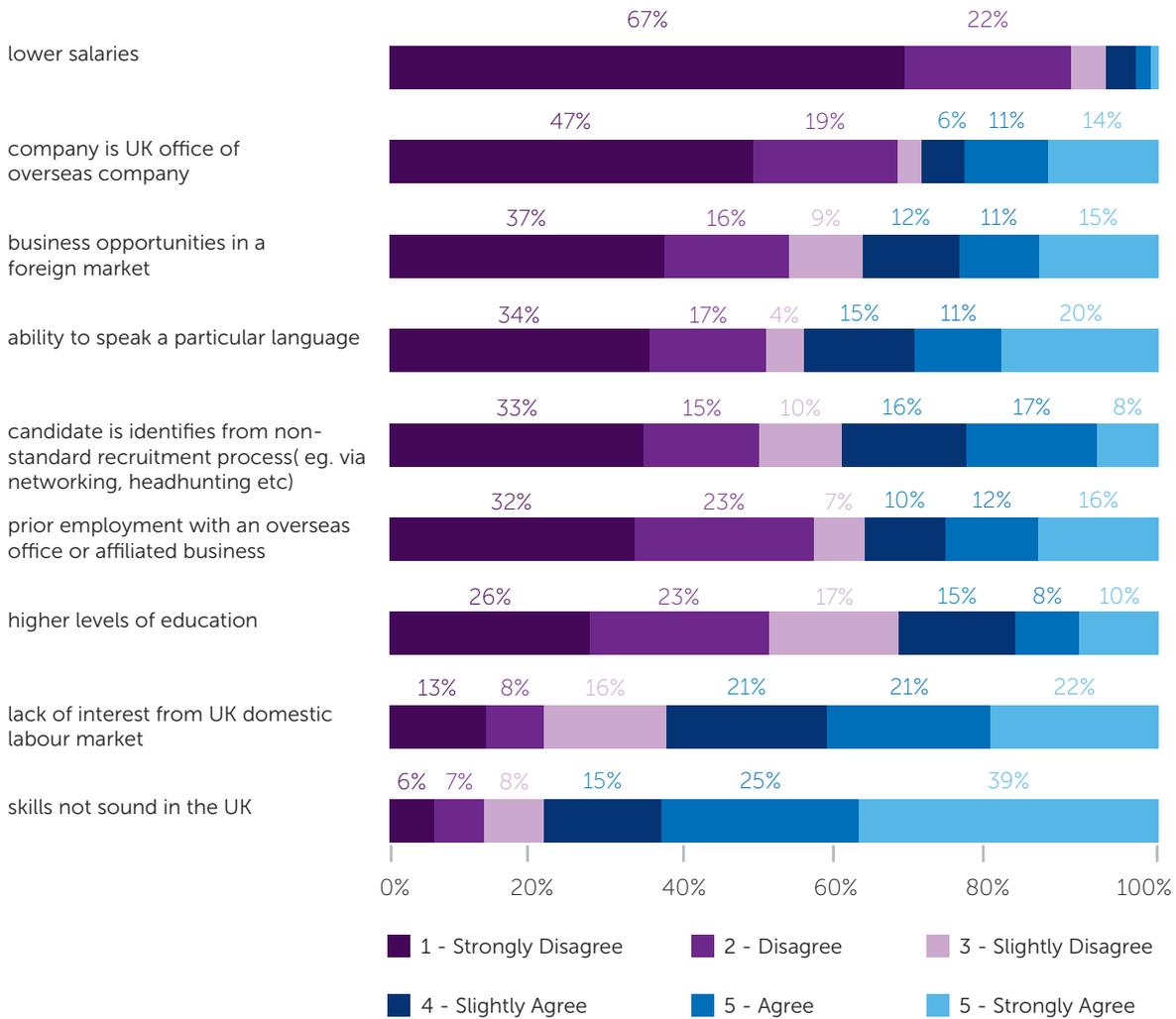
The main reason our organisation recruits workers from outside the UK domestic labour market is:





**Reasons for recruitment of EU workers**

The main reason our organisation recruits workers from outside the UK domestic labour market is:



*“There has been a direct impact to our profitability as we source a high percentage of goods from outside of the UK and the strength of the pound v other currencies has meant we are now paying more than pre Brexit. This will undoubtedly impact the prices we charge our customers and require us to look at other costs such as pay and benefits”*



## Availability of skills

66 percent of respondents agree that their businesses rely on the particular skills held by EU workers and 79 percent agree that the particular skills that they require are not found within the UK domestic labour market.

