Employment-related settlement, Tier 5 and overseas domestic workers: a consultation

Response from the Immigration Law Practitioners' Association

Introduction

The Immigration Law Practitioners' Association (ILPA) is a professional association with some 900 members (individuals and organisations), the majority of whom are barristers, solicitors and advocates practising in all aspects of immigration, asylum and nationality law. Academics and non-governmental organisations are also members. Established over 25 years ago, ILPA exists to promote and improve advice and representation in immigration, asylum and nationality law, through an extensive programme of training and disseminating information and by providing evidence-based research and opinion. ILPA is represented on numerous Government, UK Border Agency and other, consultative and advisory groups.

The proposals in the consultation paper are unjust to migrants already in the UK. They treat them as expendable: "do your job and then go" and do not value their contribution, or their skills. These attitudes, which have long been in evidence toward those doing jobs that are low paid, and for which academic qualifications are not required, now appear as more general attitudes to those migrating to the UK for work. They are not attitudes that a fair system holds toward any person is making their life in a country and contributing as part of its workforce.

The proposals will not provide the desired certainty. If implemented, they will make it very difficult for the UK to attract the migrants it needs to fill skills gaps. This is not solely a matter of how UK-based businesses will be affected. It goes to the larger question of whether businesses will be willing to be or to continue to be based in the UK at all. The draft Minutes of the UK Corporate Group meeting on 7 July 2011, at which ILPA is represented, state:

> *"Demand is lower than expected on tier 2 applications and the agency is considering messaging to ensure potential applicants know that UK is still open for business."*[1]

This reflects discussion at the meeting about the extent to which potential Tier 2 employees, and their employers, do not at the moment consider that the UK is still open for business.

ILPA has already made its views on the format of the consultation questions known to the UK Border Agency. By telling those who reply in the negative to a question

[1] As sent to ILPA and other attendees. Final versions of these minutes are published on the UK Border Agency website.

because they oppose a proposal not to bother to reply to the questions about how that proposal would be implemented, the question format will fail to capture the full range of views. The UK Border Agency's response: that its questions were phrased in a way to allow people to respond quickly, rather than fully or accurately, is not persuasive.[2] ILPA has of course replied to all the questions on which it has something to say; other respondents will not have done so. ILPA remains of the view that the results of the consultation must be treated with extreme caution because of this.

QUESTION 1 – Would creating clear categories of temporary and permanent visas help migrants and the public better understand the immigration system?

This question does not admit of a tick-box answer.

The distinction between temporary migration routes and settlement migration routes already exists. Under the current immigration rules[3] any given category either may lead to settlement after a qualifying period (e.g. Tier 2 General, Tier 1 Entrepreneur) or cannot (e.g. Tier 4, Tier 1 Post Study Worker, Tier 5 youth mobility etc).[4] Such distinctions are already clear. The proposals in the consultation paper are about reducing the number of routes leading to settlement rather than about improving clarity.

The UK Border Agency may consider that it could make distinctions clearer by prohibiting all possibility of people switching between different categories. ILPA would oppose such a proposal were it made. It is not difficult to understand that when people's circumstances change, they should be able to apply to change their immigration status. For example a Tier 2 migrant or student forms a relationship with a settled person or British citizen and then applies to stay as a spouse or a civil/unmarried partner. Making provision for switching provides recognition of the dignity and of the rights to private and family life, not only of the migrants who switch but of the British citizens with whom they form relationships.

The proposals set out in this part of the consultation paper, if implemented, would create uncertainty and confusion for those already in the UK and those employing them or working with them, especially in Tier 2 of the Points-Based System.

A Tier 2 migrant would not know until three years into their stay whether they would be able to settle or not. In ILPA members' experience, gained in working in UK immigration law and in other jurisdictions, without the possibility of gaining the right to stay after several years' work, workers are less likely to want to commit to

[2] Letter from ILPA to the UK Border Agency, 20 June 2011 and UK Border Agency response of 1 July 2011. Copies available from the ILPA Secretariat.
[3] HC 395 as amended.
[4] Paragraph 287 of the current immigration rules sets out the requirements to be met by spouses of settled persons or British citizens to be granted indefinite leave to remain in the UK on the basis of their qualifying residency in the UK. Tier 4 (General) in Part 6A of the current rules has no such corresponding paragraph that would enable students in the UK who have been resident here for a qualifying period as students or Tier 4 (General) migrants to be eligible to apply for and be granted indefinite leave to remain in the UK as a result of their studies or good academic performance alone.

the employers or to uproot themselves and their families to come to a country. This will restrict employers' choice and has the potential to restrict the UK's competitiveness in attracting workers. It is also members' experience that employers will frequently be reluctant to hire a person to fill an important role where there is a high level of uncertainty as to whether that person will be allowed to stay.

As discussed in ILPA's response to the UK Border Agency Consultation on *Limits on Non-EU Economic Migration* in 2010,[5] the design of periods of leave granted to Tier 2 migrants, whereby they are granted an initial period of leave and are then able to apply for an extension of that leave indicates that the initial grant, and in many respects the grant of any extension, is temporary in nature. Where a worker becomes eligible to apply for settlement, their employer is obliged to confirm that the migrant is still required for the job and the worker also has to fulfil a number of other requirements set out in the Immigration Rules.[6]

The question is simplistic and will not assist in gathering meaningful information about the nature and extent of the understanding of the public and migrants of the immigration system. Labelling visas 'temporary' or 'permanent' does not entail a better understanding of the immigration system by the public or migrants.

Legality

In *Razgar v SSHD* [2004] UKHL 27, Lord Bingham held that the proportionality test, by which the lawfulness of interference with the rights of individuals in pursuit of immigration control is to be judged "*must always involve the striking of a fair balance between the rights of the individual and the interests of the community*."[7]

The House of Lords in *Huang v SSHD, Kashmiri v SSHD* [2007] UKHL 11 went further when looking at the human rights of migrants in the UK to state as follows:

> *There will, in almost any case, be certain general considerations to bear in mind: the general administrative desirability of applying known rules if a system of immigration control is to be workable, predictable, consistent and fair as between one applicant and another; the damage to good administration and effective control if a system is perceived by applicants internationally to be unduly porous, unpredictable or perfunctory; the need to discourage non-nationals admitted to the country temporarily from believing that they can commit serious crimes and yet be allowed to remain; the need to discourage fraud, deception and deliberate breaches of the law; and so on.*[8]

Legislators and public authorities are required to take into account the human rights of migrants when drafting the rules and amendments and making their decisions

[5] ILPA response to the UK Border Agency Consultation on Limits on Non-EU Economic Migration (2010), at http://www.ilpa.org.uk/resources.php/13018/uk-border-agency-consultation-on-limits-on-non-eu-economic-migration-ilpa-response-of-17-september-2 p. 23.
[6] Paragraph 245GF in the current immigration rules.
[7] *Razgar v SSHD* [2004] UKHL 27 at paragraph 20
[8] *Huang v SSHD, Kashmiri v SSHD* [2007] UKHL 11 at paragraph 16

within the requirements of the rules.[9] These considerations are of relevance to all the proposals, but of particular relevance to questions of retrospectivity.

Retrospectivity

The consultation paper expressly envisages applying the proposed changes retrospectively from April 2011,[10] although this aspect of the proposals is not highlighted in any consultation question. ILPA strongly opposes retrospective application of changes.

There are limits to the legality of retrospective changes, as demonstrated by the successful challenges in the *R (HSMP Forum Limited) v SSHD* [2008] EWHC 664 (Admin) and *R (HSMP Forum Limited) v SSHD* [2009] EWHC 711 (Admin) cases[11] and discussed at length in previous ILPA submissions.[12] There are also questions of the way in which retrospective changes to the law affect people's lives; questions of unfairness, of the unintended consequences of such changes and of their effect. In the context of the *HSMP* cases all these questions were raised by the now Deputy Prime Minister and now Immigration Minister, both of whom expressed their opposition to the retrospective changes. The Right Honourable Nick Clegg MP stated:

> *"The legislation has been sprung on us without any meaningful consultation. In the Government's February consultation document, there was no mention of the new five-year qualifying period. There is a suddenness - a brutality - about the way in which the measure has been announced. There was no preceding consultation whatever, and that strikes us as bad practice, which will lead to several unintended - or perhaps intended - consequences that merit further examination. I am sure that we have all received correspondence from constituents whom we know to have been directly affected by the change. In my constituency, I have come across a large number of families who, if the measure proceeds, will need to change their plans, leave their work or studies, sell their homes and take their children out of school or university, because they have received no warning that the rules have changed, or that the understanding on which they entered this country has summarily changed. The measure seems to fly in the face of the basic fairness, transparency and predictability that anybody who is resident and working in this country expects and deserves.*
>
> *There has been no proper analysis of the measure's impact and there is no regulatory impact assessment attached to it, yet estimates suggest that the overall cost to UK employers of renewing their employees' work permits could be as high as £15 million. In other words, the change is not cost-free. In addition to its sudden introduction and its retrospective application to those who were perfectly entitled to expect that the rules would not change from one day to the next, it will be costly to UK business.*

[9] *Secretary of State for the Home Department v Pankina* 2010 ECWA Civ 719
[10] Paragraph 4.2 at page 16 of the consultation
[11] At http://www.bailii.org/ew/cases/EWHC/Admin/2009/711.html
[12] ILPA response to the UK Border Agency Consultation on Limits on Non-EU Economic Migration (2010), at http://www.ilpa.org.uk/resources.php/13018/uk-border-agency-consultation-on-limits-on-non-eu-economic-migration-ilpa-response-of-17-september-2 pp. 4-6

