



**RESPONSE OF THE JOINT COUNCIL FOR THE WELFARE
OF IMMIGRANTS (JCWI)**

**TO THE HOME OFFICE
CONSULTATIVE DOCUMENT**

***SELECTIVE ADMISSION: MAKING MIGRATION
WORK FOR BRITAIN***

November 2005

Introduction

1. The Joint Council for the Welfare of Immigrants is an independent, voluntary organisation working in the field of immigration, asylum and nationality law and policy. Established in 1967, JCWI actively lobbies and campaigns for changes in law and practice and its mission is to eliminate discrimination in this sphere. In considering the issues raised in the Home Office consultative document we are alert to our principle concerns that law and policy should be capable of being applied in a non-discriminatory way in respect of racial or ethnic grouping. This is not exclusive to other concerns which might arise in relation to discrimination on other grounds. These considerations are reflected throughout our following comments.

Summary of concerns

2. JCWI acknowledges Ministerial recognition of the contribution of migrants and the increasing opportunities for people to enter the UK for the purposes of work and study. However we remain concerned about the managed migration programme's development in recent years, primarily because of its burgeoning complexity and the absence of a clear sense of the *rights* which should be attached to the status of migrant worker under the scheme. The review as presented in the consultation document has still not addressed either of these two crucial issues.
3. The consultation document asserts a set of 'objectives' and 'tests' for the new system which are intended to aid its design. We agree with this approach but believe that the 'objectives' listed at 5.2 – 5.7 are partial at best, and the 'tests' have the potential for being contradictory. They do not acknowledge that a migrant worker should be afforded basic rights for the proposed new system to work.
4. The consultation document fails to explain what gains would be obtained for the system by reorganising the current managed migration schemes into the five tier system it advocates. As we understand the position, the 50 different ways to come to the UK to work or study which are criticised for being complex and bureaucratic, will be reproduced within the five tier scheme with only the means of judging entitlement for admission being modified by the proposals. The gains which might be expected from this approach are likely to be small, if they exist at all, and hardly likely to justify the overhaul required for the introduction of the new system.
5. We disagree with the presumption of the document that the conditions of entry and residence associated with each category of migrant can be disassociated from one another in a way which divides this workforce into a series of distinct, separate classes. The effect of measures of this kind will be to raise the cost of migration for those in the least advantaged groups and to expose them to greater dangers in the way of abusive and exploitative conditions of employment. Given the likelihood of the impact being greatest

on non-EEA nationals from the developing world, it also raises the probability of discrimination on grounds of nationality and ethnic grouping occurring on an extensive scale.

Response methodology

6. JCWI's response is framed on an analysis of the overall effectiveness of the proposed new *Selective Admission* system. The response discusses the need to incorporate the issue of rights of migrant workers which is notably absent from the consultation paper. Although the *consultation questions* have not been specifically answered in the order they appear, the pertinent issues raised by them are addressed in this response.

The absence of rights for migrant workers

7. The outlook of the document would appear to conflict with the principle that 'migrant rights' should underpin the relationship between migrants and the public authorities. The perspective it would appear to set out is one in which the immigration control agencies have arbitrary powers to settle all questions of admission, residence, settlement and family reunification without consideration of the essential rights of the applicants.
8. We are firmly of the view that migration will not be rendered 'manageable' in any meaningful sense of the term if the dimension of the rights of workers admitted as migrants is not taken into account.
9. We are concerned that this document would seem to promote a viewpoint that there can be no rights associated with being a migrant worker, and that the authorities are able to operate restrictions and arbitrary measures without justification.
10. The rights of migrant workers seem to be viewed as factors which can be manipulated by the authorities to reduce the attractiveness of residence in the UK and to assert greater control over their presence in the workplace and the community. At paragraph 6.21, for example, the document suggests that it would be appropriate to impose conditions on the residence and employment rights of Tier 3 migrants which would deprive them of virtually all opportunities to exercise discretion on how they organise their employment and personal lives during the period of residence in the UK.
11. The implications of how migration would be organised under a radical regime in which rights are withheld from migrant workers are not fully assessed. JCWI is familiar enough with the conditions of work in many of the casual and informal sectors of the economy in which Tier 3 migrants are likely to concentrate to know that their already vulnerable position will be made worse as the absence of rights weakens their ability to resist abusive and exploitative employers. It is also unrealistic to suppose that these workers, who have often made large investments in their migration to the UK, frequently financed by loans, will accept the position that the alternative to

exploitative working conditions is to return abroad. The imperatives of repaying loans and returning home with some degree of gain are likely to incentivise migrant workers to expand the scope of their working opportunities which may, in many instances, involve breaches of their conditions of entry and residence.