### **IT sector**

In follow up conversations with our respondents, it is clear that fields such as the IT industry are incredibly competitive and so whilst there are British workers with relevant skills and experience to be found in the UK labour force, it is sometimes the case that the most skilled and qualified candidate is from the EU or from outside the EU. The skill levels of EU and non-EU nationals is encouraging competition in the UK which results in this instance in the industry developing and more jobs becoming available. Many UK jobs have been created by EU and non-EU nationals who have founded companies in the UK. Our respondents in the IT and Technology sectors have indicated that it would be detrimental to their business if it were any more difficult to recruit the best skilled candidates globally.

### **Education sector**

Similarly, UK universities, whose success relies on being truly global in terms of teaching staff and student population, have very high numbers of EU workers. 20 percent of respondents to our survey identified themselves as working in the Education Sector and anecdotally we can confirm that UK universities are highly concerned about the implications of the UK leaving the EU. In view of the uncertainty of their ability to remain and work in the UK, some respondents have spoken to us about high level candidates withdrawing from the recruitment process citing the uncertainty of the ongoing status of EU nationals in the UK as the reason. We have also heard that other European universities have begun to capitalise on this uncertainty by attempting to recruit the current EU staff members of leading UK universities.

## Language skills

The ability to speak another foreign language is another skill area that is very difficult to find within the UK domestic labour force, with 46 percent of respondents agreeing that they recruit outside the UK domestic labour force for this reason. This is a skills shortage that cannot be developed overnight within the UK labour force especially if diversity through immigration is discouraged by immigration policy. Our respondents believe that in order to be 'Global Britain', UK companies need workers with the skills to engage with partners globally.

## Lack of interest from British workers

64 percent of respondents agree that they recruit EU nationals because there is a lack of interest from the UK domestic labour market. This is found to be particularly true in the Agricultural and Food Manufacturing sectors where the percentage of EU workers comprises up to 90 percent of the UK workforce. In follow up conversations with our respondents we were told that, by and large, British workers did not want to work the hours (early starts, nightshifts, weekend work) or to work in the environment (temperatures of 5°C) whilst EU nationals were willing to do so. At present there is a high percentage of low-skilled workers from the EU working in low-skilled work, without whom these UK companies would not be able to keep operating. One respondent from a very large food manufacturing company advised us if the company could not employ EU nationals as it does at present, then it will have to close factories unless British nationals are compelled to take their place.

*"Uncertainty means we are currently missing out on potential EU applicants for roles being offered."*

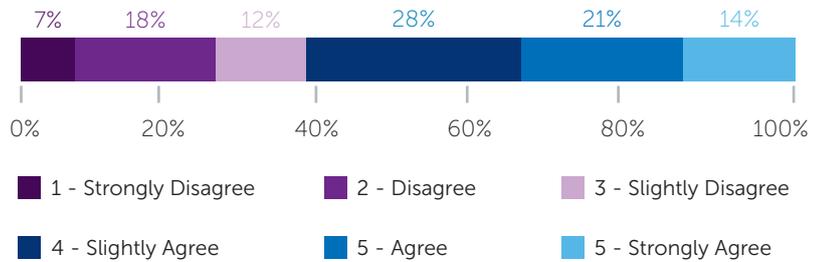


### Transfer of skills from EU countries

The Manufacturing industry in general in the UK are reliant on machinery and technologies that it imports into the UK from the EU. Aside from the free movement of goods, the workers who are responsible for fitting, maintaining and repairing this machinery are likely to work for the companies who make the machinery in the EU and so are required to work in the UK very frequently. Therefore, companies in these industries are concerned first with a short-fall in their available low-skilled workforce if they are unable in the future to rely on an immigrant workforce and also they are worried with regards the ability of staff to be able to travel freely within the EU to respond to urgent business needs. Respondents in this sector believe that restricting these areas will not result in increased employment of UK nationals and will effect revenue for these companies.

