

## **Submission to the UKBA consultation on Employment-related Settlement, Tier 5 and Overseas Domestic Workers**

**September 2011**

### **Migrants' Rights Scotland**

Migrants' Rights Scotland (MRScotland) was established as an independent organisation in 2010 but looks back on a longer history of active engagement on issues affecting migrants' rights and social justice, especially through the Migrants' Rights Network (MRN). Through two Scotland-based Directors of MRN, we have been involved in a migrants-led development for a rights-based approach to migration since 2006. The establishment of MRScotland thus builds on earlier work and specifically aims at building solidarity and working alongside the growing number of migrants, MCOs and other civil society organisations in Scotland, as well as at highlighting the specific situation and needs in Scotland which are often not sufficiently reflected in public debate and policy-making in the UK.

MRScotland's network stretches from the Highlands to the Borders, bringing together migrants of various backgrounds, residency status, ethnicities and nationalities; they connect us with thousands of other migrants who are trying to make their lives here. We work towards getting their voices heard and towards strengthening their meaningful participation in developing the policies that affect their lives, through open discussions, sharing experiences and knowledge, lobbying and campaign activities.

### **Introduction and summary**

The government's proposals to deny the vast majority of non-EU migrants on work-related visas the option to apply for settlement in the UK as well as to remove/restrict many migrants' rights to work and to a family life in the UK are part of various, subsequent changes to immigration rules in the past months, marking a fundamental shift in migration policy based on the government's fixation with driving down 'net migration' to the levels of the 1990s. We object to this agenda, as the government has yet failed to establish how the level of net migration constitutes an adequate indicator for what might be "sustainable immigration" and thus, it should not form the unqualified basis or be the target of immigration policies.

Given the lack of reliable data on migration and of conclusive evidence on the impact of migration on public services in the UK, we understand the various changes in immigration rules and proposals made by the government mainly as an attempt to avoid an image of inertia, instead of opening up and being accountable to a serious public debate about social inequality in the UK at a time in which many are struggling to deal with the impacts of economic recession.

With the proposed changes under consultation here, the government continues to disregard widespread criticism against the current immigration system as well as the recently introduced changes to immigration rules, which fail to consider the varied contexts and needs of different parts of the UK to the detriment, for example, of Scotland. Scotland does not only need to attract migrants but also to ensure that they settle here, thereby contributing to the effective management of Scotland's decreasing and aging population, keeping services and communities alive and promoting sustainable economic growth.

Of particular concern to MRScotland, to migrants and MCOs we work with is the potential impact of the proposed changes on the rights, interests and lives of migrants wishing to enter, continue their stay or settle here. Realistic opportunities to extend their stay and/or settle in the UK if they wish to do so and to be joined by family members are of fundamental importance to migrants coming here to work and contributing to British society and economy throughout their time here. We are highly concerned about the set of proposals put forward by the UKBA and their narrow focus on those the government considers the “brightest and the best”, while curtailing the rights and interests of migrants coming under Tier 2, Tier 5 and the domestic worker visa route. Instead of moving further towards reducing these migrants to a commodity of labour which can be flexibly utilized, ‘imported’ and ‘exported’ without considering individuals’ rights as human beings and UK workers, all migrants should be valued for the critical contributions they make, not least by enabling the UK to compete in increasingly globalised markets and to positively respond to challenges arising from a global economy. In return, migrants merely seek decent life opportunities.

With regard to migrant domestic workers, more specifically, the proposed changes are likely to increase the risk of trafficking and other abuses including forced labour and exploitation, which we consider unacceptable.

Overall, we think the UKBA proposals within this consultation would create substantially more insecurities for migrants wishing to come to the UK and as they progress through the system. Not only would many migrants find themselves made more vulnerable during their lives here as a result of the proposed changes, but the government also risks depriving the UK and communities across the country of valuable skills, expertise and energy as well as options for positively addressing varying short- and long term needs. We reiterate these proposals come without the evidence-base that would justify their introduction and are already achieving negative outcomes which have been highlighted in the media and individual reports from industry, commerce, academia and employment consultants in recent weeks and months.