The impact of the measure on overseas students and trainee doctors, specialists and others working in the national health service has attracted a great deal of attention. I shall quote an e-mail that I received from a constituent who is a consultant and the head of the assisted conception unit at the Jessop wing in Sheffield:

> *'The changes regarding the need for work permits will almost certainly affect our ability to recruit appropriately trained doctors to work in our department. It is increasingly difficult to attract UK graduates into our speciality as a whole, and the field of reproductive medicine is even more specialised. In order to get the best people for the job, we need to recruit from all over the world, and indeed to date we have been very successful in attracting a very high calibre of applicant to these jobs. I am concerned that, with the introduction of these new rules, we will no longer be able to attract these high-quality trainees to work with us, as the UK will be perceived to be hostile to overseas doctors. This may mean that we will be forced to employ someone who is less suitable, which would be a disadvantage to our service, the women of Sheffield and the scientific community as a whole.' Similar observations have been made by the British Medical Association, which claims that the change is unfair on the doctors who already work here, and by many other professional bodies, which fear that they will have a detrimental effect on the quality of work undertaken in a number of specialism's in the NHS."* [13]

Mr Damian Green MP, Shadow Immigration Minister at the time, concurred with Mr Clegg's comments, stating:

> *"In particular, I do not agree with the Government's plan to change retrospectively the rules on settlement. Whatever the merits of changing the qualifying period from four years to five, it is unfair and wrong to apply the new rules to people who have been living and working in this country for some time, many of whom had planned their lives around the date on which they expected to gain full settlement rights."* [14]

The Joint Committee on Human Rights conducted an inquiry into the changes and found:

> "*… individuals with leave to enter or remain under the HSMP have taken a number of important and long-term steps to establish their main home in the UK: they have left permanent jobs in their home countries, sold their homes, relocated their families (spouses and children) to be in the UK also, entered into financial commitments such as mortgages, transferred businesses, entered into long-term financial arrangements, made long-term economic and contractual plans, and the lives of their families have been transferred (for example, spouses have new jobs, children new schools).*" [15]

Any system needs to be workable, predictable, consistent and fair. An unpredictable system of immigration control that is often revised and tinkered with can itself deter

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[13] *Hansard*, 20 June 2006, Second Standing Committee on Delegated Legislation.
[14] *Ibid.*
[15] HL paper 173, HC 993 published 9th August 2007.

international applicants and cause businesses to question whether they wish to remain based in the UK. This is already happening. UK-based employers need to be able to source skills that are not available from within the resident labour market from outside that market.

QUESTION 2 – Should exceptional talent migrants have an automatic route to settlement after five years?

This question does not admit of a tick-box answer.

It is unclear what is meant by an 'automatic route to settlement.' Currently, nobody has an automatic route to settlement, settlement always depends on migrants continuing to meet the immigration rules in the category under which they entered, or into which they were permitted to switch, and on their meeting the requirements for settlement including general requirements such as not having unspent criminal convictions, passing the knowledge of life in the UK test, and limits on absences during the qualifying period.

The immigration rules are often changed with effects on people already in the UK with an expectation of being able to apply for settlement. For example the Statement of Changes in Immigration Rules HC 863 changed the requirements as to salary and employment of Tier 1 (General) migrants. Settlement has never been 'automatic.'

If it is now proposed that those in the Tier 1 'exceptional talent' category should qualify for settlement automatically, and therefore that they do not need to be able to show they can speak English, nor know about life in the UK, nor be free of unspent criminal convictions then it is difficult to understand the rationale behind making these absolute requirements in other categories. Being able to sing, to paint, to design a bridge or to split the atom are not guarantees of good character nor of an ability to form part of a community in which one is living (the stated intention behind the language and knowledge of life in the UK requirements). ILPA and others have corresponded with the Home Secretary[16] about the imposition of the requirement to be free of criminal convictions at the time of applying for settlement on those applying under the domestic violence rule because of the risk that this will lead to people remaining in abusive relationships. If it is considered that this requirement can be waived for migrants in the 'exceptional talent' category then the insistence upon it in a category where it is doing real harm, that of survivors of domestic violence, should immediately be revisited. This should not await the outcome of the consultation.

If however, as we suspect, what is meant by 'an automatic route to settlement' is simply 'a category leading to settlement' if the criteria are satisfied at the end of the qualifying period as is currently the case for example Tier 1 Investor migrants, Tier 2 General migrants (as opposed to a category that does not lead to settlement, such as Tier 1 Post Study Worker), then our response would be 'yes.' Tier 1 Exceptional talent should lead to settlement and this should not be the only category that leads to settlement. It would appear somewhat absurd if the category of migration

[16] See, for example, letter signed by ILPA, Rights of Women, Southall Black Sisters and 106 other organisations, at http://www.ilpa.org.uk/data/resources/13284/11.05.01.pdf

presented as seeking to attract the world's most elite individuals in science and the arts then required these individuals to leave the UK with the loss of their skills to the UK. Tier 1 (Exceptional Talent) is not the only category for which arguments about the risk of losing skills can be made, as discussed further below.

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)?

No.

There are many reasons why not all migrants wish to apply for settlement, for example that they may lose rights in their country of origin. They may simply be aware that their long-term future is not in the UK and that, although after more than five years in the UK, their next posting will be in another country. Some will not qualify for settlement after five years for a range of reasons, for example excess absences due to the nature of their work. They may be still on their journey to settlement, albeit requiring one or two more years before they qualify.

There would appear to be no benefit to the UK to force such people to leave the UK after they have spent five years here. By insisting on such inflexibility, the UK would risk losing these migrants at an arbitrary juncture. This risks substantial unnecessary disruption to the persons affected and to the businesses in which they work. For example, the five-year point might be midway through a critical major project/contract or partway through an academic term.

QUESTION 4 – Should temporary leave for Tier 2 migrants be capped at a maximum of five years?

No.

See also response to question 3 above. Tier 2 migrants must already show that they remain in employment and that their employer wishes to retain their services. A project may be time-limited but nonetheless last for six or seven years. For the reasons set out in response to question three, forcing them to leave at an arbitrary cut-off point will make it more difficult for migrants and their families to lead planned lives in the UK and will hamper businesses.

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?

Although ILPA answered 'no' to question four, we do have a view on this question. We do not doubt that others who answered 'no' will have a view as well, but may be deterred from the format of the question paper from making that view known and therefore suggest that the Agency should be slow to draw conclusions from the responses to this question.

If the proposal in question four were to be implemented, we consider that Tier 2 migrants should be permitted to re-apply for further leave in Tier 2. If this were not possible it would mean that an employer would be able to employ anyone in the world to do a job except the person who had been doing it for five years. Similarly, such persons would be uniquely disadvantaged in applying for any other job in the UK in comparison with all other applicants. It is impossible to square this with fair recruitment and retention practices and we are unable to identify any mischief that this would address save insofar as it is seen as a way to avoid engaging the UK's obligations under the European Convention on Establishment (see the response to question 6 below).[17]

It is artificial in the extreme to require a person to apply from abroad rather than apply in-country for an extension.

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?

We did not give a yes or no answer to question 5 but we have a view on this question.

No.

ILPA sees no reason to justify banning a Tier 2 migrant who has been in the UK for five years from re-entering for any period whatsoever. This places such a person at a unique disadvantage in the labour market. It is unnecessarily disruptive to business.

A person may be extremely reluctant to take a particular job in the UK if they know that by doing so they have irrevocably determined the possibility of making future applications to come to the UK.

Arbitrary periods of exclusion create perverse results: a UK-based employer may be prevented from benefiting from the services of a critical individual, such as a leading expert in the sector, purely because that person happens previously to have worked in the UK. This will put the business at a disadvantage, and affect its competitiveness. As stated above, these difficulties may lead the employer to reconsider whether they wish to be UK-based or not.

If the UK Border Agency is fearful of two five-year periods of stay engaging its obligations under the European Convention on Establishment,[18] it should say so and explain why this is a problem.

QUESTION 7 – Should Tier 2 General become a wholly temporary route with no avenue to settlement?

No.

[17] CETS No. 19, Paris, 13 December 1955.
[18] CETS No. 19, Art. 3.3, at http://conventions.coe.int/Treaty/EN/Treaties/Html/019.htm

This would reduce the attractiveness of this route to migrants and would mean that UK-based employers could not hire or retain the workers they require, which will lead them to question whether they wish to remain UK-based. Migrants would work and pay taxes in the UK for several years and then, however much their skills were needed, or however few other people could do the work that they do, be required to depart.

Nowhere in the consultation paper is a case made as to why the UK should wish to create a 'revolving door' of skilled workers, contrary to the desire of employers to remain UK-based but retain skilled members of their workforce and to the desire of the workers who wish to commit to a particular job, company, or to 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?

ILPA did not answer yes to question 7 but has a view on this question.

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

ILPA urges that all migrants should have a route to settlement, including but not limited to those listed. Many people are vital to the business or organisation within which they work but are not paid £150,000. Many small businesses and many not for profit organisations do not pay any member of staff £150,000 and in other fields also such a salary is rare or unknown. Salary alone is not a reliable measure of skill or the critical nature of a position to a particular organisation or business. It takes inadequate account of factors such as geographical location and sector.