### Impact of Brexit

The current uncertainty regarding the post-Brexit status of our current EU staff is detrimentally effecting our business

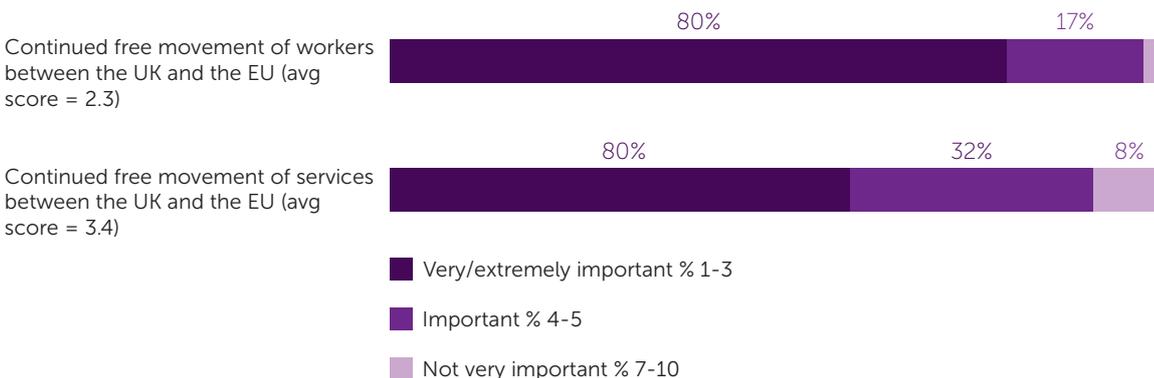


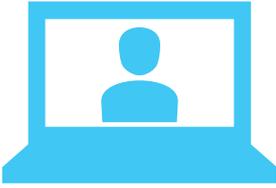
63 percent of respondents agree that the current uncertainty regarding the status of their EU staff is detrimentally affecting their business. Our respondents are telling us is that they need certainty with regards the status of their current workers since they form such a large proportion of their current workforce. Uncertainty is leading to highly skilled candidates from the EU looking outside of the UK for work and EU based companies capitalising on this and recruiting staff ahead of their UK competitors. Additionally, all employers have an interest in the well-being of their staff, and the uncertainty surrounding the status of so large a proportion of their workforce is detrimental to this end.

For most (if not all) of our respondents, the motivation for communicating with us on this matter is to speak in unison for the need of assurance for the ongoing rights of EU nationals working for UK companies. Their clear message to us is that this lack of certainty is harming UK business.

## Free Movement of Workers between the UK and rest of the EU

### Important business areas over next 12 months





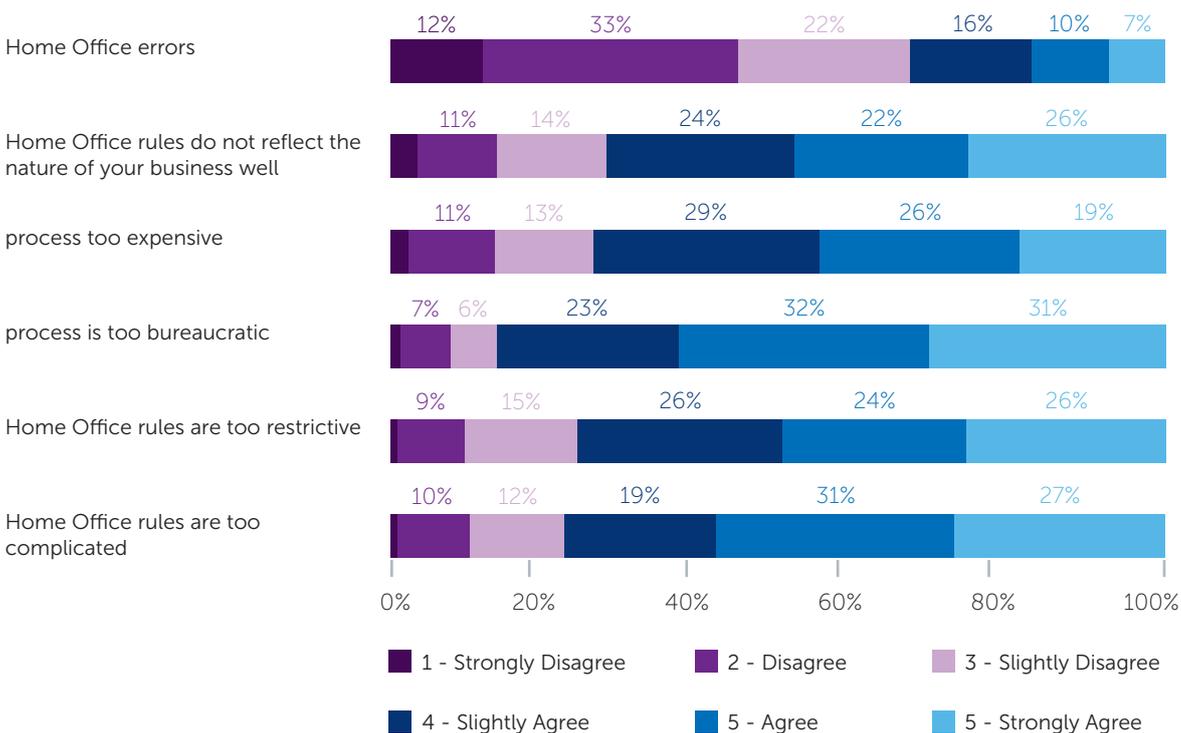
Free movement of workers is regarded by the respondents that we have spoken with as the ease with which workers can travel frequently between the UK and the EU member states generally for short periods of time in most cases, during which they are unrestricted with regards work and study and not subject to lengthy and expensive visa processing times.