Lastly, we are also highly concerned about the way this consultation has been conducted. The response form provided mainly allows only yes/no answers, and even discourages respondents from replying to several questions on the implementation of changes if they have answered in the negative to the more general question. Moreover, some vital issues are not consulted on, e.g. the retrospective application of rules, and the phrasing of several questions is misleading, bringing into question whether the UKBA wishes to be complicit in misinforming the public.

In fact, we are disheartened that the UKBA limited the extent of its consultation by not engaging with the broadest spectrum of stakeholders with direct interest in the areas proposed. We specifically refer to a meeting organized by the UKBA in Glasgow for 10<sup>th</sup> August 2011, to which there seemed no genuine wish to reach the very people whose interests and rights would be affected by the changes. We were told by UKBA staff not to inform others of the meeting and our own confirmed place was withdrawn the day before. With just two hours notice, we were finally informed we could attend. We are not convinced that “restrictions on space” was the significant issue behind our experience as numbers present on the day were low. We do want to point out that public consultations cannot be meaningful nor can they accurately reflect wider views and concerns of the interested public if they are limited or are run contrary to the aims of public consultation processes.

NB: Our submission builds on discussions with migrants, MCOs, trade unions and academics from across Scotland. Some of their voices and concerns about the proposed changes are gathered in a short video response to this consultation, which can be viewed here: <http://www.youtube.com/watch?v=-xic6A92yJ0>.

## Questions for consultation

### **QUESTION 1 – Would creating clear categories of temporary and permanent visas help migrants and the public better understand the immigration system? (Please select one answer only)**

No.

Describing the proposals set out in this consultation as “creating clear categories of temporary and permanent visas” is incorrect: The term “permanent visa” is misleading as even the reworked Tier 1 only provides an option to apply for ILR, i.e. settlement remains dependent on fulfilling the (recently toughened) requirements for ILR<sup>1</sup>, rather than conferring a right to permanent residency from the outset. Instead of being clearer for migrants from the start, the proposed changes are likely to increase confusion and insecurity of people coming to the UK, especially for migrants coming under Tier 2, as they would only be able to establish whether they could settle here after they have already moved to the UK, e.g. when trying to “switch” into a new “permanent route”.

This would also create substantial insecurities for migrants in their everyday lives here, the more so as – by denying the vast majority of migrants the option to apply for settlement here – people spending as long as five years working in jobs where there is proven need for their labour, paying taxes and sending their children to school here would be prevented from laying down roots in the UK, fully participating in the communities and places they live in, and planning for their future. While the majority of migrants on work-related visa leave the UK after an initial period here anyway<sup>2</sup>, removing the opportunity for those who might wish to settle here greatly underestimates the level of investment made by people in coming to this country to work as well as their contributions throughout their lives here, and unfairly removes returns they could reasonably expect from their contributions and investments.

Reserving settlement options only for the remodeled Tier 1 while excluding most Tier 2 migrants from this opportunity only highlights the unqualified premise that solely Tier 1 comprises the “brightest and the best” whose skills and investments are needed in the UK. In the context of Scotland, Tier 2 migrants are known to play a vital role in critical sectors including the health and higher education sectors, hospitality and tourism, financial and public services, creative industries and energy, agriculture and food as well as, more generally, for small and medium sized businesses (which account for more than 95% of all Scottish businesses),<sup>3</sup> and this may also reflect the situation in other parts of the UK. Instead of disadvantaging these migrants and disregarding the benefits they bring to Scotland and more generally to the UK,<sup>4</sup> Tier 2 migrants should be valued as making a critical contribution to our communities here and be offered decent life opportunities as part of this.

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<sup>1</sup> UKBA Statement of Changes in Immigration Rules HC 863 (March 2011), <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/statementsofchanges/2011/hc863.pdf?view=Binary>

<sup>2</sup> Achato et al (2010), The Migrant Journey; Achato et al (2011) The Migrant Journey Second Report, <http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/immigration-asylum-research/horr57/horr57-summary?view=Binary>.

<sup>3</sup> Immigration policy must reflect Scottish needs, minister told (Scotsman article, 06/12/2010) <http://news.scotsman.com/scotland/Immigration-policy-must-reflect-Scottish.6650946.jp>; Equal Opportunities Committee Report on Inquiry into Migration and Trafficking (Dec 2010), SP Paper 543, EO/S3/10/R5, <http://www.scottish.parliament.uk/s3/committees/equal/reports-10/eor10-05-00.htm#12>.