As to ministers of religion, it is unlikely that any will be paid £150,000 but they are valued by the communities in which they work. Many religious groups would struggle to survive without migration. Religious groups and their members often contribute financially and in kind to social causes identified as necessary by the public and the Government. The small number of people applying under this category does not affect the labour market in any significant way. Ministers of religion often work to build up a permanent and personal bond with their congregation and this relationship of trust is part of the work of ministers who might be carrying out weddings, funerals or providing spiritual care. If the congregation knew the minister's time in the country was arbitrarily limited, this could hamper the development of such relationships.

QUESTION 9 – Should there be an annual limit on the number of Tier 2 migrants progressing to settlement?

No.

There is already a cap on initial migration in Tier 2. A cap imposes an arbitrary limit. A cap at the settlement stage would mean that whether a person can settle depends on how many other persons happen to be settling during the same period, regardless of the individual merits of the application, the importance of the person to the organisation within which they work, or of other factors that make their long-term stay in the UK desirable.

Crucially, numerical caps introduce uncertainty; a lottery effect. A cap on whether or not an employer can begin to employ a particular individual (which ILPA opposes in any event) is of a very different order to a cap on whether an employer may *continue* to employ a particular worker.

Settlement is appropriate for those whose long-term future lies in the UK; it should not be the result of a competition. The result of a cap could be a situation where a person whose long-term future is generally acknowledged to lie in the UK and who meets the qualifying criteria cannot settle if, as a matter of chance, at the time of their application there are a greater number of applicants than the cap permits.

The combined effect of a cap on settlement and the proposal to prevent extensions beyond five years would be that a person who meets the qualifying criteria for settlement not only cannot settle but has to leave the UK since they cannot extend. They will not know this until the time of applying for settlement after five years, creating uncertainty throughout the entire five-year qualifying period. This is not a situation that those who have a choice about where they go are likely to be enthusiastic to accept. It is difficult for them; it is difficult for their families. It makes it hard to plan either a career or a personal life. This is not how a responsible employer would wish to see their workers treated, or would wish to be treated, since uncertainty about a worker's future in the company can affect the way in which the company operates. This is not how those who live and work alongside those affected would wish to live and work: the uncertainty can affect migrants' attitudes and does not encourage them to integrate if they fear or expect to have to depart.

Migrants are not disposable and workers are not disposable because people are not disposable. An immigration system that seeks to treat people who have some measure of choice about where they live and work as disposable is likely to find itself shunned by them and their would-be employers. This is not about recruiting workers from within the resident labour market (UK and EEA) instead. A Tier 2 worker can only be employed if there is shortage of persons to do this type of job from within the resident labour market or if no one can be found to do the particular job from within the resident labour market. If a worker from outside the resident labour market cannot be attracted to fill this post, either the company must move, or it must endeavour to do without the skills in question, which in some cases will mean that it is no longer viable as a going concern.

It is important that migrants know at the outset what the criteria for any extension of leave and/or any settlement application will be.

A migrant who would otherwise qualify for settlement but falls foul of an arbitrary cap may suffer the termination of their employment or studies. If, contrary to the proposals set out in the consultation paper, they are allowed to extend on a

temporary basis instead, consequences will include that their children will not be born British and that they will they enjoy the full range of social entitlements. Neither is desirable in the case of a family whose long-term future lies in the UK.

There are likely to be challenges to the proposals on human rights grounds. There is already considerable jurisprudence on the circumstances in which the ties formed by people who did not have leave to be in UK mean that to force them to leave the UK would be a disproportionate interference with their rights. This provides some indication of the likely outcome of litigation where the persons challenging their removal have had lawful leave throughout the period during which the ties, including with British citizen or settled family members, were formed and have lived in the UK in a way that has reflected the lawful basis of their stay.

QUESTION 10 – If you answered "yes" to question 9, what proportion of Tier 2 migrants should be allowed to progress towards settlement?

ILPA answered no to question nine and therefore our view on this question is 100%, if they wish to do so.

As explained above, ILPA objects to the form of the questionnaire, which risks dissuading respondents who do not answer the question in the desired way from elaborating on their answers.

QUESTION 11 – How should we determine which migrants can apply for settlement? By setting objective criteria or by random allocation?

This question does not admit of a tick box answer.

ILPA does not agree that most Tier 2 migrants should be prevented from moving towards settlement. However, if it is decided, after consultation, to prevent most migrants from applying for settlement, this should be done through setting objective, well-publicised and consistent criteria, in the interests of fairness and the principles of legal certainty and non-arbitrary executive action. The futures of individuals, and their human rights, as well as the stability of the companies within which they work, are ill-suited to a lottery.

QUESTION 12 – If you answered "objective criteria" to question 11, what criteria should we use to identify settlement candidates?

- **Pre-determined sectoral or occupational groups**
- **Working in a recognised shortage occupation at the time of the settlement decision**
- **Criteria set by competent professional bodies**

ILPA did not provide a yes or no answer to question 11, but has a view on this question. This question does not admit of a tick-box answer.

The UK Border Agency should consider the recommendations of the Migration Advisory Committee, as well as the views of bodies most knowledgeable in the relevant sector, such as sports boards, the British Medical Association, the British Hospitality Association etc.

All the criteria listed may be relevant in certain circumstances but the decisions in principle, subject, where appropriate, to requirements that certain criteria continue to be met, should be made at the time when the migrant is given leave to enter the UK. Factors such as whether the occupation remains on the shortage occupation list at the time of the settlement decision, raising the spectre that a person may have been in a recognised shortage occupation throughout the five years but the occupation may happen to be removed from the list by the date of the settlement decision triggering a refusal, introduce the undesirable uncertainty also referred to in our answer to question nine.

The needs of employers must be considered – employers may be heavily reliant on a particular worker, such as a director. They may be have difficulty in replacing that person from the resident labour marker and attempts to find a replacement will not always go according to plan. Not all difficulties can be predicted. The need for employers to train resident workers has been reiterated by the UK Border Agency in almost every consultation to date, but training takes considerable time and cannot entirely replace employers' need to recruit workers at the cutting edge of their work and with the highest levels of expertise, to keep up with global best practice. The benefit of expertise gained elsewhere in developing the expertise of workers in the resident labour market is also an important consideration.

QUESTION 13 – If some Tier 2 migrants are permitted to enter a route that leads to settlement, when should the decision be taken?

This is a leading question. All Tier 2 migrants should be permitted to move towards settlement in the UK, and they should know this from the time of being granted permission to come to the UK or switch into leave as a Tier 2 migrant.

QUESTION 14 – Should employers be required to sponsor a Tier 2 General migrant seeking to stay in the UK permanently?

No.

It is unclear whether the proposal is that the employer should sponsor the application for settlement. In these circumstances if respondents state 'yes', it is unclear what question they are answering.

If Tier 2 General migrants are applying to stay in the UK permanently, they should not be required to have employer sponsorship as part of that application.

Settled persons are free to switch employers, at any time and take any employment or self-employment they wish. They cannot and should not be forced into a relationship with an employer that extends beyond their employment.[19]

Members' experience suggests that migrants will be deterred from coming to the UK in the first place if required to accept a risk that their eligibility for settlement will be determined unfavourably, due to factors outside their control and after they have spent a substantial part of their working lives in the UK. This will result in some employers being unable to fill a vacancy and/or retain a worker on a long-term basis where this is appropriate for their business.

An employer should not be held responsible for a former employee beyond their employment. As to the risks of exploitation, see the response to questions 15 and 16 below.

The commitments that employers already make under the current Tier 2 sponsorship arrangements are substantial. These include time devoted to reading and understanding the (frequently changing) sponsor and migrant guidance, ensuring that systems and processes are in place to be able to comply with reporting and record-keeping requirements, often at substantial cost, ensuring that sufficient resources are made available to administer the licence on a day-to-day basis, carrying out internal audits, training staff and paying relevant application fees. ILPA members are concerned that the full direct and indirect regulatory costs associated with Tier 2 sponsorship have not been taken into account.

In the impact assessment relating to student changes dated 1 June 2011,[20] it was assumed[21] that the direct regulatory impact of becoming a Tier 2 sponsor was to require one administrative staff member to spend three hours reading and understanding Tier 2 sponsorship rules and guidance each year. In ILPA members' experience this represents a gross underestimate of the direct regulatory impact.

Even the smallest sponsor is likely to need at least two individuals to have a comprehensive understanding of the sponsorship arrangements to ensure continuity of administration of the licence in the event of staff absence or sudden departure. Three hours is a substantial under-estimate of the time taken to read and comprehend the voluminous (143 pages for the main guidance alone, without taking into account other essential guidance such as Codes of Practice, separate guidance for leave to enter/remain applications etc.) and very frequently changing guidance. The Impact Assessment ignores the indirect regulatory effects of amending and auditing internal systems and administering the licence, which account for the major cost associated with being a Tier 2 sponsor. A sponsor properly observing and implementing the duties cannot do so by means of a three-hour review of the

[19] At the point of settlement a migrant has already demonstrated a five-year contribution to the business of the employer. This period represents some 13.3% of the average active working life of a UK worker according to the 2007 figures included in Vogler-Ludwig, K, *Monitoring the duration of active working life in the European Union - Final Report*, Study for the European Commission Employment, Social Affairs and Equal Opportunities DG, 2009, p 56, which put the average active working life of a UK worker at 37.6 years. This figure is likely to rise as the retirement age rises.
[20] Impact Assessment number HO0025, *Reform of the Points Based Student Immigration System*
[21] *Op.cit.* page 18.

guidance at the time of application for a licence. The need to keep abreast of guidance is an ongoing obligation for the lifetime of the licence.

