JCWI response to the Government consultation on the Prevention of Illegal Working

The response to the consultation questions below is prepared by the Joint Council for the Welfare of Immigrants, an independent, voluntary organisation working in the field of immigration, asylum and nationality law and policy. Established in 1967, JCWI provides legally aided immigration advice to migrants and actively lobbies and campaigns for changes in immigration law and practice. Its mission is to eliminate discrimination in this sphere and to promote the rights of migrants within the framework of international human rights.

We have been glad of the opportunity to be consulted on action against illegal working as a member of the Ministerial Illegal Working Stakeholder Group. We welcome this further opportunity to comment on the implementation of the provisions on illegal working contained in the Immigration Asylum and Nationality Act 2006. We will respond to the questions as requested but before doing so feel it helpful to set our general approach.

JCWI does not as a matter of principle oppose the introduction of system of sanctions against those employers who employ individuals with no entitlement to work in the UK. JCWI believe however that if such a system is to be effective in a) discouraging employers from employing migrants with no entitlement to work in the UK and b)preserving the integrity and rights of migrants, it must be situated within a human rights framework applied through the use of international labour standards enhanced worker protections, and an enhanced labour inspection regime.

Consultation questions and responses

Recruitment practices

The Regulatory Impact Assessment[1] published during the passage of the Immigration, Asylum and Nationality Bill, estimated that initially, the direct financial cost to employers of familiarising themselves with the new guidance would be £27.2 million. The projected cost to business of the new continuing obligation to conduct checks on temporary migrant workers, in the fifth year of its introduction, is £1.3 million.

1. Will the measures outlined in this consultation document lead to significant additional economic costs to recruitment practices?

Yes

[1] Illegal Working Taskforce Regulatory Impact Assessment for the Immigration, Asylum and Nationality Bill, 22 June 2005 **www.bia.homeoffice.gov.uk/6353/18383/18469/ria11.pdf**

Potentially there are additional and disproportionate economic costs for some employers.

If yes, please explain how and why recruitment practices will be influenced.

Disproportionate additional costs to small businesses and charities

The RIA for the Immigration Asylum and Nationality Act 2006 estimated the costs to UK business of the new regime at £27.2million "based on 1.16 million of the 4 million businesses in the UK having employees, and assuming that it would take a Personnel and Industrial Relations Officer (SOC 2000 classification 3562), on a median wage of £11.73 per hour, two hours to read through the guidance (1.16 million x £11.73 x 2)." Arguably this cost is somewhat optimistic because it does not include the cost of the high level of legal/human resource expertise needed to be able to interpret and implement the guidance; the cost of cases for unfair dismissal and discrimination which could flow from poor implementation of the guidance; or the penalties which might be occurred through the occasional and non-intentional administrative lapse.

Nevertheless, the cost of training in using the guidance, some of the lower penalties envisaged for non-compliance, or potential costs for unfair dismissals, may not impact significantly on medium-sized and big business which can afford to employ full-time and highly qualified human resources, and legal, advisors; and have relatively higher turnovers. It is smaller organisations, including small businesses and charities, which are likely to encounter them as an additional burden.

Arguably these latter sectors should expect no special treatment before the law. It is right to expect them to take their human resources and legal duties seriously, as part and parcel of their desire to make a profit and/or enjoy good reputation. But it must be recognised that in practical terms they often cannot afford to employ human resources professionals and/or legal advisers. The owner or chief executive may have to take responsibility for recruitment practices and processes including checking documentation and may not have the funds to access human resources training.

BME business

The above will be particularly true for ethnic minority businesses run by the settled migrant communities which constitute ten per cent of small businesses with employees. These businesses present important employment opportunities for individuals who may otherwise encounter discrimination in the market place. They already establish themselves in the face of more hurdles, being much more likely to be based in the most deprived areas of the country, to experience

difficulty accessing finance from formal sources, such as banks, and to have lower financial turnovers (Ethnic Minority Business in England, Report on the Annual Small Business Survey 2003, Survey Boost, DTI).