<sup>4</sup> See e.g. COSLA, Memorandum submitted to Home Affairs Select Committee (08/2010), <http://www.publications.parliament.uk/pa/cm201011/cmselect/cmhaff/361/361wa16.htm>.

We are also highly concerned about the potential retrospective application of these new rules to persons who have entered the PBS from April 2011 onwards and who could have expected to have the option of settling here in the future. Applying these changes to migrants already in the UK is likely to lead to legal challenges, as previously demonstrated in the case of the Labour government's attempt to introduce retrospective changes to the settlement route offered under the Highly Skilled Migrant Programme (HSMP), which were overturned by the High Court in 2009.<sup>5</sup>

As the proposed changes are aimed at "increasing the numbers who leave after their initial stay" by allowing only a small number of people to stay for longer than 5 years or settle here, it is clear that "transparency" of the immigration system is not the main objective driving these changes. Given the well documented misrepresentations of migration issues in the public debate, especially by parts of the media as well as politicians,<sup>6</sup> it is cynical to try to justify these proposals with public "concerns" and "common misconceptions" about the immigration system.

**QUESTION 2 – Should exceptional talent migrants have an automatic route to settlement after five years? (Please select one answer only)**

Yes,

even though this question is misleading, as there is no 'automatic' route to settlement in the UK; all applications for settlement are assessed on the basis of several requirements (beyond the length of stay here) that applicants need to fulfill (see above). Nevertheless, those considered as 'exceptional talent' migrants – as well as other migrants on work-related visas should continue to/be able to move towards settlement after 5 years in the UK.

**QUESTION 3 – Should temporary leave for Tier 1 migrants be capped at a maximum of five years (those who wish to stay longer will be obliged to apply for settlement)? (Please select one answer only)**

No.

The Tier 1 route has already been reworked into an elite route intended to benefit a privileged minority of investors, entrepreneurs and migrants with 'exceptional talent' in science, arts or humanities and capped at 1000 a year. Requiring Tier 1 migrants to apply for settlement (with further costs involved) or otherwise leave the UK after five years would mean to force a decision on them without any justification or need to do so. Tier 1 migrants should be able to extend their stay in the UK beyond the five year period, both on a temporary basis and through application for settlement; otherwise the new Tier 1 would not offer any real benefits to those applicants the government is so eager to attract.

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<sup>5</sup> Migration Observatory, Unsettling? Challenges with using changes in settlement policy to reduce net-migration (23/05/2011), <http://migrationobservatory.ox.ac.uk/commentary/unsettling-challenges-using-changes-settlement-policy-reduce-net-migration>.

<sup>6</sup> For example see UN CERD, Concluding observations of the Committee on the Elimination of Racial Discrimination on United Kingdom of Great Britain and Northern Ireland, CERD/C/GBR/CO/18-20 (01/09/2011), para. 11, [http://www2.ohchr.org/english/bodies/cerd/docs/UK\\_COBs\\_CERD79.pdf](http://www2.ohchr.org/english/bodies/cerd/docs/UK_COBs_CERD79.pdf), and Huysmans/Buonfino (2008) Politics of Exception and Unease: Immigration, Asylum and Terrorism in Parliamentary Debates in the UK. Political Studies, 56:766-788. For the Scottish context, see Equal Opportunities Committee Report on Inquiry into Migration and Trafficking (Dec 2010), SP Paper 543, EO/S3/10/R5, para 118 seqq.



**QUESTION 4 – Should temporary leave for Tier 2 migrants be capped at a maximum of five years? (Please select one answer only)**

No.

The consultation paper notes that there is a “strong case for capping all Tier 2 leave at five years” in order to “reduce net migration”. However, the government has yet failed to establish how the level of net migration constitutes an adequate indicator for what might be ‘sustainable immigration’ and thus it should not form the unqualified basis or be the target of immigration policies. Likewise, the government continues to disregard widespread criticism against the current immigration system as well as the recently introduced changes to immigration rules, which fail to consider the varied contexts and needs of different parts of the UK to the detriment, for example, of Scotland.<sup>7</sup> It is clear from research that for Scotland it is vital not only to attract skilled and highly-skilled migrants but also to ensure that they settle here in order to effectively deal with Scotland’s decreasing and aging population, keep services and communities alive, counter the current economic slow-down and work towards sustainable economic growth.<sup>8</sup> As migration from EU-member states is unlikely to substitute for the loss that the restrictions on settlement rights of non-EU migrants would result in, the proposed changes would once again run counter to Scotland’s specific needs.