ILPA urges that a more accurate picture of the obligations a sponsor is obliged to undertake be used to inform consideration of whether it is appropriate to introduce enhanced sponsorship requirements related to the settlement of Tier 2 (General) migrants.

The employer does not receive any settlement-related benefit at the three-year mark, aside from the uncertain possibility that their employee may be able to settle in two years' time and may continue to be their employee after that date. They have already complied with Tier 2 sponsorship obligations throughout the period and confirmed that the worker is still required.

Many employers already do make a financial contribution in terms of paying (or contributing to) the substantial settlement application fees, but this is currently a matter of choice not an obligation and should remain so.

The proposal that sponsors pay a financial contribution may encourage some employers to seek to fill the position with a new temporary migrant rather than incurring the cost of sponsoring a permanent application, assuming this cost is higher. This raises questions under the employment laws pertaining to termination of employment and fair recruitment practices. In such circumstances, the worker finds out at the last minute that instead of being able to stay in the UK for a further period and/or permanently they must leave abruptly due to the termination of their employment. Replacing one migrant worker with another does not in any way assist in meeting policy goals such as ensuring that a role be filled by a worker from the resident labour market or reducing net migration. See also the response to questions 15 and 16 below on the risk that the costs will be passed on to the migrant worker.

If only a proportion of Tier 2 (General) migrants proceed to a category in which they are eligible for settlement after three years, as per the proposals then employers would be being asked to make a financial contribution to an application the success of which is dependent on a limit, selective points test or lottery. This is not reasonable.

The proposal that employers confirm that they expect the resident labour market to be unable to supply a suitable worker for the foreseeable future assumes a far greater extent of knowledge of the labour market than employers can or should be expected to possess. The proposal also calls for employers to be able to predict future changes to the labour market, which will be affected by factors outside their knowledge and control.

In ILPA's view it is more appropriate for the Government, in consultation with the Migration Advisory Committee, to take the state of the labour market into account by making changes to the eligibility criteria for initial entry into Tier 2 General than to impose an additional responsibility of this type on sponsor.

QUESTION 15 – If you answered "yes" to question 14, should sponsorship be required at the 3 year or 5 year point, or both?

Not applicable; ILPA answered 'no' to question 14.

As set out above, Tier 2 General migrants applying to stay in the UK permanently should not be required to have additional employer sponsorship as part of their application.

If, contrary to ILPA's view, a financial contribution is requested from a sponsor, this should be at the inception of the sponsorship rather than at the three or five-year point, to avoid the possibility that an employer may use the payment or non-payment of the contribution as a means of augmenting its bargaining power after the employment relationship has commenced. The consultation paper fails to show any consideration of the risk of exploitation and of the way in which the proposals would augment the risk that the employer exercise an exploitative hold over the worker.

QUESTION 16 – Should the *employer* be expected to pay to sponsor their Tier 2 General employee's transfer to a permanent visa?

Not applicable, ILPA does not agree with continuing employer sponsorship at this stage for the reasons set out above.

If contrary to ILPA's view, an additional financial contribution for employers is instituted, in ILPA's view it will be impossible to ensure the burden is in fact borne by employers. This is because the employer will still be able to transfer the cost to the migrant by contractual agreement. In general, individual migrants are more motivated than their employers to protect their eligibility for settlement, so where an employer is unable or unwilling to pay a financial contribution, the migrant may agree to do so where the alternative is that they will have to leave the UK.

Tier 2 (General) migrants' contractual bargaining position is strongest prior to their agreeing to relocate to the UK, and it is at this point that a migrant will be able to negotiate to ensure any settlement-related financial contribution is paid by the employer. Therefore, if the policy of introducing an employer contribution is pursued at all, which ILPA opposes, ILPA's view is that consideration should be given to levying this at the initial entry clearance stage.

It is not clear from this proposal whether the UK Border Agency is planning to impose another 'resident labour' test at this stage – if so it would be unworkable in terms of employment law and of fairness.

QUESTION 17 – Should Tier 2 migrants be able to switch employers as they can now?

Yes.

A Tier 2 migrant who wishes to switch employers must apply for, and be granted, further leave to remain as a Tier 2 migrant for the new employer, who must have

properly assigned a Certificate of Sponsorship to the migrant, having first completed a resident labour market test where applicable.

The ability to switch employers may become an increasingly important factor in the decision for skilled migrants to re-locate to the UK. Recent immigration law changes, including the closure of Tier 1 (General), leave Tier 2 (General) migrants with few options to continue on their path to settlement in the event that their Tier 2 employment ends prematurely, for example if their employer loses its sponsor licence, makes them redundant or ceases trading.

Where the migrant ceases sponsored employment and is unable to find another sponsor, he or she must leave the UK unless s/he finds work with another Tier 2 sponsor. That other sponsor will have been required to undertake a resident labour market test unless the post is a shortage occupation or carries a salary of at least £150,000. We can see no reason not to permit the worker to accept the offer of work, since the benefit to the UK still meets the threshold set for Tier 2. There is also the benefit to the new employer of retaining a migrant who has acquired relevant experience and does not need to relocate. There is nothing in the proposals to suggest that a migrant in these circumstances would not be permitted to apply immediately for fresh entry clearance as a Tier 2 migrant for another sponsor. What then would be achieved by requiring the migrant to leave the UK and apply to re-enter rather than applying for leave to remain?

For similar reasons, an existing Tier 2 sponsor should be able to sponsor the same migrant for a different position that meets the Tier 2 (General) criteria.

A migrant who has entered the 'permanent' immigration category should not lose this status due to changing employer.

Our suggestions would help to minimise any disincentive that might reduce the chances of migrants reporting sponsors who are not observing sponsorship obligations or who are otherwise exploiting them. They would also assist migrants to plan for the future.

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.

Such a requirement could affect the principal migrant's ability to remain in their employment in the UK or risking splitting the family. It could cause an employer to lose migrants in critical roles for reasons entirely unrelated to the sponsor or migrant's meeting qualifying criteria. It is not appropriate or viable to compel a business to plan it staffing needs around the language abilities of non-employees (the dependants of employees).

Such a requirement would add to the insecurity felt by migrants and their families. The availability of publicly-funded ESOL courses is being cut and the fees are rising. Changes in the immigration rule requirements for Tier 4 applicants may have serious

effects on private language colleges. It is unreasonable to require many more people to enrol in a shrinking number of courses.

The imposition of a language requirement on the spouses and partners of settled and British citizens in November 2010 was rushed and has created problems for couples. The need to provide specified evidence to show that the spouse abroad has achieved the required level of English language has created difficulties for many applicants. If, contrary to ILPA's submission, a language test is imposed on family members of Tier 2 migrants, it must be done in a more organised and thought-through way than was the case for the imposition of language tests abroad for spouses and partners. There must not be long waiting periods for taking the test and there must be arrangements made to authorise testing bodies and to ensure that tests remain valid.

Similar problems have arisen for Tier 2 main applicants in showing the higher level of English language they require.[22] Part 6A of the current immigration rules states that the required documentary evidence in the relevant policy guidance must be provided successfully to claim these mandatory points.[23]

The lists of recognised English language test providers on the UK Border Agency website can be changed unilaterally at any time by the UK Border Agency so that the migrant who may have spent money and time obtaining an English language test that would have complied with the requirement suddenly finds him/herself in a situation where they are told that (subject to legal challenge) they do not meet the English language requirement at the time of their application because the English language test they have obtained is not on the amended list. The migrant would be regarded as being able to communicate in English to the required level up until a certain date but not after that date, unless they can show alternative acceptable evidence.[24]

Under the current arrangements the UK Border Agency is making a judgement about English language tests and test providers without consultation or oversight. It is very difficult for migrants to argue that even though their test may be regarded by the broader educational establishment as meeting the English language requirements of everyday academic and business usage, they cannot rely on this test because it is not accepted by the UK Border Agency for visa application purposes.

The UK Border Agency needs to look more broadly at how it is implementing English Language test requirements. If, contrary to ILPA's submission, a decision is to take to impose a new test requirement, that requirement must be clear and

[22] Immigration Rules HC 395 Part 6A, paragraphs 245A (a) and (c) and see Paragraphs 139-147 of the Tier 2 policy guidance version 07/11, especially paragraphs 141-141 which indicate that there is a list of English language test providers which will be recognised for applications submitted on or before 17 May 2011 and another list of English language test providers that will apply to applications submitted from 18 May 2011 onwards.

[23] Paragraph 245A(a) and (c)

[24] For example, while the ASCENTIS Level 2 Certificate in ESOL International (Anglia) was recognised as being suitable to prove compliance with the English language requirements for Tier 2 (General) applications up until 17 May 2011, it does not appear on the list of suitable English language tests for applications from 18 May 2011 onwards.

predictable and there must be transitional arrangements to deal with any changes in the requirements.

QUESTION 19 – If you answered "yes" to question 18, what level of language requirement would be appropriate?

ILPA answered no to question 18 but considers that if, after consultation, the UK Border Agency decides to impose a test, it should be at the most basic level.

QUESTION 20 – If you answered "yes" to question 18, which of the following should we test?

ILPA answered no to question 18 but if, after consultation, the UK Border Agency decides to impose a test, it should be for speaking and listening only.

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?

No.

