

## SETTLEMENT CONSULTATION

July 2011

### What is the settlement consultation?

On 9 June the Coalition government launched a public consultation called '[Employment-related settlement, Tier 5 and overseas domestic workers: a consultation](#)'. This consultation is considering more changes which would affect migrant workers in the UK - in particular the government is planning to restrict the possibility for most migrant workers from outside the EU to stay in the UK for longer than five years. It is also considering abolishing the overseas domestic worker visa, and restricting the rights of people coming here under Tier 5 of the Points Based System.

What is the purpose of these changes? The government has presented this package of policy measures as helping to tighten up on migration, and clarifying the position for people coming to the UK for work from outside the EU. It is hoping that this will increase the number of migrant workers who have to leave the UK, with the aim of bringing down the overall level of net migration. However, we think that these measures would cause significant problems for many migrant workers coming to the UK.

### Summary and analysis of the main proposals

#### **1. Limiting the visa categories that can lead to settlement in the UK**

##### ***What are the proposed changes?***

- **A clearer distinction between 'permanent' and 'temporary' visa categories for people coming to the UK.** The government's aim is to make more labour migration to the UK temporary, by requiring more people from outside the European Union to leave after their initial period here.

##### ***What would the effects be?***

- **Fewer people would be able to settle in the UK in the future.** It is not correct to describe these proposals as creating 'clearer categories' for permanent and temporary migration to the UK. These measures are instead likely to increase the insecurity and confusion of people coming to the UK, particularly under Tier 2. In the main, the effect of the 'distinction' between 'permanent' and 'temporary' migration as proposed by the government would simply be that fewer people in the future will be able to stay here for longer than five years or settle here. Far from being clearer for migrants at the outset,

many coming here under Tier 2 would only be likely to establish whether they could settle here after they had already moved to the UK.

- **This approach to migration policy will be viewed as deeply unfair.** By restricting settlement for the vast majority of labour migrants in the future, people spending as long as five years working in jobs where there is a need for their labour, paying taxes and sending their children to school here would be prevented from laying down roots in the UK and integrating here. Restricting settlement rights underestimates the level of investment made by people in coming to this country to work and the returns they could reasonably expect from that investment. As such, these changes could be expected to generate resentment rather than compliance from people moving through the system.
- **More rules would mean more enforcement.** The introduction of new rules requiring more people to leave the country after their initial period here would also require an increase in enforcement because some would not want to leave. The costs (more workplace raids, more surveillance and in-country monitoring of migrants) would no doubt fall most heavily on migrants least able to resist. The likely outcome is that more people would fall outside the immigration rules in the UK, with others deterred from coming in the first place.
- **Overall, this package of measures does not represent a positive approach to promoting temporary migration to the UK.** Governments tend to like the idea of temporary (or 'circular') migration schemes such as guestworker or seasonal migration systems, as they can allow for flexible, responsive migration flows. But where temporary migration works best is either where it arises from short-term mobility schemes (e.g. seasonal work visas) or from more labour mobility, rather than less – migration within the European Union being a good example. Matt Cavanagh from the Institute for Public Policy Research has put together a useful analysis of why this [overall approach to temporary migration just doesn't make sense](#).

## **2. Retaining settlement rights for Tier 1 migrants**

### ***What are the proposed changes?***

- **Tier 1 would be redefined as a 'permanent' route.** This would mean that Tier 1 migrants should continue to be able to move towards settlement in the UK in the future. However, because of major reforms under the Coalition government, Tier 1 is now only open to investors, entrepreneurs and those with 'exceptional talent' (capped at 1000 per year). This means that the numbers of migrants entering the UK under Tier 1 will be extremely small in the future.
- **Tier 1 investors and entrepreneurs would have an accelerated path to settlement.** The time taken to reach settlement would be reduced to 2 – 3 years for major investors and entrepreneurs with businesses making significant contributions in the UK. The government is consulting on whether Tier 1 'Exceptional Talent' migrants should be prevented from moving towards settlement in the UK although it seems likely that they will be able to settle here. It is also considering whether all Tier 1 migrants should be

required to apply for settlement if they want to remain in the UK for longer than five years.

- **These changes will probably apply retrospectively, to workers who entered the UK under the Immigration Rules in force from 6 April this year and who, under the current system, could have expected to apply for settlement in 2016.**

#### ***What would the effects be?***

- **These proposals will cement the reworking of Tier 1 as an elite route intended to benefit a privileged minority.** The Tier 1 settlement proposals may be welcomed by a small number of 'high-value' investors and businesspeople coming to the UK every year. But the changes leave the [Home Office open to accusations](#) that they are enabling the rich to 'buy passports' in the UK, whilst making it much more difficult for everyone else.
- **Uncertain benefits to investors and businesspeople.** Despite a fast route to settlement being intended as a carrot for wealthy individuals, [lawyers have pointed out](#) that the extent to which this represents a real benefit for investors and businesspeople will lie in the small print. It is possible that they may only enjoy minor benefits from this change.