Further, as there is no justification given for capping Tier 2 migrants’ temporary leave at a maximum of *five* years, we can but assume that the rationale behind this timeframe is to make it impossible for Tier 2 migrants to access public funds; we consider it highly unfair that tier 2 migrants would find themselves required to pay taxes in the UK throughout their time here, without being able to reach a point when they could fully benefit from their tax payments.

Moreover, in order to extend Tier 2 visas, applicants already need to demonstrate the continued need for their skills as well as considerably high income thresholds. Where these requirements are fulfilled, it would be contradictory to prevent these persons from applying to extend their stay in the UK. Instead, Tier 2 migrants should remain able to extend their stay in the UK beyond the maximum 5 years, both on a temporary basis as well as through a settlement application.

**QUESTION 5 – If you answered „yes“ to question 4, should a Tier 2 migrant who has completed five years in a temporary capacity be permitted to re-apply for a Tier 2 visa after they have left the UK? (Please select one answer only)**

Yes.

Not permitting Tier 2 migrants who have left the UK after a five year period to re-apply for a further Tier 2 visa would be unjustified and illogical as it would effectively punish those who

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<sup>7</sup> See e.g., Immigration policy must reflect Scottish needs, minister told (Scotsman article, 06/12/2010) <http://news.scotsman.com/scotland/Immigration-policy-must-reflect-Scottish.6650946.jp>; Scottish Government, Immigration Cap (News Release 23/11/2010), <http://www.scotland.gov.uk/News/Releases/2010/11/23162746>; Kyambi (2009) Room for Manoeuvre?, Equality and Human Rights Commission; House of Commons, Scottish Affairs Committee (04/04/2011), The Student Immigration System in Scotland, <http://www.publications.parliament.uk/pa/cm201011/cmselect/cmsscota/writev/visa/visa.pdf>.

<sup>8</sup> Rolfe/Metcalf (2009), Recent Migration into Scotland – The Evidence Base <http://www.scotland.gov.uk/Resource/Doc/261996/0078342.pdf>; Mosca/Wright (2009), Devolved Immigration Policy: Will It Work in Scotland?, Fraser of Allander Economic Quarterly, vol. 33, no. 2, pp. 55-60; General Register Office Scotland (GROS), Demographic Change in Scotland, <http://www.scotland.gov.uk/Publications/2010/11/24111237/7>, see also COSLA, Memorandum submitted to Home Affairs Select Committee (08/2010), <http://www.publications.parliament.uk/pa/cm201011/cmselect/cmhaff/361/361wa16.htm>

have already entered the UK under Tier 2; moreover, it is likely that persons who have already been working and living here will – when they return to the UK - be well positioned to continue to contribute to the UK based on their previous experiences and learning.

In case no such options for these migrants to return to the UK after their initial five years here are provided, there is a risk that some migrants would remain here as they would have put down roots during their five years in the UK and would not want to leave without the possibility of coming back. As was indicated in a study by the World Bank, the denial of return options in temporary labour migration programs risks increasing the number of undocumented migrants and should be avoided, not least for economic reasons<sup>9</sup>, but also because the status of irregularity increases migrants' vulnerability to exploitation in the UK.

**QUESTION 6 – If you answered „yes“ to question 5, should there be a grace period (say 12 months) before resubmitting a further application for a Tier 2 visa? (Please select one answer only)**

No.

There is no reason why a Tier 2 migrant who leaves the UK after five years should be banned, even temporarily, from applying to re-enter the UK under Tier 2 (see above).

**QUESTION 7 – Should Tier 2 General become a wholly temporary route with no avenue to settlement? (Please select one answer only)**

No.