QUESTION 22 – If you answered "no" to question 21, please explain why

The consultation paper states at paragraph 6.10 that there is a case for reinforcing the temporary nature of the Tier 5 Temporary Workers route. The paper does not state what this case is nor does it cite any evidence that the temporary nature of the route needs to be re-established.

It is asserted in the consultation paper at paragraph 3.2 that a 'lack of effective labelling creates confusion for migrants' and all routes should therefore be re-defined as 'temporary' and 'permanent'. But since its inception, the Tier 5 Temporary Workers route has been clearly labelled and defined as temporary. The name of the route, the information on the UK Border Agency website and policy guidance already make it clear to applicants that the route is temporary and does not lead to settlement.

Tier 5 was created as a way of combining multiple routes into a single part of the Points Based System. Each route has a different business case behind it and it is these that have given rise the different periods of leave in Tier 5. Before the leave is reduced, each business case should be carefully considered.

Respondents to the consultation *Selective Admission: Making Migration Work for Britain* published in July 2005 were generally of the view that those migrants who now enter under Tier 5 bring considerable benefits to the UK.' [25]

[25] *A Points-Based System: Making Migration Work for Britain*, Home Office command paper, March 2006, paragraph 146

These benefits would be lost if migrants are dissuaded from coming to the UK and take their skills, talents and contribution to the economy to another country. Relocating to the UK is a significant upheaval for many Tier 5 Temporary Workers and reducing the grant of leave may deter applicants if they know they will only have one year in which to gain experience and achieve their aims.

Sponsors of creative workers must show that some posts could not have been filled by a settled worker. Limiting grants of leave to creative workers whose skills are scarce in the resident labour market would be to the detriment of cultural life in the UK and could harm the economy. Limitations to the Government authorised exchange route could result in reciprocal restrictions to schemes which benefit British citizens abroad.
Several religious groups use Tier 5 to bring in migrants for whom the preferred route would be Tier 2 but who are unable to use Tier 2 because their English language skill is not at the higher level required. The UK Border Agency should ensure that migrants are able to use the most suitable routes, which in turn will reduce opportunities for misuse of Tier 5.

If the reason for restricting periods of leave under this route is to ensure that, by remaining in the UK for 364 days or less, those entering under this route do not count toward the net migration figures, this should be stated explicitly and the reasons for this being a justification for changing periods of leave set out and argued.

QUESTION 23 – Should the ability to bring dependants in the Tier 5 Temporary Worker category be removed?

No.

Non-EEA temporary workers may be deterred from taking up temporary opportunities in the UK if it would mean leaving their partners and children behind. Tier 5 migrants benefit the UK. A change in the dependants' rule might dissuade such migrants from bringing their skills to the UK. Further, it may operate in a discriminatory manner.

World class performers whose life is made up of travel from country to country can be selective as to where they choose to perform in Europe. They may be dissuaded from coming to the UK if they cannot be accompanied by their family for sporting tours or protracted rehearsals in the lead up to a run of performances. An open letter to the *Daily Telegraph* on 27 June 2011, signed by over 100 names from the arts world, states that many non-European artists have decided not to return to Britain after being 'treated poorly' by immigration officials, criticising the Points-Based System as 'needlessly bureaucratic and intrusive.'[26] Further restrictions on entry to the UK may threaten its status as an international cultural centre if artistes are deterred from performing here.

Sportspeople granted entry to the UK under the Tier 5 Temporary Workers category must demonstrate that they are internationally established at the highest

[26] http://www.telegraph.co.uk/news/uknews/immigration/8599638/World-class-artists-put-off-coming-to-Britain-by-intrusive-points-based-immigration-system.html

level in their sport and that they will make a significant contribution to the development of their sport at the highest level in the UK. Introducing further restrictions which might deter high calibre sportspeople from coming to the UK undermines the Government's commitment to 'making the UK a world-leading sporting nation', a London Olympic Games 2012 legacy 'promise'.[27]

Considering how few dependant visas are issued under Tier 5, as stated in the consultation,[28] calculating that 'around 815' were issued in 2010, for periods of over a year, and given that the route does not lead to settlement, it would seem disproportionate to close the route.

Tier 5 migrants are important to the UK, providing sporting and creative entertainment, and supporting the charity and religious sector. A change in the dependants' rule may dissuade migrants coming to the UK. We take the example of polo. The ability to bring Tier 5 dependants to the UK will affect the players and sponsors a great deal. Many players travel the world playing polo, following the polo seasons, and take families with them. Many would not consider leaving their families at home or in the previous country in which they were working, or the next country to which they will go, for the two to six months they are in the UK. A restriction such as this would reduce the quality of players and other polo personnel who make a positive contribution to the sport and to developing players and would ultimately be detrimental to the sport in the UK, with financial consequences for the UK.

The consultation paper arguably implies that one to two years is a short time to be separated from one's family. It is not. A year is a very long time for a couple to be apart, or for children to be separated from a parent. Under Section 55 of the Borders, Citizen and Immigration Act 2009 the UK Border Agency should take into account the need to safeguard and promote the welfare of children in planning its policies.

There is also potential sex discrimination in this rule change, since it could make migration more difficult for lone parents, who would have to leave a child with a carer not the other parent, and women are more likely to be lone parents. [29]

QUESTION 24 – If we were to continue to allow Tier 5 Temporary workers to bring their dependants, should dependants' right to work be removed?

No.

When the Migration Advisory Committee looked into the question of whether dependants of Tier 2 workers should be permitted to work, it found no economic evidence against family members of these workers being permitted to work.[30] When

[27] *Before, during and after: making the most of the London 2012 Games*, Department for Culture Media and Sport, June 2008, page 18

[28] Paragraph 6.11

[29] See Office for National Statistics, *Households and families*, Social Trends 41, Editor Jen Beaumont, 14 April 2011 for figures for the UK; trends are similar in other OECD countries.

[30] Migration Advisory Committee, *Analysis of the Points Based System: Tier 2 and dependants,* August 2009, chapter 7, at

people are coming for a purpose which is agreed by all to be temporary, it appears even less likely that their family members taking work for a short period would have harmful economic effects on the UK. Instead, the UK can benefit from the skills and labour of Tier 5 migrants' dependants who choose to work and from the tax they pay on their income.

ILPA's 2010 evidence to the Migration Advisory Committee's consideration of the cap on migration and whether this should include family members of Points-Based System migrants, discussed how restrictions on dependants and on their right to work would risk discrimination on the grounds of sex. The evidence suggests that more women than men would be affected since more women than men come to the UK as family members of workers, and more women are primary carers of children, and the separation of families would make integration of migrants more difficult.[31]

Some dependants might be unwilling to accompany the Tier 5 migrant if it meant an enforced break in their career which in turn may dissuade the Tier 5 migrant from coming to the UK. Employment is a way of helping integration and without that means of doing so some dependants risk being left isolated.

Some Tier 5 migrants are low-paid, such as volunteers in the charity or religious sector. They may need their dependants to be able to work to help to support the family. With the number of dependants so low, as stated above, their impact on the labour market would appear to be negligible.

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)?

No.

Raising the minimum skill level will undermine the efficacy of this temporary migration route established to provide cultural benefit to the UK and help meet international development objectives. The exchanges are authorised by the relevant Government departments, who have determined that an exchange of skills at the given level is beneficial.

If, contrary to ILPA's view, the skill level is to rise, ILPA agrees with the statement in paragraph 6.14 of the consultation document that such a change should only be applied to newly proposed Government Authorised Exchange schemes.

In March 2006, following public consultation, a command paper entitled *A Points-Based System: Making Migration Work for Britain* (CM 6741) was presented to Parliament. The publication set out proposals by the then Secretary of State to

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http://www.ukba.homeoffice.gov.uk/sitecontent/documents/aboutus/workingwithus/mac/pbsanalysis-09/0809/mac-august-09?view=Binary

[31] ILPA's response to the Migration Advisory Committee's *Consultation on the level of an annual limit on economic migration to the UK,* 2010, question 7, see http://www.ilpa.org.uk/resources.php/13020/migration-advisory-committee-consultation-on-the-level-of-an-annual-limit-on-economic-migration-to-t

modernise and strengthen the UK's immigration system by introducing the Points Based System. Of the Tier 5 Government Authorised Exchange category, the Command Paper stated, at paragraph 154, that:

> ***154. Exchange:*** *People coming through approved or accredited exchange or development schemes aimed at sharing knowledge, experience and best practice. Such schemes are of cultural benefit to the UK and help meet international development objectives. The sponsor would be the organisation running the accredited scheme and might include the British Council or a Government department. Sponsors would need to vouch that the applicant was qualified to take part in the scheme and would not take employment other than as part of the exchange. The maximum leave for this category will be 12 months.*

At paragraph 6.14 of the consultation document, the only justification suggested for raising the skills requirement for migrants entering through the Government Authorised Exchange category is to 'ensure overall system consistency' through bringing the skill level required for the Government Authorised Exchange category 'into line with the revised Tier 2 requirements.'

ILPA is unclear as to why the skill level requirements in the Government Authorised Exchange category, a category which relates to temporary migration of young people to the UK primarily for non-economic purposes (i.e. cultural exchange), should be set at the same level as Tier 2, an immigration route for skilled workers. '[O]verall system consistency' would appear to be just as likely to be promoted by removing the skill level requirement to bring the Government Authorised Exchange category into line with the other categories in Tier 5, thus leading the Government department in question to determine the appropriate skills level.