80 percent of respondents state that free movement of workers is a very important consideration for them, particularly over the next 12 months of Brexit negotiations. In conversations with our respondents we were told by one company that it would be likely that they would centre more of their staff in their other EU office and downsize their UK office if it was difficult for their EU staff to work at the UK base. Several companies cited serious concerns with free movement rights for UK nationals to work in the EU once the UK has left. One large retailer spoke of the importance to their business that they can freely travel and work in other EU countries for periods of 6 months to a year in order to establish the company and its stores in these countries. Current Schengen visa restrictions would not allow for this amount of time to be spent in these EU countries. In this scenario it is likely then that British nationals currently undertaking this work will lose their jobs to EU candidates in situ in the EU.

While free movement is unlikely to continue as is (freedom to travel within the EU and to the UK from the rest of the EU visa-free and with an initial right of residence dependent on EEA membership only) our respondents urge the UK Home Office to ensure that any future visa process and conditions under which movement of workers travel between the UK and the EU is as efficient, speedy and user-friendly as possible. This comment is not limited to EU nationals coming to the UK but non EU nationals working in Europe wishing to come to the UK.

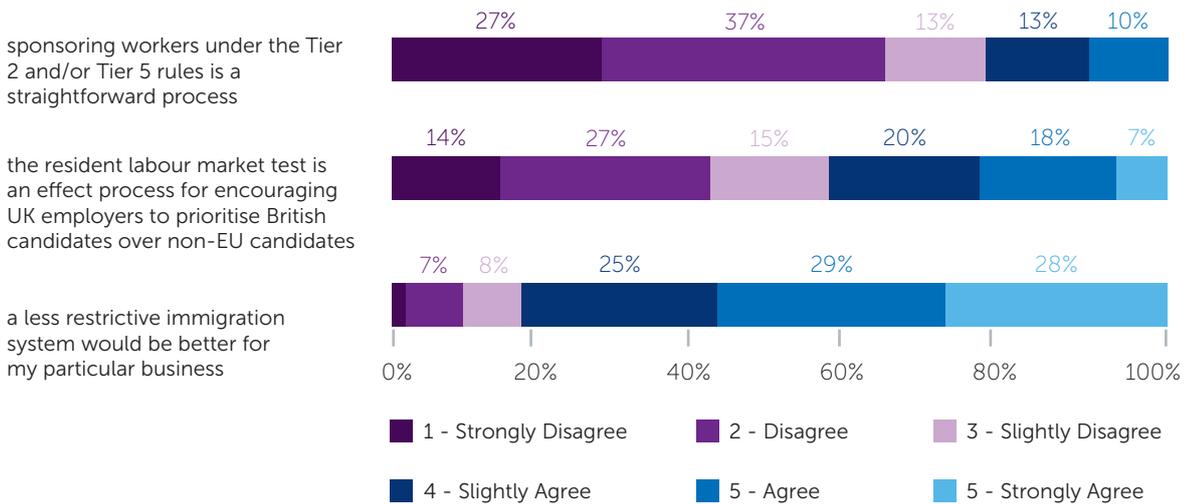
## Comments on the current immigration system as it relates to non-EU Workers

The main reason issues with recruiting non-EU staff present are:





**With regards the Point Based System:**



77 percent of respondents disagree that the current sponsorship system for non-EU Tier 2 and Tier 5 workers is straightforward. 86 percent of respondents consider the process to be too bureaucratic, 76 percent agree that the rules are too restrictive and 77 percent agree that the rules are too complicated. To illustrate this point, currently the Tier 2 and 5 Guidance for Sponsors document is 202 pages long with seven separate Appendices documents and eight separate Codes of Practice. Additionally, the specific immigration rules and Appendices relating to Tier 2 (General) alone are over 28,000 words long. The rules and guidance are very challenging to navigate without specialist assistance, which entirely defeats the original objective of the Points Based System.