It is clear from our discussions with migrants and migrant community organizations in Scotland that leaving their homes abroad and coming to the UK for work is often experienced as a difficult process, not least given the increased barriers to entry and continued stay in the UK for non-EU migrant workers. Since April this year, applicants for Tier 2 (General) already have to meet higher education, skills requirements and income thresholds, and have to navigate the newly introduced immigration cap which has limited the absolute number of visas available. Denying persons who come to the UK to work the option of moving towards settlement and citizenship sends out the wrong message and will significantly lessen the attractiveness of the UK for potential applicants, as it will represent much reduced returns for the significant investments made by Tier 2 migrants in coming to the UK and throughout their time here.

By making Tier 2 General a wholly temporary route, the government risks depriving the UK economy of valuable skills and expertise and, more specifically, threatening sustainable economic growth in Scotland which requires more than filling short-term skills shortages (see above).

In fact, while the government hopes to “encourage employers to look beyond migrant workers to upskill the domestic labour force” by removing Tier 2 migrants right to apply for settlement, there is no evidence to suggest this would automatically happen. Not only does upskilling the workforce require time and significant investments, but migration from outside the UK can also provide experienced workers to support this process.<sup>10</sup> It would also be incorrect to directly correlate increased unemployment rates within the domestic workforce

<sup>9</sup> Mansoor/Quillin (2006) Migration and Remittances, [http://siteresources.worldbank.org/INTECA/Resources/257896-1167856389505/Migration\\_FullReport.pdf](http://siteresources.worldbank.org/INTECA/Resources/257896-1167856389505/Migration_FullReport.pdf), pp. 107-109.

<sup>10</sup> Scottish Government, Immigration Cap (News Release 23/11/2010), <http://www.scotland.gov.uk/News/Releases/2010/11/23162746>.

to the number of migrants coming to the UK as the consultation paper implies. Research suggests, on the contrary, that migrants increase the supply of labour, enabling particular sectors to expand and produce new goods and services, increasing economic growth and in turn, creating more rather than less employment opportunities for British workers.<sup>11</sup> Moreover, while migrant workers have an overall positive impact on British economy,<sup>12</sup> they also cost the economy less as they have been educated and trained abroad and are predominantly a long way from retirement when they arrive here.

Further, the option to settle in the 'host society' is one key factor for early and continuing integration and social cohesion in multi-ethnic societies, both with regard to individual migrants' investments in terms of 'human and social capital' and their acceptance by and relationships within their local communities.<sup>13</sup> For many Tier 2 migrants, the incentive to build long-term relationships or participate in local communities would be lessened if they knew they would be unable to apply for settlement after five years.

This would be exacerbated by the fact that Tier 2 migrants would find themselves required to pay taxes in the UK for up to five years, without being able to reach a point where they could themselves fully access public funds. In this context, it remains unclear whether and how the government has considered Art. 9 International Covenant on Economic, Social and Cultural Rights, which provides for the non-discriminatory right to social security, including social insurance, in particular with regard to contributions towards the state pension, as Tier 2 migrants would have no opportunity to benefit from their payments when forced to leave after five years.

Turning Tier 2 (General) into a wholly temporary route could also increase the risk of increasing inequality at the workplace, as there might be less incentives for employers to equally invest (e.g. trainings, promotions etc.) in migrant workers as they would not be meant to stay more than five years. Employers might also feel less obliged to respect migrant workers' rights, especially towards the end of the time the Tier 2 visa allows, as migrants would face significant difficulties in seeking redress for rights violations before having to leave the UK.

While the majority of migrants on employment-related visa leave the UK after an initial period here anyway<sup>14</sup>, introducing new rules denying most people the option of staying in the country after a maximum of five years ignores the fact that – even though not all migrants plan to settle in the UK at the time of their application for entry – many will establish lasting relationships over time and put down roots, especially when their children are growing up here.

Removing settlement rights would necessitate an increase in enforcement measures because some would not be able or want to leave as they would have established a life here or due to external political and social developments outside their control. The likely outcome would be that more people would 'overstay' their visas and thus fall outside the immigration rules. In fact, such outcomes and other failures of similarly large-scale

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<sup>11</sup> Royal Geographical Society (2008) UK Migration Controversies, <http://www.rgs.org/NR/rdonlyres/3E05AE1F-1FFC-43B5-A37C-2203ECBEA17B/0/MigrationFINAL.pdf>.

<sup>12</sup> Work Foundation (2008) Migration Myths: employment wages and labour market performance, London: The Work Foundation.