Raising the skills requirement from S/NVQ level 3, which requires the migrant to perform a work placement at a level suitable for a person with the equivalent of A Levels, to S/NVQ level 4, which would require the migrant to perform a work placement at a level suitable for a person with a degree, would redefine this migration route. Currently, the Government Authorised Exchange attracts migrants undertaking work placements as part of a cultural exchange. Often, these work placements form part of a "gap" year or occur during a break or vacation from university. Raising the skills requirement to S/NVQ level 4 would limit the ability of migrants without a degree to secure a work placement and could also appear to recast the Government Authorised Exchange category as an economic migration route rather than a primarily non-economic migration route.

In summary, the Government Authorised Exchange category is for approved schemes which, through the provision of work placements in the UK, are aimed at sharing knowledge, expertise and best practice. The work placements are supernumerary so that there is no impact on the resident labour market. The Government Authorised Exchange category is the only Tier 5 category which requires minimum skill levels. Raising the minimum skill level could impact upon the viability of the existing schemes and the development of new schemes. This could result in schemes closing and a reduction in the number of opportunities available for skills exchange and international co-operation which would reduce the cultural benefit to the UK derived from this migration category.

At the same time, through promoting circular migration (due to the temporary nature of this route) additional benefits, in terms of furthering international development objectives, are also gained as migrants return to their countries of origin with skills developed in the UK. Raising the skill level would undermine the efficacy of this category in promoting the sharing of knowledge, experience and best practice.

The UK Border Agency already appreciates that there will be some programmes, such as the EU Lifelong Learning programme, where migrants entering the UK will not be able to carry out work, even at the existing skills level. As a consequence, concessions have been developed, allowing migrants to undertake vocational education and training at a lower skill level. The consultation document confirms this existing exception to the skill level requirement will continue for the EU Lifelong Learning programme. By raising the minimum skill level, the UK Border Agency may create a need to extend the concession arrangements to other schemes. This will increase confusion about the required skill level of migrants entering in the Government Authorised Exchange category and make this category more problematic to administer.

If, contrary to ILPA's submissions, the skills level is to rise, ILPA agrees with the statement in paragraph 6.14 of the consultation document that such a change should only be applied to new schemes.

It is stated that the UK Border Agency will separately review the 'various schemes created under the Tier 5 GAE category to ensure there are delivering on their primary objective of sharing knowledge, experience and best practice.' ILPA looks forward to contributing to that review.

QUESTION 26 – Should the route for domestic workers in private households be closed?

No.

ILPA has had sight of the response of Kalayaan to this consultation and knows that many domestic workers have themselves responded to this consultation. Their responses should be given particular consideration.

It is easy to feel uncomfortable about the notion that people should be allowed to bring domestic workers with them to the UK, given the documented cases of abuse and exploitation, and to reach for a paternalistic response. But such a response does little or nothing to change the overall power relationships. The way to protect people against exploitation is to give them more choices, not fewer. Insofar as they are at risk from an imbalance of power and a dependency, these risks are likely to follow them around the world. In the UK at the moment there is a measure of protection that gives workers an escape route. The UK should be promoting the application of such protections around the world, not restricting them in the UK. Domestic workers are advocating that the route be kept open, with protections. Their remittances may support families at home who would otherwise lack for any support. The alternatives open to them may be much worse than the jobs that bring

them to the UK. The UK should be proud of a response to domestic workers that tries to take account of global realities.

The vast majority of domestic workers come in temporarily, with employers who have come in as visitors, and leave with their employers. The workers are granted 'Overseas Domestic Worker (Visitor)' visas, accompanying an employer. Those coming to work for an employer who is coming to the UK for settlement, or returning after a period abroad, or for long-term work or business under Tier 1 or Tier 2 will be given visas for a year at a time. The ratio of the two types of visa granted is around 10:1; in 2009, for example, 13,175 domestic worker visas were granted for six months, and 1600 for 12 months. Few domestic workers remain long enough to settle; as the consultation document recognises. In 2010 15,350 visas as domestic workers were issued and 1060 domestic workers were granted settlement.[32] The latter figure is stated to be a third higher than the figure for 2009; this is likely to be related to the change in the immigration rules on settlement, permitting settlement only after five years rather than four, rather than an increase in overall numbers. If the domestic workers were not able to come, some of their employers would not come either, and the UK would lose out on the money they spend here. It is unrealistic to expect that visiting super-rich would employ British domestic workers. The most likely outcome of a ban on domestic workers would be such people being brought in as general visitors and then being forced to work illegally.

The consultation document states that (paragraph 7.4):

> *ODWs* [overseas domestic workers] *are generally doing low skilled work... While we are restricting skilled work it would arguably be counter intuitive to retain a route into the UK labour market for low skilled domestic workers via the private household route.*

This analysis, consistent with an extensive part of the consultation document on overseas domestic workers, is deficient for comparing apples and oranges. Domestic workers are not in the same position as Tier 2 skilled workers. Moreover, it misses the point of the requirements in the Rules[33] that the domestic worker has been employed in the employer's household, and living in that household, for 12 months prior to coming to the UK, and is coming to the UK with that employer or household to continue that live-in work.

Workers who are long-term members of households, albeit employees, cannot, for the very reason of their long-term household membership, straightforwardly be replaced from within the resident labour market. This has nothing to do with relative skills, aptitude or interest within the resident labour market. It arises from the necessary fact (by reason of the Rules) that these domestic workers will already be long-term, live-in employees of the particular employers. Thus, the statement at

[32] Consultation document, paragraphs 7.3 and 7.13, and *Control of immigration: Quarterly statistical summary, UK Quarter 4 2010*, at http://rds.homeoffice.gov.uk/rds/pdfs11/control-immigration-q4-2010.pdf .
[33] Paragraph 159A.

paragraph 7.6 of the consultation document that '*current levels of unemployment in the UK domestic labour market indicate there is a case for abolishing the household route*' is, at best, not made out on the basis of anything presented in that document.

There is no analysis, still less evidence, presented to suggest that, if the route were abolished, this would provide any or any significant opportunities for workers in the resident labour market. The assertion that there would be such opportunities would have to rest on all or at least two of the following assumptions: that if the route were to be abolished (i) migrants who currently employ domestic workers under the route would continue to come to the UK; (ii) those migrants would continue to bring their families with them; and (iii) those migrants would employ persons from the resident labour market to substitute for the domestic workers that they had already been employing in their previous country of residence. This is discussed further below.

The consultation document is correct to state (paragraph 7.5):

> *... there can be serious problems associated with the treatment of people working for others in a domestic capacity.*

This leads to the other reason advanced in the consultation for abolishing the route (paragraph 7.6):

> *The documented abuses ... indicate that there is a case for abolishing the private household route.*

However, the well-documented examples of abuse point instead to the need to retain (or indeed increase) the protections '*designed to minimise potential for such abuses*' (paragraph 7.5). The arguments presented in favour of abolishing the route do not stand up to scrutiny.

This is a matter to which we return to in answer to the questions that follow below.

Domestic workers and international development

There are wider arguments in favour of retaining the route, albeit on the basis of retaining the current or improved protections, which protections the consultation document indicates are not favoured. We draw specific attention to the issue of remittances, and the importance of these in relation to tackling global poverty. These matters are not ones that have so far received particular attention in the development of immigration policy, particularly in the Points-Based System, which is of concern not least because of the resultant lack of joined-up policy development across Government.

The Government's programme for government[34] states '*the UK has a moral responsibility to help the poorest people in the world*,' and that statement is reflected in commitments on international development including to '*honour our commitment to spend 0.7% of GNI* [gross national income] *on overseas aid from 2013*,' '*support actions to achieve the Millennium Development Goals*' and '*maintain DfID* [the Department for International Development] *as an independent department focused on poverty reduction*.' The Government's stated vision for international development[35] goes further in stating its belief that '*promoting global prosperity is both a moral duty and in our national interest*;' and highlighting that: '*Aid is only ever a means to an end, never an end in itself. It is wealth creation and sustainable growth that will help people to lift themselves out of poverty*.' These statements were reflected in much of what the Prime Minister had to say in his speech on aid, trade and democracy in Lagos on 19 July 2011.[36]

If the Government is serious about these concerns and objectives, it needs to ensure that they are reflected adequately in cross-Governmental policy development including at the Home Office. Successive reports of the International Development and Treasury Select Committees have highlighted the importance of remittances in addressing global poverty.[37] The Secretary of State for International Development has recognised the link between remittances and economic growth in developing countries.[38] The World Bank has this year highlighted that '*persistently high unemployment rates and tightening of migration controls in Western Europe are adversely affecting remittance flows.*'[39]

These general observations should be considered against more specific and detailed consideration given by the World Bank in its 2006 report *Global Economic Prospects: Economic Implications of Remittances and Migration*. In expressly considering '*the impact of remittance flows at the micro-level, in particular on the welfare and opportunities of the recipient households and their members,*'[40] the World Bank found there to be '*a*