72 percent of respondents agree that the current immigration rules for non-EU workers do not reflect the nature of their business. We are told that while the rules are lengthy and complicated, they are also unnecessarily rigid and restrictive. Two areas in which most respondents would like to see amendments are in the classifications of jobs under the Standard Occupational Codes (SOC) and in the rules with regards the Resident Labour Market Test (RLMT).

**SOC codes**

When sponsoring a non-EU worker, the job must be skilled to NQF Level 6 or above. The Home Office qualify jobs as being NQF 6 or above by listing occupations and giving each one a specific code – a SOC code. When a company proposes to sponsor a non-EU worker, the company identifies a SOC code that resembles the job title and job description that they are advertising. The Home Office will often not allow the sponsorship to proceed if the job title and/or job description is too similar or different from the SOC code that has been identified. If it is too similar, the Home Office may consider that the job has been created specifically to recruit a non-EU national and if is too different, the Home Office may consider that the SOC code does not match the particular job title or description. Often an employer recruiting for a highly skilled position requires an individual highly skilled in a particular role that is not covered by a SOC code, meaning that employers have to try and find the nearest equivalent, putting them at risk of not qualifying. The SOC code system does not capture the full range of occupations that can be considered NQF 6 or above and needs to be reviewed in consultation with UK employers.

The SOC code system also brackets occupation types together with no consideration of the ‘scale’ of the job. For example, a large UK retailer would be unable to sponsor store managers for its large stores which employ hundreds of staff because the role is classified as NQF level 3. Therefore, store managers of large department stores are classified within the same category as store managers of small convenience stores despite clearly having a very different and more specialised job role. Our respondents in the UK Retail Sector are household names currently advise that up to 20 percent of their store managers are EU nationals and so if the SOC code system applies to all non-British and settled staff, the business will struggle to fill these roles with qualified staff from the UK domestic labour force.



## Resident Labour Market Test

The RLMT is a process by which an employer advertises a position to the UK domestic labour market so that there is opportunity for British and/or settled workers in the UK to apply for the job and stand a fair chance in the recruitment process. However, 56% of respondents disagree that the RLMT is an effective process for encouraging UK employers to prioritise British candidates over non-EU candidates. Failing to include all of the required information such as a closing date or a salary range or failing to advertise on Universal Jobmatch for a role with a salary of below £72,500 will result in any advert not counting as a valid RLMT, which not only prevents the hiring of any non-EU national that is recruited as a consequence of the position, but it is also grounds for the employer to have their sponsorship license removed with a ban from applying again for 12 months imposed.

Employers will often identify candidates through their own standardised recruitment process or from a different context in which the candidates skills have been demonstrated to an employer, such as a collaborative project with another company, or even from having been previously employed by the employer. In these circumstances, even when the employer additionally advertises the position to the UK labour force to meet the conditions of the RLMT and, more importantly, opens the role fairly to the domestic labour force, the employer can be prevented from recruiting the candidate on allegation that the RLMT was pretence.

## Comments and Recommendations

**Assurance:** Our respondents need to know as a matter of urgency that their current EU will be unaffected by Brexit in terms of their work and residence status in the UK.

**Strategy:** Our respondents want to see the government's strategy for addressing the skills shortages in the UK domestic labour force currently being filled by EU nationals.

**Diversity:** Our respondents want the government to value diversity in the workforce as a key consideration for the UK worker immigration system.

**Competition:** Our respondents want the UK to be able to compete globally by being able to recruit the best global talent.

**Low-Skilled:** Our respondents recommend a visa scheme similar to Tier 5 Youth Mobility open to EU nationals to travel to the UK easily to undertake low skilled work for 1 to 2 years.

**Highly-Skilled:** Our respondents request a more common sense approach to global recruitment for highly skilled workers and a more effective and coherent visa system.

**Consultation:** Our respondents request that these measures be taken in co-operation with UK businesses.

*“It is difficult to recruit UK nationals with the level of IT specialist skills required in our business, where there is a very competitive market.”*

*“Our industry is competitive and finding candidates with the right level of skills is difficult in the UK market. Many of our employees are from the EU.”*

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