<sup>13</sup> Esser (2001) Integration and ethnic segmentation, Working Paper – Mannheim Centre for European Social Research, pp. 68 seqq. [German], <http://www.mzes.uni-mannheim.de/publications/wp/wp-40.pdf>.

<sup>14</sup> Achato et al (2010), The Migrant Journey; Achato et al (2011) The Migrant Journey Second Report, <http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/immigration-asylum-research/horr57/horr57-summary?view=Binary>.

temporary migration programs in the past in other countries are well documented<sup>15</sup>. Next to the high costs of enforcement measures (e.g. more workplace raids, surveillance, in-country monitoring of migrants) for the tax payer, those ending up living and working irregularly would be most seriously affected, becoming more vulnerable to exploitation in the UK.

**QUESTION 8 – If you answered „yes“ to question 7, should the following migrants be exempt from the policy and continue to have a direct route to settlement? (Please select EITHER Yes No OR No opinion for each category)**

- Those earning over £150,000K Yes
- Sports people Yes
- Ministers of Religion Yes
- Other? Yes

All Tier 2 migrants, including Tier 2 General migrants, should continue to have the option of moving towards settlement in the UK

**QUESTION 9 – Should there be an annual limit on the number of Tier 2 migrants progressing to settlement? (Please select one answer only)**

No.

In our view, there would be no merit in limiting the number of Tier 2 migrants able to progress to settlement in the UK as Tier 2 visas are already capped at the application stage.

**QUESTION 10 – If you answered „yes“ to question 9, what proportion of Tier 2 migrants should be allowed to progress towards settlement? (Please select one answer only)**

100%.

**QUESTION 11 – How should we determine which migrants can apply for settlement? By setting objective criteria or by random allocation? (Please select one answer only)**

N/A. We do not agree that most Tier 2 migrants should be prevented from moving towards settlement.

**QUESTION 12 – If you answered „objective criteria“ to question 11, what criteria should we use to identify settlement candidates? (Please tick all that apply)**

N/A. We do not agree that settlement should be an option only for the 'selected' few.

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<sup>15</sup> See e.g. Migration Observatory, Unsettling? Challenges with using changes in settlement policy to reduce net-migration (23/05/2011), <http://migrationobservatory.ox.ac.uk/commentary/unsettling-challenges-using-changes-settlement-policy-reduce-net-migration>; Castle (1985), The Guests who stayed – the debate on foreigners policy in the German Federal Republic, International Migration Review 19(3): 517-34; Meissner (2004), U.S. Temporary Work Programs: Lessons learned, Migration Information Source (01/03/2004), <http://www.migrationinformation.org/feature/display.cfm?ID=205>.



**QUESTION 13 – If some Tier 2 migrants are permitted to enter a route that leads to settlement, when should the decision be taken? (Please select one answer only)**

All Tier 2 migrants should be permitted to move towards settlement in the UK.

By only permitting some Tier 2 migrants to move towards settlement via an application after three years, the government would make Tier 2 a significantly more insecure immigration route. This would make it more difficult for people coming here under Tier 2 to plan for the future in the UK or elsewhere. As well as impacting on main applicants, the high level of insecurity in only permitting some Tier 2 migrants to move towards settlement would have particular impacts on dependents including spouses and children in school in the UK.

**QUESTION 14 – Should employers be required to sponsor a Tier 2 General migrant seeking to stay in the UK permanently? (Please select one answer only)**

No. If Tier 2 General migrants are applying to stay in the UK permanently, they should no longer be required to have employer sponsorship as part of their application.

**QUESTION 15 – If you answered „yes“ to question 14, should sponsorship be required at the 3 year or 5 year point, or both? (Please select one answer only)**

N/A. Tier 2 General migrants applying to stay in the UK permanently should not be required to have employer sponsorship as part of their application.

**QUESTION 16 – Should the *employer* be expected to pay to sponsor their Tier 2 General employee's transfer to a permanent visa? (Please select one answer only)**

N/A. Tier 2 General migrants applying to stay in the UK permanently should not be required to have employer sponsorship as part of their application.

**QUESTION 17 – Should Tier 2 migrants be able to switch employers as they can now? (Please select one answer only)**

Yes.