Small NGOs

JCWI is one such organisation, providing legally aided advice to marginalised migrant communities and ensuring that individuals from these communities are not further disadvantaged by immigration status. Other NGOs may be providing forms of welfare support, training programmes or other activities which sustain integration. Like small businesses, small NGOs will likely not employ full-time human resources and legal professionals. Already this sector is complaining of the burden of over-regulation and competitive labour markets on activity (i.e. see http://www.ncvo-vol.org.uk/askncvo/.) Additionally they may rely on voluntary workers, serve deprived communities and have minimal financial resources. Because of the nature of the work, refugee and migrant community organisations are probably better informed on changes to immigration policies and rules than most small NGOs. However being funded by poor minority communities they are already responding within restricted budgetary limits to the burden of supporting socially excluded groups, without contemplating these additional regulatory burdens.

Aside from direct financial costs, would these measures give rise to additional indirect costs?

For example, would these measures discourage individuals from acting as directors? Please explain your answer in the space provided.

There will be additional indirect costs arising in key areas and to differing stakeholders, i.e., increased pressure on refugee and migrant community organisations; increase in visible destitution; impact on ability of BME business and NGOs to contribute to integration and regeneration agendas; loss of employment opportunity and increase of poverty and exclusion among BME groups; and costs flowing from the envisaged solution of the biometric immigration document.

This is because the illegal working regime is not envisaged primarily as a way of responding to worker exploitation but of contributing to a regime of immigration control. It has been constructed so as to

- take advantage of the workplace as an accessible locus of enforcement, where other enforcement strategies and Home Office systems have failed (David Roberts, of IND, to Home Affairs select Committee May 16 2006)
- and ensure enforced destitution by pushing irregular migrants out of work so that they are discouraged from remaining in the UK (John Reid Home Secretary March 7, 2007).

QUESTIONS FOR PARTICIPANTS

Stress on NGOs and destitution

However we do not think that because large numbers of irregular migrant people are forced out of work they will leave the UK of their own accord or, on the Home Office's current record, be successfully deported. It may also be that larger numbers of destitute people who cannot obtain employment will end up turning to RCOs and MCOs and other NGOs who will in turn pick up the bill for the authorities' enforcement of destitution via denial of employment as a tool of immigration control. If the NGOs cannot assist all then increased visible destitution, including for example street homelessness may result. Another eventuality is that more people because of their poverty and desperation will become prey to coercion and being trafficked within the UK's borders into the hands of truly criminal and exploitative employers.

Further exclusion of marginalised groups

There is already some anecdotal evidence that restricted immigration status may discourage employers from taking on certain groups; and we are not satisfied that the Code of Practice can provide satisfactory guidance to employers on striking the balance between non-discrimination and not employing persons lawfully present. (see our responses to questions below). We are concerned that businesses with minimal infrastructure and resources who do not understand immigration status may be discouraged by the threat of penalty and/or claims of unfair dismissal from employing black and ethnic minority UK/EEA nationals and/or non-EEA nationals lawfully present in the UK. This is worrying because recent evidence continues to point to disproportionately lower labour market participation and poverty experienced by some black and ethnic minority groups i.e. black Africans, Pakistanis and Bangladeshis (Poverty Among Ethnic Groups: How and Why Does it Differ, www.jrf.org.uk 2007) We would be concerned that the provisions of IAN 2006 have the effect of intensifying this situation.

Integration

This makes the integration of these migrant groups more precarious At a time when Government is attempting to co-opt black and ethnic minority business and the NGO sector into helping it to fulfil its agendas on integration and regeneration, (i.e. see HM Treasury Report *Consultation feedback on the future role of the third sector in economic and social regeneration* paragraphs 2.13 and 6.13) it must be of the utmost concern that legitimate and law-abiding employers among these sectors will be carrying these additional human resource burdens.

Cost of the identity projects and BIDS (Biometric Immigration Documents)

Additional costs to the public purse, migrants and business are implied by the expectation that documentation problems will be solved by biometric immigration documents and the national identity register, for example, by businesses using document readers. While we are not opposed in principle to a national identity scheme particularly if voluntary registration is the aim, we do not see how, given that at the present time the Government's cannot guarantee the integrity of NINOs, it can hope to guarantee the integrity of BIDs or an additional national identity document. In view of the rising costs of the national identity project, this must be a concern to all stakeholders. We note that there is no clarification on the liability of Government if a person is wrongly refused employment as a result of biometric mismatch or failure to capture biometrics accurately. In the case of some BME groups whose biometric information is more likely not to be accurately read by the existing technology this is of greater concern.