### **3. No settlement rights for most Tier 2 (General) migrants**

#### ***What are the proposed changes?***

- **Tier 2 (General) would be redefined as a 'temporary' route.** In practice this would mean that major new restrictions would prevent most Tier 2 migrants from staying in the UK after a maximum of five years, either for further temporary work or by applying for settlement. Currently, only Tier 2 migrants entering the UK via intra-company transfers are prevented from extending their stay in the UK after five years. After leaving the UK, Tier 2 migrants might have to wait for a 12 month 'grace' period before reapplying to come to the UK.
- **A small number of Tier 2 migrants might be allowed to move into a 'permanent' Tier 2 route after three years.** The government recognises that it cannot prevent all Tier 2 migrants from moving to settlement - but it intends to make sure only a small number can apply to move towards settlement after five years in the UK. The government is considering a number of selection methods for identifying the lucky few, but it is likely that the most 'economically important' Tier 2 migrants will be given priority. The Migration Advisory Committee has been asked to assess how the government should calculate who is 'economically important', and to calculate the economic impacts of restricting or [removing settlement rights for the rest](#). It seems that Tier 2 employers would also be required to play a bigger role in determining who will be able to stay after five years and who must go.
- **Certain categories of Tier 2 migrants might have their right to apply for settlement restricted.** This could apply to groups currently not included in the immigration cap

(ministers of religion, elite sports people, those earning over £150,000 per year and those in occupations of particular economic or social value to the UK).

- **These changes will probably apply retrospectively**, to workers who entered the UK under the Immigration Rules in force from 6 April this year and who, under the current system, could have expected to apply for settlement in 2016.

### **What would the effects be?**

- **Further reducing the attractiveness of Tier 2 for potential applicants.** The decision to move to the UK for work is a big decision, particularly given the increased barriers to entry and continued stay in the UK for migrant workers over recent years. Since April this year, applicants for Tier 2 (General) are now required to meet higher education and skills thresholds and navigate the new immigration cap which has limited the number of visas available. It is a real investment to navigate this process and move here. However, reducing the option of moving towards settlement and citizenship will significantly lessen the attractiveness of the UK for potential applicants.
- **More insecurity and uncertainty for people coming here under Tier 2.** Under these proposals, Tier 2 migrants would find their ability to establish a life in the UK would be significantly limited. Those who are not permitted to move into a 'permanent' Tier 2 route after three years would find that they would have to leave the UK after a further two years. This would make it more difficult for people to plan for the future either in the UK or elsewhere. As well as impacting on the migrants themselves, it would have particular impacts on dependents including spouses and children in school here.
- **Less incentive for Tier 2 migrants to 'integrate'.** For the majority of Tier 2 migrants, the incentive to build long-term relationships or participate in local communities would be reduced they are likely to be required to leave the UK after only a few years. by the fact that the majority of Tier 2 migrants would find themselves required to pay taxes in the UK for up to five years, without the option of ever reaching a point where they could themselves fully access public funds. The government should anticipate a sense of resentment, rather than a desire to 'integrate', from people required to make significant contributions in the UK with such little return.
- **Undermining contribution made by Tier 2 migrants.** Preventing most Tier 2 migrants from settling here would deprive the UK economy from valuable skills and expertise. Despite growing political and public messaging to the contrary, Tier 2 migrants are known to play a vital role in some of the UK's critical export sectors including IT, financial services, health and teaching. [Research indicates](#) that Tier 2 migrants bring positive economic outcomes for the UK, and are thought unlikely to threaten either employment or wage levels of resident workers. Tier 2 migrants should be valued as making a critical contribution in the UK and offered decent life opportunities as part of this. This set of proposals sends the opposite message to Tier 2 migrants.
- **Potential increase in irregular stay in the UK.** The government should anticipate that some people required to leave after five years will not want to go, as they would have established a life here or there is continued demand for their skills. Enforcing these new rules will require an increased investment in in-country monitoring of migrant workers,

with costs for migrants and the resident population as a result. We could expect that some workers will end up living and working irregularly as a result.

- **Retrospective application of the changes to Tier 2 would be highly problematic** for those who have entered since April 2011, and likely to be subject to legal challenge.

#### **4. New English language requirement for dependants of Tier 2 migrants switching to a settlement route**

##### ***What are the proposed changes?***

- **Adult dependents of the few Tier 2 migrants able in the future to switch to a 'permanent' Tier 2 route after three years would be required to take a basic English language test.** Passing this test would enable them to stay in the UK for a further two years before the main Tier 2 applicant is eligible to apply for settlement. The language test would be at A1 level of the Common European Framework of Reference (CEFR). A test at this level has already been introduced for non-EU nationals applying to enter the UK or extend their stay as the spouse or partner of a person settled in the UK or of a British citizen, active from 29 November 2010.