Making visas dependent on migrants staying with their employers would skew the power balance between employees and employer to the detriment of workers and increase the risk of migrant workers becoming vulnerable to unfair work conditions and exploitation. Tier 2 migrants should retain the right to change employers, as, e.g. the Global Commission on International Migration has recommended.<sup>16</sup>

**QUESTION 18 – Should adult dependants of Tier 2 migrants, who switch from a temporary to a permanent route, be subject to an English language test? (Please select one answer only)**

No.

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<sup>16</sup> Global Commission on International Migration (GCIM) (2005) Migration in an interconnected world – New directions for action, p. 18.

The introduction of English language testing for this group would introduce further insecurity for Tier 2 migrants and their families during their time in the UK. An English language requirement is already in place at the point of applying for indefinite leave to remain in the UK. In our view, it would be unnecessary and unfair to expect adult dependents to pass an additional language test when they move from one form of temporary visa to another. Moreover, such requirement would be likely to be challenged in the courts as a potential infringement of Article 8 rights under the European Convention of Human Rights.

**QUESTION 19 – If you answered „yes“ to question 18, what level of language requirement would be appropriate? (Please select one answer only)**

If a language requirement is introduced, it should be a basic language test.

**QUESTION 20 – If you answered „Yes“ to question 18, which of the following should we test? (Please tick all that apply)**

N/A.

**QUESTION 21 – Should those who enter on the temporary worker route be restricted to a maximum of 12 months leave to reinforce the temporary nature of the route? (Please select one answer only)**

No.

**QUESTION 22 – If you answered “no” to question 21, please explain why below.**

The government offers no justification for restricting the stay of Tier 5 temporary workers to a 12 month period – giving the impression that there is no reason for this change to be made other than to move towards the overall objective of reducing visas which could contribute to net migration figures, even though the numbers of people currently coming under this route is rather small.

There is already real concern that Tier 5 requirements are having negative impacts on by far the largest category of temporary workers – those in the creative and sporting fields.<sup>17</sup> Further restrictions for this group of high-value individuals which make it more difficult for them to come will be likely to have a negative impact on these sectors. Given that this visa category is already temporary, there is little to be gained from further restrictions but much to lose for the UK as a destination and place of world class cultural and knowledge exchange.

**QUESTION 23 – Should the ability to bring dependants in the Tier 5 Temporary Worker category be removed? (Please select one answer only)**

No.

Plans to prevent this group from bringing dependents are once again aimed at driving down net migration. As stated above, we do not agree with using the level of net migration as a

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<sup>17</sup>See, e.g. Manifesto Club's Visiting Artists Campaign, <http://www.manifestoclub.com/visitingartists>; Word class artists 'put off coming to Britain by intrusive points-based immigration system, (The Telegraph article, 27/06/2011), <http://www.telegraph.co.uk/news/uknews/immigration/8599638/World-class-artists-put-off-coming-to-Britain-by-intrusive-points-based-immigration-system.html>.

basis for immigration policy and consider these plans to be unjustified, also when considering that only 815 dependant visas were issued under this category in 2010. Further, such change in rules would lead to some potential Tier 5 applicants being unable to come to the UK, and thus would run counter to the government's stated aim to allow Tier 5 migrants to come to the UK to help "satisfy the UK's cultural, charitable, religious or international objectives".

**QUESTION 24 – If we were to continue to allow Tier 5 Temporary workers to bring their dependants, should dependants' right to work be removed? (Please select one answer only)**

No.

It would be a waste of human resources to deny people who are in the UK the right to work and contribute to the places they stay in. Further, such change in rules might lead to some potential Tier 5 applicants being unable to come to the UK, and thus would run counter to the government's stated aim to allow Tier 5 migrants to come to the UK to help "satisfy the UK's cultural, charitable, religious or international objectives".

**QUESTION 25 – Should the minimum skill level in the Government Authorised Exchange sub-category be raised to graduate level (N/SVQ level 4 or above)? (Please select one answer only)**

No.

**QUESTION 26 – Should the route for domestic workers in private households be closed? (Please select one answer only)**

No.

As UKBA figures show, around 94% of domestic workers coming to the UK return home with their employer within a short period of time and do not stay here. However, closing the route would remove vital protections for domestic workers, instead of ending abuse as the government suggests. Evidence suggests that, without the route, domestic workers will be brought here through other informal routes and forced to work illegally, as the existing legal channels for migrant domestic workers would no longer meet continued demand.<sup>18</sup> In fact, the domestic worker visa is recognized across Europe as best practice for preventing trafficking and other abuses including forced labour and exploitation.