The draft Codes at Annexes B and C require that employers will, in some instances, be required to undertake repeat checks as part of an ongoing process for new and existing employees in order to retain a statutory excuse. We expect that the majority of new employees will possess one, or a combination of documents stipulated in List 1, but would welcome views as to how far you believe that current recruitment and employment practices could be affected by these new requirements.

2. Will the proposed codes significantly impact upon recruitment practices?

Yes

If yes, please explain how and why recruitment practices will be influenced.

Some Highly Skilled Migrant Programme migrants who entered the UK before the November 2006 changes to the points-based scheme have informed us that for some time they have felt that a combination of limited initial leave to remain, employers' unwillingness to contact and check referees abroad, and race discrimination have made it difficult for some of them to obtain permanent, and more highly paid jobs commensurate with their qualifications.

This year a few individuals have been receiving notification in writing that they will not be considered for recruitment to permanent posts because they do not have indefinite leave to remain. This is in spite of those individuals having both valid leave to remain in the UK and being suitably qualified. Some of this may be due to to existing policies by certain employers such as banks on not employing persons without ILR. However it may be symptomatic of a heightened concern by employers that they will be more vulnerable to financial penalties, as well as vulnerable to action for race discrimination or unfair dismissal. This in turn is

making them increasingly cautious about employing even those individuals with valid leave to remain; or UK nationals they do not believe to be UK nationals for reason of their race or accent.

As we set out below while the new Code on non-discrimination is a positive step we are unhappy that it can adequately respond to the scenario above. It seems the BIA may hold a similar view as its own equality impact assessment of these measures has noted: "A system of checks by employers on prescribed documents may disadvantage particular groups if they are less likely to be able to produce one of the documents listed as being acceptable as proof of entitlement to work. There may be employers who will not want to learn the new rules and will only employ those who satisfy their view of being 'British.'" (EIA p7)
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Support for employers
The Home Office established the Employers' Helpline, along with free comprehensive guidance booklets for employers, when section 8 of the Asylum and Immigration Act 1996 was first implemented. In addition, a summary guidance leaflet for employers was sent out to 1.4 million people registered as employers on the Inland Revenue's PAYE mailing list in 1997. The guidance was revised and redistributed in 2004 to reflect changes made to the law.

We acknowledge that there may be cases where it would be helpful for an employer to be able to contact the Border and Immigration Agency and check the entitlement of an individual to work in the UK. That is why a verification service is being developed through the Employers' Helpline for employers to check the work entitlement of individuals. The service became available to employers at the end of April 2007 and will initially focus on cases where the individual has an outstanding application with Border and Immigration Agency or an outstanding appeal. Further development of extra services will be taking place throughout 2007 and the Helpline will continue to give advice to employers on meeting legal requirements.

On-line step-by-step guidance for employing migrant workers is available at:
www.employingmigrantworkers.org.uk. There is also a section dedicated to the prevention of illegal migrant working on the Border and Immigration Agency website:
www.bia.homeoffice.gov.uk/lawandpolicy/preventingillegalworking, which provides current information for employers. We have also contributed to other websites that deal with the prevention of illegal migrant working, which include:
www.businesslink.gov.uk.

It will be important that the requirements of the 2006 Act, however they are taken forward, are communicated to employers in a way that is clear and allows them to understand what is required. To help our thinking about how to communicate these changes we would welcome your views on how we might improve the communication process so that a sufficient amount of information is available to assist employers in complying with the law.

3. How well understood are the requirements for employers under the current (1996) legislation?

Misunderstood

How much have the Government communication methods described above contributed to a good understanding of the current (1996) legislation?

Not at all

If you do not think the current (1996) legislation is well understood, please outline why you think this is so.

It is not well understood. This largely stems not so much from a failure of specific communication strategy as such as from the overall message that is sent by the fact that the provisions and enforcement against employers are located within a system of immigration control instead of within a system of employment rights, and labour inspection. As a result enforcement action has taken place against disproportionately more employees (via deportation) than against employers (via prosecution), thus sending out the implied message that "illegal" migrant workers rather than "illegal" employers or worker exploitation are likely to be punished for unlawful employment.