12. The document fails to recognise that the absence of rights *reduces the incentives of migrant workers to remain within the legal system of managed migration*. If a worker discovers that the only redress s/he has against an abusive employer is to find another job, and in doing so places him/herself in breach of controls, then s/he, and the tens of thousands in a similar position will choose the option of breaking the rules and find ways to exist to meet their goals despite the new position of undocumented irregularity.
13. Our view is that the government should commit itself to setting out a clear charter of rights which would be available to all migrant workers, irrespective of the tier of entry. These would include the right to have applications to enter and reside in the UK decided in accordance with the law, and made effective by a *right of appeal* against all adverse decisions to an independent court. A Home Office system of administrative review would not be objective. The right to protection from forced labour would be obtained by ensuring that all workers have the right to change employers during the period of their residence permits, and for all residence permits to be extended to the point of permanent settlement when, on the merits of the individual application, it is reasonable to do so. The right to be joined by family members during the period of residence is also of critical importance and is asserted in all international labour conventions as the most basic of human rights for migrant workers.

Confusion of 'objectives' and 'tests'

14. The 'objectives' set out for the new system are not sufficiently comprehensive to accommodate the diverse interests which need to be considered. For example, there is no commitment to ensure that under the new system migrant workers will have the opportunity to obtain a clear benefit from their period of work in the UK by such means as a guarantee of financial gain from their experience, or upgrading their skills or extending networks which they will be able to draw on after their return to their home countries.
15. The paragraph on 'economic and international competitiveness' (5.3) seems to set out a logic which requires that migrant workers enter the UK as a cheap alternative to resident workers, and that they remain cheap throughout the period of their migration. We are completely opposed to this proposition, which in our view is full of danger for good relations between the different groups within the labour force and will have a perverse effect in utilising migrant labour as an alternative to capital investment and the raising of labour productivity. To counter these tendencies one of the objectives of migration policy should be to ensure that mechanisms are in place to allow

migrant workers to receive their full share of the productivity gains which have come from their employment in the UK.

16. The commitment set out at paragraph 5.6 constitutes a reduction of all the issues which need to be addressed in policies for migration and development to the single issue of “brain drain”. This represents an insufficient analysis. The government should ensure that DFID is brought into this discussion as the lead department in framing this aspect of immigration policy in order that a proper level of regard could be had for all the relevant issues. It is our view that given the remittance levels of migrant workers to sending countries, managed migration could become an important tool for international social justice and play an important role in the Government’s programme to reduce poverty in the developing world.
17. The ‘tests’ set out at paragraph 5.8 lack coherence. It is inadequate to assert that the system will, for example, be expected to be both ‘robust’ and ‘flexible’ when it is clear that the two elements, if not actually contradictory, certainly tend in different directions. How can the requirement for ‘operability’ (*‘government officials to use the system as it is specified, with little room for human error’*) be squared with ‘flexibility’ (*‘the ability for the process to be modified due to particular characteristics (eg risk factors) of particular applicants’*)? This provides no useful guidance with regard to the operating principles of the new system.