**QUESTION 27 – If we were to continue to allow domestic workers in private households to enter the UK, should their leave be capped (at a maximum of 6 months, or 12 months if accompanying a skilled worker)? (Please select one answer only)**

No.

The existing visa cannot be renewed unless domestic workers are in work. As these workers can only renew their visa if there is proven demand for their labour, there is no need for an additional cap.

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<sup>18</sup> [www.kalayaan.org.uk](http://www.kalayaan.org.uk).

Leave granted to migrant domestic workers should not be capped at all. Instead, the visa should be renewable and recognize the visa holders as UK workers with rights in the UK that they can realistically enforce. Moreover, it is likely that a cap on the leave of domestic workers would only play into the hands of unscrupulous employers who would not want to replace their worker after six or twelve months. It can be expected that many would encourage/force their workers to overstay, making them even more vulnerable to exploitation and abuse, as employers might use the UK immigration authorities as an additional threat to coerce and control a domestic worker.

**QUESTION 28 – Given the existence of the National Referral Mechanism for identifying victims of trafficking, should the unrestricted right of overseas domestic workers in private households to change employer be removed? (Please select one answer only)**

No.

First of all, the right of overseas domestic workers in private households to change employers is not unrestricted. They must remain in full-time domestic work and must notify the Home Office.

Migrant domestic workers should not be prevented from changing employers in the UK.

Evidence by charities working with migrant domestic workers such as Kalayaan indicates that making immigration status dependent on remaining with a single employer can lead to exploitation and abuse of migrant domestic workers, especially as the ability to withdraw their labour is the only bargaining power migrant domestic workers have in relation to their employers and as such is an important protection against abuse and exploitation.

The existence of the National Referral Mechanism for victims of trafficking would not substitute for the right to change employer. This system has been criticized as ineffective by NGOs and does not protect domestic workers who have been badly abused or exploited but do not fit the specific definition of a trafficked person. Further, there are significant costs associated with supporting trafficked MDWs through the NRM. In contrast most MDWs on the visa use the possibility of changing employer to simply find a new job, and continue to work and pay taxes with no recourse to public funds.<sup>19</sup>

**QUESTION 29 – Should leave for private servants in diplomatic households be capped at 12 months? (Please select one answer only)**

No.

Leave for domestic workers in diplomatic households should not be capped. Instead, these workers should retain their existing right to renew their visa and to apply for settlement after five years. Moreover, the right to change employer should be extended to domestic workers in diplomatic households in order to allow them to escape from abuse when necessary.

Capping their leave at 12 months would be likely to lead to irregular employment for many beyond this period, as most diplomats are stationed in the UK for several years. Those who would not want to lose their domestic staff half-way through their own posting might encourage their staff to overstay. Considering the already high rates of trafficking for domestic servitude by diplomats, it is not acceptable to put domestic workers at greater risk.

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<sup>19</sup> [www.kalayaan.org.uk](http://www.kalayaan.org.uk).

**QUESTION 30 – Should an avenue to settlement be removed from overseas domestic workers (private servants in diplomatic households and domestic workers in private households)? (Please select one answer only)**

No.

While settlement is not an unrestricted right for domestic workers but rather depends on fulfilling several requirements, achieving settlement provides domestic workers with some independence from their employer and enables them to finally take control of their own lives. Not only is the number of migrant domestic workers settling in the UK every year is extremely small (795 persons in 2009), but settlement is an important protection for those who do remain in the UK.

**QUESTION 31 – Should the right for overseas domestic workers (private servants in diplomatic households and domestic workers in private households) to bring their dependants (spouses and children) to the UK be removed? (Please select one answer only)**

No.

Many migrant domestic workers had to leave their own families behind to support British families and other households in the UK. It would be highly unfair to expect them to continue a life separated from their families.

**QUESTION 32 – If we were to continue to allow overseas domestic workers to bring their dependants, should those dependants' right to work be removed? (Please select one answer only)**

No.

Everyone should have the right to work, so to be able to contribute to the places they stay in as well as to the wider UK economy.