Thus where some employers "implement" the 1996 legislation, it is less out of concern to ensure migrant workers are lawfully present than out of concern to control the workforce and subvert union recruitment and organisation. Some trade unionists have informed us that as long as irregular migrant employees are subservient and vulnerable to exploitation by the employers, ensuring that a worker is lawfully present is of no interest to the employer. However as soon as the workplace becomes well-unionised and the union is in a position to negotiate employees are told to turn up to work with their papers – with the implicit threat of deportation - which has the predictable effect of intimidation. The employees scatter and the workplace becomes de-unionised again. Other employers have suddenly decided after several days or weeks of employing certain workers that it is incumbent on them to inform the immigration authorities of their suspicions that the workers are illegal. This nearly always takes place just a few days before wages are due to be paid, or where workers complain about conditions, or a union is about to gain recognition.

The situation is further confused by the application of specific rules to Romanian and Bulgarian nationals under the UK's derogation from the Accession treaty. Despite having the right to reside in the UK these Accession Two nationals are not generally permitted to work without prior permission unless they are self-employed. Under the regulations both A2s working illegally and their employer may be fined. However JCWI has now received many reports of A2 nationals

who are lawfully self-employed on construction sites being intimidated into paying fines by the BIA officials while the contracting construction company which could be prosecuted is not fined. We do not see how either the introduction of the extremely complex derogation from the Accession treaty or the discriminatory application of the rules to A2 by the BIA, once again usually punishing vulnerable migrant workers rather than business, helps send out a clear message about the purpose of the original 1996 regime and the duties of employers.

What improvements to the Government communication process would aid understanding of the proposed codes and assist employers in complying with the law?

We believe it is when the law becomes clearly focused in favour of migrant workers' rights, and there is a properly resourced and integrated workplace inspection regime which can ensure compliance with international labour standards that employers will get the message that employing irregular migrants is not a possibility. In the meantime promoting sanctions as part of a communications strategy to employers which reinforces messages against exploitation and discrimination and in favour of workers' rights will be helpful. Communicating the sanctions as part of regime of immigration control which is designed to ensure the destitution of irregular migrants as happened hitherto (i.e., Enforcing the rules, Home Office 2007) will not help drive home the message to employers that the sanctions are primarily about their practices.

We do not propose to impose an obligation on employers to verify a prospective employee's status with the Border and Immigration Agency, but we are seeking to improve the current helpline service in order to support employers' compliance with these new measures. A verification service is being implemented for employers to check the work entitlement of individuals who have an outstanding application with the Border and Immigration Agency.

4. Would the provision of any other services assist employers in complying with their duties under the legislation? If so, please describe them below and indicate the benefit these services would bring.

To date we have not yet seen evidence-based evaluation of the employment verification pilot's performance so arguably this question is somewhat premature. In the absence of such evidence we would question whether overall employers are being empowered to employ individuals by confident advice-giving, or being discouraged by a cautious approach to advising. Given that immigration status is not always straightforward we would be concerned that the tendency might be for the EVS advisors to err on the side of caution, and that consequently many immigrant people who could be lawfully employed will be refused employment opportunities.

We are happy for this latter assumption to be contradicted but we would want to see this evidenced by the evaluation of the pilot . Ideally evidence from the pilot should be distributed in a timely and complete manner with scope for debate on the outcomes among all stakeholders as to its value and helpfulness before further service provision is discussed.

Would employers be prepared to pay a fee for use of these services?

Medium and big business may choose to avail themselves of the best paid in-house or out-of-house legal advice they can. Smaller businesses who cannot afford independent legal advice who wish to demonstrate they are complying with law may feel they have no other option.

Wherever advice is offered with respect to complying with laws the provision and any pricing of services must depend on the type and quality of assistance being made available. To give a full service EVS advisors should be accredited to give immigration advice and provide written follow-up of verbal information according to the standards usually demanded of immigration advisors by the OISC.

It should also be noted that verification of immigration status is also only a part of the picture in making decisions about recruitment and retention. We would foresee combined issues of employment, discrimination and immigration law as being potentially at stake from the employer's point of view.