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[34] http://www.number10.gov.uk/the-coalition/programme-for-government/
[35] http://www.number10.gov.uk/policy/international-development-dfid/
[36] http://www.number10.gov.uk/news/pms-speech-on-aid-trade-and-democracy/
[37] See e.g. International Development Select Committee, Fourth Report of Session 2005-06 (*Private Sector Development*), HC 921, paragraph 145; Treasury Committee, Thirteenth Report of Session 2005-06 (*'Banking the unbanked'*), HC 1717, paragraph 91; International Development Select Committee, Fourth Report of Session 2008-09 (*Aid Under Pressure*), HC 179, paragraph 14d); International Development Committee, Third Report of Session 2009-10 (*DfID's Programme in Bangladesh*), HC 95, paragraphs 1 & 41; International Development Committee, Fourth Report of Session 2009-10 (*DfID's Performance in 2008-09*), HC 48, paragraph 130; International Development Committee, Sixth Report of Session 2009-10 (*DfID's Programme in Nepal*), HC 168, paragraph 67 and International Development Committee, Eighth Report of Session 2009-10 (*DfID's Assistance to Zimbabwe*), HC 252, paragraph 9.
[38] When shadowing his current department on the Opposition frontbench, the Secretary of State said: '*I welcome the discussion of migration and remittances in the White Paper. Sending money back to developing countries is often a costly business. I look forward to hearing what specific ideas the Secretary of State has to help lover the cost of remittancing. Economic growth is central to development.*' (*Hansard*, HC 26 Oct 2006: Column 1745).
[39] World Bank: *Migration and Development Brief 16*, 23 May 2011 – Outlook for Remittance Flows 2011-13, page 7.
[40] World Bank – Global Economic Prospects 2006 (Report No. 34320), Chapter 5, page 117

growing body of evidence... that remittances, in fact, do reduce poverty,'[41] highlighted evidence that remittances '*had more impact on reducing the depth of poverty than on reducing the poverty headcount; in other words, they were really helpful for the poorest of the poor*' and that '*increased remittances not only reduced poverty in the migrant families, they also had spillover effects on nonmigrant families*'[42] and made the general observation that:

> *...in the context of remittances, inequality relates to income differences among groups that would be viewed as relatively poor in an industrial-country context. The rich in developing countries probably receive little in the way of remittances; the rich who migrate tend to take their families with them.*[43]

The World Bank report continues, still in relation to impact at the micro-level of individual households, to highlight the value of remittances in providing insurance or mitigation against the impact of events such as natural disasters or more straightforward weather-related risks upon the poor, and particularly rural households[44] and to highlight the particularly positive effect among the poor of remittances in terms of '*work on human capital... leading to greater child schooling, reduced child labor, and increased educational expenditure in origin households.*'[45] It is interesting, given that the consultation document identifies the Philippines as one of three '*main countries from which domestic workers originate*' (paragraph 7.2) that in relation to both these points, supporting research to which the reports points includes specific example of such positive outcomes in Filipino households.

The impact of remittances on global poverty and the matters to which we refer here are not within ILPA's area of specialist expertise. We raise them because on the face of the evidence (whether the conclusions of the International Development and Treasury Select Committees, the Secretary of State for International Development or the World Bank) there is a clear link between the objectives of Government policy on international development, as most recently articulated by the Prime Minister in July 2011 in Lagos, and migrants' remittances. Moreover, if it is correct, as the evidence we have reviewed suggests, that there are particular advantages for poorer households and communities in developing countries from these remittances, and that poorer migrants are more likely to be sending remittances, this would or might suggest that abolishing the overseas domestic worker route would have a significantly detrimental effect on many of the very individuals, families and communities that the Government's international development policy is most concerned about. In the absence of any careful and detailed assessment of the impact on remittances and the knock-on effect on poor households and families, there are strong reasons for retaining this route and (see below) retaining or indeed

[41] *Op cit* page 118.
[42] *Op cit* page 121.
[43] *Op cit* page 122
[44] *Op cit* page123
[45] *Op cit* page 126

improving protections. By contrast, the reasons advanced for abolishing this route are either unsubstantiated and on their face dubious ('*current levels of unemployment in the UK domestic labour market',* for the reasons discussed above) or point in favour of retaining protections rather than abolishing the route ('*documented abuses*').

Given the undoubted abuse that some domestic workers have suffered, it might be considered that the preferred stance would be to retain the route, increase the protection and make greater efforts to penalise, and where appropriate prosecute, abusers in the UK, while advocating for other countries to implement similar standards. Merely abolishing the route will not stop abuse of domestic workers. Indeed, it may not stop abuse of the very same domestic workers who might otherwise have come to the UK who may continue to be employed in the same households either because the migrant with whom they would have come to the UK does not come, or does not bring his or her family or be taken on by another employer. In those circumstances, the risk of abuse may be greater if the protections against abuse overseas are weaker than those available in the UK.

In answering this question, we consider it significant that Kalayaan, an organisation with undoubted expertise and commitment to the interests of domestic workers, is not in favour of abolishing the route.

Personal relationships

Those currently employing live-in domestic workers may have particular attachment to the worker they have already employed and lived with for at least 12 months. This may be particularly true of those whose lives are peripatetic, for example international sportspersons and artists who travel the world and who seek to provide continuity of care for their families and children.

ILPA members have given examples from their practices representing employers that many have specifically mentioned that if their domestic workers' visa were not granted they would not relocate to the UK. For example, a Tier 1 investor explained that his domestic worker had been working for the family for nearly 10 years and had become an inseparable member of the family. The children were very attached to their nanny and would not relocate without her. In this instance, the very wealthy employer did not need to move to the UK, having a choice about where to live. In his view, he would have been doing the UK a favour to by relocate to the UK and invest at least £1 million in the UK. If the UK would not grant his nanny a visa in the circumstances then his view was that he would not bother coming to the UK at all.

As set out above, domestic workers are long-term live-in employees, well-known to their employers and in whom their employers can have a particular trust and confidence in employing the domestic worker in their home, with their family and children. This can be true in those households in which a domestic worker is valued and treated decently, as well as in those in which the domestic worker is exploited or ill-treated.

No consideration is given in the consultation paper to the UK Border Agency's statutory duty under section 55 of the Borders, Citizenship and Immigration Act 2009. There would appear to be a clear value to the children of a migrant coming to the UK and thus experiencing significant change in their lives to be able to continue their relationship with an already established live-in employee and, in line with section 55 duties, consideration should have been, and should be, given to this.

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)?

No.

This removes the safeguards from the domestic workers and would make it much more likely that workers would be pushed into illegality and be even more open to exploitation. If the employer were permitted to remain longer, it is likely that the workers would be pressed to stay longer too. It would encourage bonded labour and exploitation. The domestic workers should be given the same length of stay as their employers, if the employers have a time limit on their stay.

ILPA agrees that it is not practicable to expect migrants to the UK to make arrangements before coming to the UK to replace domestic workers. However, while this is a sound reason for rejecting the proposal to close the route altogether, we do not consider it to be a sound reason for capping the length of leave permitted to domestic workers.

The proposal to cap domestic workers' leave indicates a failure to have any proper regard to these workers. All the focus of such a proposal is upon their employers. Given the recognition in the consultation document of the vulnerability of these workers to exploitation, it is somewhat shocking to see a proposal that considers domestic workers as little more than chattels of their employers – to be brought to the UK for a few months before being sent away, whether back to their countries of origin or countries in which they have been working.

This is all the more so in view of the current wider policy generally to discourage or prevent migrant workers to the UK from staying beyond a limited period, which is at the heart of the proposals on Tier 2 as set out in the consultation document. If migrants in future will increasingly not have prospects of staying permanently, those that are welcome and choose to come to the UK will be expecting to return with any family they bring with them rather than making this country their permanent home. As such, for those who are already employing a live-in domestic worker, it is reasonable to expect that they will intend to do so after they leave the UK; and it particularly, therefore, makes no sense temporarily to disrupt an arrangement that has been long-term (at least 12 months).

Where the employer of a domestic worker is deterred from coming to the UK because they cannot bring the domestic worker with them (for example in cases where the domestic worker cares for the children of the family, or has been part of the household for a period of years) then the possibility of the worker coming for six months will not alleviate their concerns.

Again, as with the previous proposal, the consultation document fails to have proper regard to the requirements in the Rules which mean that the only domestic workers with which the proposal is concerned are those that have been employed in the employer's household, and living in that household, for at least 12 months prior to coming to the UK, and are coming to the UK with that employer (or household) to continue that live-in work.

All the matters raised in relation to the previous question concerning remittances and the Government's international development policy apply also in relation to this question.

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?

No.

The consultation document makes express (paragraph 7.9) that this question is founded upon a positive response to the previous question. Since our answer to that question is in the negative, it follows that the answer to this question is in the negative too.

This is a leading question. It invites respondents to assent to the removal of the right to change employer for one particular reason, that of the existence of the National Referral Mechanism.

Such a formulation of the question acknowledges that the right to change employer is designed as a protection against exploitation and posits the National Referral Mechanism as an adequate substitute safeguard. It is not. The domestic worker who puts up with abuse and exploitation retains his/her job, and with it attendant immigration and other benefits. The domestic worker who turns to the National Referral Mechanism has a chance of being granted a year's discretionary leave and a chance that this may be extended. As set out in all the documentation around the National Referral Mechanism, this is far from a certainty. The other possibility is that the worker faces the option of a voluntary departure, or an enforced removal. There is unlikely to be a route back to the employment. It is the case that many

workers are deterred from engaging with the National Referral Mechanism for this reason. Kalayaan's submission to this consultation stated:

> *Kalayaan identified 157 domestic workers as trafficked under Operation tolerance (May-Sept 2008) and under the NRM (April 2009 - Dec 2010), 102 of these individuals choose not to be referred to the NRM. 68 of those individuals did not need accommodation and support as they found new work. An additional 10 domestic workers who were referred into the NRM chose not to take up accommodation and support as they wanted to work. Therefore without the domestic worker visa an additional 78 would have needed housing.*[46]

The 2009 Home Affairs Select Committee report on trafficking stated:

> *to retain the migrant domestic worker visa and the protection it offers to workers is the single most important issue in preventing the forced labor and trafficking of such workers … we consider it likely that migrant domestic workers will need the special status afforded by the current visa regime for much longer than two years.* [47]

By keeping the possibility of changing employer, the worker has a potential route out of abuse and exploitation, while still having a job, and retaining a legal immigration status. In these circumstances, the National Referral Mechanism is simply a poor substitute for the possibility of changing employer when it comes to persuading people to leave exploitative employment. Domestic workers, however abused, however exploited, have choices to make and improving the range of choices is more likely to provide protection than relying on them to choose to enter the National Referral Mechanism.