##### ***What would the effect be?***

- **Additional insecurity for Tier 2 migrants and their families.** An English language requirement is already in place at the point of applying for indefinite leave to remain in the UK. It is not fair, however, to expect adult dependents to pass an additional language test when they move from one form of temporary visa to another. This requirement would be likely to be challenged in the courts as a potential infringement of Article 8 rights under the European Convention of Human Rights.
- **Legal challenge would be likely.** Although the government views introducing an English language for some Tier 2 dependents as reasonable, it is not likely to be viewed that way by people whose loved ones are required to leave the UK in the case that they do not pass the test. It is likely that this requirement would face legal challenge on the grounds that it infringes upon Article 8 rights (Right to respect for private and family life) under the European Convention of Human Rights. The introduction of testing for spouses has already proved problematic for the government and will be the subject of a judicial review in July 2011.

#### **5. Restricting length of stay and dependents for Tier 5 temporary workers**

##### ***What are the proposed changes?***

- **Restricting the period of leave available for Tier 5 temporary workers to a maximum of 12 months, with no possibility of extension.**
- **Tier 5 temporary workers would no longer be able to bring dependants with them to the UK.**

- **These changes would probably come into force at some point in 2012.**

***What would the effect be?***

- **Apparently arbitrary difficulties for temporary workers coming here.** The government offers no justification for restricting the stay of Tier 5 temporary workers to a 12 month period – giving the impression that there is no reason other than the overall objective of reducing visas which could contribute to net migration figures. In addition, the decision to prevent them from bringing dependents is unjustified and would only lead to many potential Tier 5 applicants being unable to come to the UK.
- **Penalising sectors which frequently use Tier 5.** [There is already real concern that Tier 5 requirements](#) are having negative impacts on by far the largest category of temporary workers – those in the creative and sporting fields. Further restrictions for this group of high-value individuals which make it more difficult for them to come will be likely to have a negative impact on these sectors. Given that this visa category is already temporary, there is little to be gained from further restrictions and much to lose.

**6. Restricting entry and settlement for domestic workers and private servants in diplomatic households**

***What are the proposed changes?***

- **The overseas domestic worker route would either be closed or severely limited.** If the domestic worker route is to continue, it will probably be limited to a 6 – 12 month, non-renewable visitor visa, tied to one employer. The government intends that this would encourage employers to recruit domestic workers instead from within the UK, and would reduce the capacity for abuse of migrant domestic workers.
- **Visas for private servants in diplomatic households would be restricted to a 12 month period.**
- Neither overseas domestic workers nor private servants in diplomatic households would be able to progress towards settlement, and nor would they be able to bring dependents into the UK.
- The government intends that these changes would probably come into force at some point in 2012.

***What would the effect be?***

- **Legal channels would no longer meet continued demand for migrant domestic workers.** The government refers to the migrant domestic worker route as facilitating abuse – as such it argues that the route should be closed or strongly limited. But there is no evidence to suggest that employers are willing to give up their servants so that they will be able to recruit from the UK labour force. The more likely outcome is that there would be continued demand for domestic workers but inadequate legal channels to bring them into the UK. This would increase the potential for irregular entry and stay of

domestic workers, effectively denying the workers concerned access to any employment rights.

- **Increased potential for bonded labour for migrant domestic workers.** Either closing or reforming the overseas domestic worker visa as proposed by the government would mean that migrant domestic workers, if able to enter the UK legally at all, would once again become tied to their employer, with only limited legal stay in the UK. Evidence by charities [such as Kalayaan indicates](#) that making immigration status dependent on staying with a single employer only facilitates exploitation and abuse.
- **Moving the UK backwards by a decade in its approach to domestic workers.** The current system, whereby domestic workers enter the UK on a specific visa which allows them to change their employer, is arguably not perfect but at least provides some protection for domestic workers. As the ILO has agreed a historic Convention on domestic workers this month (June 2011), the UK seems to be travelling backwards in its approach to these issues. For a full briefing on issues related to domestic workers visit the [Kalayaan website](#).

The settlement consultation will be running until the 9th September 2011 and, as ever, we encourage everyone concerned about these changes to respond. This consultation paper is awkward as it is largely a 'yes/no' format, with very little space for written answers. **But we must take the opportunity to respond anyway!** Here is [why we think consultation responses are important](#).

### How do I respond?

**In 20 minutes.** If you have limited time then the online questionnaire [by clicking here](#). The government does count the responses to each question and so the more of us fill it in, the more impact we have.

**In a couple of hours.** Those who would like to give more detailed answers, or would like to focus their response on a particular section of the consultation, can [adapt the Word version](#) of the questions downloadable on this page and write fuller explanations for their responses. You are welcome to use the [MRN model response](#) as a starting point, but it will be more effective if you add your own text, particularly if you know of particular groups that would be affected by the proposals.

**In an afternoon.** If you have more time, do also submit a response to the new Migration Advisory Committee (MAC) inquiry which has just been released and is linked to the settlement consultation. You can [download the questions from the MAC website](#). Responses should be sent to the MAC, rather than to the UKBA.

**In a day.** If you have even more time, you should think about organising a meeting on the consultation to get the views from different stakeholders and to encourage others to take part. Here is [MRN's toolkit with tips and techniques](#) to get the most out of a consultation.