Code to prevent unlawful discrimination

We are committed to ensuring that job candidates and existing employees are not unlawfully discriminated against. We would welcome comments from employers and other interested parties to see whether or not the proposed documentation requirements achieve this objective.

The aim of the Code is to provide employers with enough information to ensure that they know what they need to do to comply with the law. We recommend that employers conduct these checks on all eligible individuals to avoid allegations of unlawful discrimination.

5. The Code recommends that employers conduct document checks on all prospective employees to avoid allegations of unlawful discrimination. Do you think this recommendation will be followed?

Unsure

Do you think the recommendation is enough to provide a safeguard against unlawful discrimination?

No. We are pleased that a Code is in existence and that further consultation is taking place. The Code does at least remind employers of the requirement not to discriminate and the forms which discrimination may take. However it does not really give a clear lead to employers as to how they should act. It is our view that the legislation puts reputable and conscientious employers in an impossible situation whereby they are being asked to operate in a non-discriminatory manner and, at the same time, adhere to their new legal obligations on irregular working which may in themselves be discriminatory. The Code can not in itself resolve this tautology. As a result, an employer may take the view that it is simply easier to effectively exclude whole groups of people from consideration for employment. However in terms of what improvements can be made to the Code, it could still make it clearer to employers that their overriding concern must be not to discriminate in recruitment practices

Are there any alternatives that would provide further safeguards against unlawful discrimination?

It is would be a shame if the Government does not avail itself of the opportunities presented to it by the Single Equalities Bill to extend the public sector race equality duty contained in the Race Relations (Amendment) Act 2000 to the private sector. We hope that the introduction of this illegal working regime does

not come at the cost of relinquishing any aim to extend to this duty to the private sector. One imagines that as a result of co-operation with the illegal working regime being demanded of them at this particular point in time, coming as it does before the single equalities bill, some elements of the private sector may now feel that they are on extremely strong ground in arguing against the public sector duty being extended to them.

Code on the administration of civil penalties

Where a limited time has been granted for an individual to live and work in the UK, the expiry date should be clearly marked in the person's travel or identity document.

During the passage of the 2006 Act, the Government suggested that the follow-up checks should be done one year apart, although we would welcome comments on other alternative approaches. For example, if less than one year is remaining on a visa at the point of recruitment, this should be noted at the time of checking and a follow up check carried out closer to the expiry date to ensure that further permission to stay has been granted by the Border and Immigration Agency.

6. Should the timings of follow up checks be standardised?

Unsure

If yes, when and how should follow up checks be undertaken?

1. The checks should be completed each calendar year following the start of the individual's employment.

2. The checks for all employees presenting documents from List 2 should be completed on the same day every year, in the same way as a financial audit.

3. The employer should make a note of the expiry date at the time of employment and the follow-up checks should be conducted within 28 days of the documents expiry.

4. Other (please provide additional comments in the space provided)

We hesitate to argue against standardised checks which treat employees equally and minimise the risk of discrimination. However we have to advise against a process whereby a worker will inadvertently become irregular when they could have regularised themselves easily if an application for extension of leave had been made more promptly. On balance we would therefore recommend the employer should make a note of the expiry date at the time of

employment and the follow-up checks should be conducted at a minimum 28 days, and ideally, further in advance of the document's expiry ,so as to ensure the necessary permit renewal can be made.

7. What is the right maximum civil penalty for those employers who conduct no document checks at recruitment and have been found to repeatedly employ illegal migrant workers?

£5,000
£10,000
Other (please specify amount below)

We believe that the penalty must reflect what is permitted by statute. In imposing any penalty which is greater than that permitted by statute the Government will be acting ultra vires.

Repeat offenders deserve a higher penalty but the greatest factor in applying a penalty should be the level of worker exploitation
Please provide additional comments about the level of the civil penalty in the space provided.

We believe that the penalty should reflect the seriousness of employing illegal workers and that those who repeatedly flout our laws should pay the price. The maximum penalty would only be imposed upon those who had been repeatedly visited and found to have been employing illegal migrant workers, and where no document checks had been completed at the point of recruitment. £5,000 is the current maximum fine available to the courts on summary conviction of an individual for the existing offence of employing an illegal worker under section 8 of the Asylum and Immigration Act 1996.