The five tier system

18. We are attracted to the idea, set out in the introduction (paragraph 1.6) that the routes of entry to the UK should be available to the prospective migrant as a “one- stop interface” allowing them to assess with accuracy her eligibility for entry in one of the categories of admission. For such an approach to be practical however it would be necessary to ensure that the routes of entry were relatively simple, that the requirements for entry were proportionate to the desirable ends sought by the system of control, and that they did not generate a sense of grievance or injustice. The current proposals for a five tier system do not meet these requirements.
19. The consultative document makes no concession to the urgent need to simplify the immense complexity of the current system. It simply re-introduces it under the various tiers envisaged for the new system. The gains, insofar as they exist, come about from the use of the points principle for considering applications, which we are expected to assume will assist the decision-making process.
20. Further, we have an objection in principle, argued above in the section on ‘rights’, to a scheme which propose to manage migration flows by over-emphasising the distinctions to be made between ‘highly-skilled’, ‘skilled’ and ‘low-skilled’ jobs, and the range of possibilities for further distinctions based on nationality, age, student status, etc. In our view the range of distinctions between skill levels should be taken no further than that already elaborated in the work permit scheme, which already provides for the various gradations

between the formally- and informally-skilled quite adequately. The work permit scheme also provides that, once eligibility has been decided, no distinction in terms of rights and expectations should be made between the highly- and the informally-skilled, with migrants across all grades being able to rely on five years residence, the opportunity for family reunification, and the possibility for settlement should they wish to take this up.

21. We are highly concerned at many of the detailed proposals set out in the section on the five tier system, such as the suggestion for 'bonds' and the charging of fees for applicants. These all have the effect of raising the costs of migration for individuals who will look to recover them during the period of employment in the UK. For migration to be manageable the opposite objective should be pursued, namely that the cost of moving as a migrant should be reduced as much as possible in order that the worker might be able to move into to a positive gain on their investment at an early time, with the penalty for returning home after a relatively brief stay in the UK being thereby made negligible. We would expect to see the level of short-term migration increase under such a system as migrant workers are able to realise a profit on their period of work much earlier. Furthermore, the bonds will be imposed upon migrant workers from poorer countries, and will invariably discriminate on grounds of nationality and ethnic grouping.
22. We would finally wish to express our concern that the arena for decision-making on labour migration applications should switch to entry clearance officers rather than officials at Work Permits UK.
23. JCWI's recent experience of ECO decision-making on the entry of the self-employed from Romania and Bulgaria suggests there are many reasons to be concerned that ECOs lack the capacity for the type of sophisticated decision-making which is often required in this area of migration policy. Operating within a deeply- entrenched 'gate-keeper' culture, ECOs have a poor record in being able to evaluate the merits of applications when issues concerning complex economic interests, basic rights, race equality, or the application of more complex areas of law and policy are concerned. They have a tendency to produce local responses to types of applications which are expected to be applied in a comprehensive manner which means that the rules applied in one country or region can be markedly different from another. The suspicion of discriminatory approaches frequently accompanies their work and the standard of decision-making is often very poor. It would therefore be extraordinary for ECO's to assume greater responsibilities for dealing with these matters than they currently have. If greater decision-making is to be vested in ECO's, it is all the more important that their decisions are reviewed independently via a right of appeal.

Conclusion

24. The consultation document's vision of immigration as a human activity, which may be completely controlled and directed by the Government, is unrealistic and somewhat narrow. It fails to recognise that a number of parties apart from the UK government – business and industry, research and educational

institutes, public service providers and individual households - have an interest in immigration to the UK.

25. It is unrealistic in its belief that the costs of running a complex and bureaucratic administrative system can be offloaded to migrant workers through visa and work permits fees, and that additional financial burdens might be added through the imposition of bonds and other devices. Other costs will inevitably accrue from the fact that migrant workers are now required to engage the services of agents and legal advisers at almost every stage of their project in order to negotiate their way through the vast array of regulations which govern the system. The consultation document seems to discount that the growth of such costs to migrants is now a major contributor to irregularity as workers are obliged to structure all aspects of their residence and employment to the need to clear debts and show a profit on their venture.
26. A failure to ensure that migrant workers enjoy equal rights under the managed migration programme in the UK will not only jeopardise the safety and well-being of individual migrants. It could undermine the Government's achievements to date on delivering improved public services, which rely on migrant workforces, and tackling poverty and social justice in the UK. It could affect its future ability to meet its own equality agenda, particularly around race equality and its goals to promote the improved integration of migrant communities into UK life. The unimaginative approach of the managed migration policy means the Government is missing out on the opportunity to use it as a tool for international social justice and "Making Poverty History."