Domestic workers do not have an unrestricted right to change employment; they can only find other work as domestic workers in private households, a very serious restriction and one that ILPA considers should be lifted.

The risks that migrant domestic workers, including trafficked persons, will suffer abuse will be exacerbated if, as is currently proposed in the Legal Aid, Sentencing and Punishment of Offenders Bill before parliament, they have no access to legal aid for their immigration cases. Many migrant domestic workers are not well-paid and are not in a position to pay for legal advice and representation. Many are isolated with little knowledge of their rights and entitlements; they need assistance in having these explained to them and, given the prohibition on giving immigration advice unless a solicitor, barrister, member of the Institute of Legal Executives or regulated by the Office of the Immigration Services Commissioner, set out in the Immigration and Asylum Act 1999, they cannot get this advice from other, more general sources of help. A trafficked person may claim asylum if they fear persecution or a violation of their human rights on return to their country but not all domestic workers will have such fears and in any event many will want advice and/or representation in the

[46] Kalayaan submission, 4 August 2011, at www.kalayaan.org.uk

[47] *The trade in human beings: human trafficking in the UK*, 6th report, session 2008-9, May 2009, HC 26-i, paragraph 59

matter of changing employer, or applying for settlement. These are immigration matters and it is proposed that they be taken out of the scope of legal aid. ILPA urges the UK Border Agency to make representations in the strongest terms to the Ministry of Justice that this is not appropriate.

QUESTION 29 – Should leave for private servants in diplomatic households be capped at 12 months?

No.

Similar arguments to those above apply. The 2011 US State Department international survey report[48] on trafficking, while recognising that 'the UK government generally complies with the minimum standards for the elimination of trafficking' and keeping the UK in its Tier 1 category, also stated:

> *Some domestic workers reportedly are subjected to forced labor by diplomats in the UK; there are concerns that these diplomatic employers are often immune from prosecution.*

While prosecution of diplomats remains difficult, it would be wrong to reduce the protection and recourse for servants in diplomatic households further.

The consultation document states (paragraph 7.12) that this proposal is made so as to be '*in line with the proposal on Tier 5 generally.*' There is simply no logic to that. Tier 5 (temporary workers) constitutes a mishmash of routes that concern workers who simply do not fit into the other tiers of the Points-Based System. There is no homogeneity among this group, and hence the fact that certain proposals are made for others in Tier 5 is no basis in and of itself for extending such proposals for these private servants. If the view is that the Tier cannot bear such difference between different categories, that would be a reason for moving private servants out of Tier 5 and into another part of the Rules; but it is not a reason for capping private servants' leave.

All the points advanced in respect of domestic workers (see above, answers to Q26 & Q27) apply to private servants of diplomats. Moreover, the reference to the 1961 Vienna Convention on Diplomatic Relations[49] appears to be inadequate. The Convention requires notification to the relevant ministry in the receiving State (. for these purposes the UK) of '*the arrival and final departure of private servants in the employ of* [members of the diplomatic mission].'[50] There is nothing in this provision, or elsewhere in the Convention, to suggest that a cap, as proposed, may be introduced. We recall in particular that Article 11 of the Convention provides:

> *In the absence of specific agreement as to the size of the mission, the receiving State may require that the size of a mission be kept within limits considered by it to*

[48] US State Department, *Trafficking in persons report 2011*, at http://www.state.gov/g/tip/rls/tiprpt/2011/
[49] United Nations, *Treaty Series*, vol. 500, p. 95.
[50] Article 10.1(d).

> *be reasonable and normal, having regard to circumstances and conditions in the receiving State and to the needs of the particular mission.*

and that Article 57 provides:

> *Private servants of members of the mission shall, if they are not nationals of or permanently resident in the receiving State, be exempt from dues and taxes on the emoluments they receive by reason of their employment. In other respects, they may enjoy privileges and immunities only to the extent admitted by the receiving State. However, the receiving State must exercise its jurisdiction over those persons in such a manner as not to interfere unduly with the performance of the functions of the mission.*

QUESTION 30 – Should an avenue to settlement be removed from overseas domestic workers (private servants in diplomatic households and domestic workers in private households)?

No.

Most domestic workers come to the UK only for short period with their employers and leave again. Only a tiny proportion ever qualify, or apply, to settle – fewer than 1000 were granted settlement in most recent years, 396 in 2006, 434 in 2007, 784 in 2008 and 845 in 2009, rising to 1060 in 2010.[51] Most domestic workers do not apply to extend their leave in the UK: 5275 applications were granted in 2006, 6425 in 2007, 5845 in 2008 and 6425 in 2009. The increases may well be related to the increased numbers of overseas workers coming to the UK in those years and therefore will decrease if the Government's plans for a migration cap are successful.

In substantial part, the proposal to remove the avenue to settlement is stated in the consultation document to arise from the proposals to cap leave (paragraph 7.13):

> *In the future, we would expect domestic workers in private households and private servants in diplomatic households to leave the UK after a maximum of 12 months.*

ILPA's answers to the proposals to cap leave are in the negative and this informs our answering this question in the negative too.

Moreover, we agree that the retention of the possibility of applying for settlement for these workers has been as a protection against '*their potential mistreatment and abuse*' (paragraph 7.13). The consultation document does not seek to contradict that the possibility of settlement applications provides some real and effective protection, and expressly acknowledges the particular risk of exploitation faced by these workers. There is no unfairness, therefore, in retaining the protection.

[51] *Home Office Control of Immigration: quarterly statistical summary Q4 2010*, as quoted in the consultation document, paragraph 7.13.

The suggestion that there would be some illogicality or unfairness to Tier 2 migrants, as stated in the consultation document (paragraph 7.13) fails to have proper regard to the relevant circumstances. The Rules currently provide this protection to domestic workers because of their particular vulnerability to abuse. Tier 2 migrants are not in general so vulnerable: they do not work in private households; they have skills for which there is a particular market other than with the particular employer; they have higher earnings, and they have a higher potential to be able to leave their employment.

Tier 2 migrants also enjoy greater freedom to change employer. While there is some opportunity to for domestic workers to change employer, they are not permitted to change their type of employment. Private servants in diplomatic households face greater restrictions still. Tier 2 migrants are protected by their ability to change employer and this is an important additional protection to those that they already enjoy.

If the changes proposed for Tier 2 migrants are brought into effect this may reduce settlement opportunities for domestic workers working for Tier 2 migrants. This is because the Rules currently require that domestic workers still be employed as domestic workers at the point of applying for indefinite leave to remain. Therefore, if what is intended is simply a reduction in settlement by domestic workers, this aim seems likely to be achieved if the proposals on Tier 2 are introduced.

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?

No.

Domestic workers need to show that their dependants can be maintained and accommodated without recourse to public funds in order to bring them to the UK. In many, if not most, cases, therefore, it is likely that the dependants/domestic worker will be dependent on the employer and will have been living together in that employer's home before coming to the UK. As such, there is good reason to allow family unity to be maintained. The International Labour Organisation has stated:

> *It is ironic that women who contribute so much to the care of others and to the work and family equilibrium of their employers sacrifice their own family lives. They are separated from their husbands and children for extended periods of time causing deep emotional distress. The material benefits of migration cannot*

compensate for the affective loss that the workers' own partner and children suffer.[52]

The UK should not impose further barriers to family unity for a particular group of workers. Permitting the domestic worker to remain together with his or her family in those cases where this is a possibility, may itself contribute to protection against exploitation by reason of the support provided by family members (particularly partners and any older children).

The UK Border Agency *Control of immigration: statistics 2010*, table 1.1 (cont)[53] states that the number of entry clearances granted to dependants of domestic workers in private households was 150 in 2007, 75 in 2008, 245 in 2009 and 335 in 2010; only 805 dependants over the course of four years. Statistics are not held separately for the very small number of dependants of domestic workers for diplomats. The numbers are thus very small.

QUESTION 32 – If we were to continue to allow overseas domestic workers to bring their dependants, should those dependants' right to work be removed?

No.

See the answer to question 31. Permitting dependants to work provides additional protection against abuse and this should be retained. It provides protection against abuse in that (i) it may effectively allow the maintenance of family unity referred to in the previous answer; (ii) it may allow the development of relations outside the household in which the domestic worker is employed and so provide greater opportunity of finding advice and support in the event of exploitation and may by that reason provide a incentive against exploitation; and (iii) It may provide an additional source of income for the family and as such reduces one aspect of the dependency upon the employer.

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05 September 2011

[52] ILO Working Paper 2/2010, *Moving towards decent work for domestic workers: an overview of the ILO's work, at* http://www.ilo.org/wcmsp5/groups/public/---dgreports/---gender/documents/publication/wcms_142905.pdf

[53] Table at http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/immigration-asylum-research/control-immigration-q4-2010/?view=Standard&pubID=864988