The average unit cost of removing an immigration offender or failed asylum seeker from the United Kingdom in 2003-04 was around £10,000[2].

8. Should employers only receive a written warning for a first offence in the generality of cases unless the number of illegal workers involved exceeds four or there is evidence of deliberate wrong doing on the employer's part?

Unsure.

Evidence of deliberate worker exploitation should be the main factor if migrant worker rights are to be held in any regard

Small businesses who are shown not to be duly diligent, rather than deliberately and exploitative, in respect of employing an irregular migrant worker should receive a written warning for a first offence.

Please provide additional comments about the penalty for a first breach in the space provided.

[2] National Audit Office report on Returning failed asylum applicants, 14 July 2005, p.4.

The Government recognises that some businesses, particularly small and medium enterprises, may make mistakes in their recruitment practices. Our response should be proportionate to the nature of the breach.

We believe that repeat and serious offenders should face escalating penalties, but we would welcome your views on how the penalty scheme should treat a first breach of the law involving a relatively small number of illegal workers. Enforcement operations are categorised in three tiers relative to the number of illegal workers involved; the threshold between a lower and middle tier operation is four.

9. How important should the following factors be in calculating the amount of the penalty fine?

a. Whether full or partial document checks have been completed by the employer.

Important

b. Whether any previous penalties or warnings have been issued.

Important

c. Whether or not there has been any subsequent improvement in procedures following previous penalties or warnings.
Important

e. Whether the employer has reported his or her suspicions to the Border and Immigration Agency.

No. We fear this is giving a tool to some exploitative employers to use against workers and undermine unions.

f. Whether the employer has co-operated with the Border and Immigration Agency.

Important

Are there other factors which should be given importance when calculating the fine?
Yes

Please describe these factors below.

QUESTIONS FOR PARTICIPANTS

The level of worker exploitation should be the most important factor, particularly where organisations generating large profits and cutting costs through the use of irregular migrant workers are shown to be the employers at the top end of the sub-contracting chain

The civil penalties Code of practice sets out the different circumstances and considerations that may be made when setting the penalty for those employers who are found to be employing an illegal migrant worker.

The amounts given in the Code of practice are proposed maximums and are subject to objection and a right of appeal. Because the proposed maximum penalty may be high, we acknowledge that this could be potentially difficult for some employers to pay in one lump sum.

We intend to take into account the employers' ability to pay the penalty and, where appropriate, to allow gradual payment.

10. Do you agree that, in certain circumstances, employers should be allowed to pay fines in instalments?

Yes

If yes, should a maximum period in which to pay the fine be set?

Yes

If yes, what maximum period should employers have in which to pay the fine?

6 months
1 Year
18 months
2 years
Another period (please state)

It depends. If it is a case of lack of due diligence and no worker exploitation is involved and a smaller business or organisation is at it fault it is appropriate they should get more time to pay. If it can be shown that the employer is a business with big turnover deliberately inflicting migrant exploitation in the name of profit they should pay immediately.

The government is committed to tackling the problem of trafficking for forced labour and the civil penalties regime is part of a comprehensive, cross- Government approach to tackling illegal working. This includes strengthened border controls to prevent illegal immigration, increased enforcement activity and action to tackle the organised criminal networks, who traffic illegal workers to the UK. The International Labour Organization's definition of forced or compulsory labour is: 'all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily'.

11. Do people feel that these measures will have any effect upon trafficking for forced labour?

No

Please provide additional comments in the space provided.

There is already evidence from the TUC and Anti Slavery International that trafficking for forced labour is an issue in the UK. It is positive that the UK Government has signed the Council of Europe Convention Against Trafficking in Human Beings and that an Action Plan to support it has been published.
We note that the new illegal working regime is already listed as a plank of the UK Action Plan on Trafficking.

However how those trafficked for forced labour are to be distinguished from other irregular migrant labour is not helped by a present lack of criteria which will help officials to identify victims of forced labour. The overall stress on enforcement action via deportation against migrant workers because of their irregularity as opposed to protecting their human rights, is also unhelpful to identifying and protecting those among them who may have been trafficked for forced labour. This is important because such individuals may be eligible for the 30-day reflection period and for the discretionary residence period which may in certain circumstances be awarded according to the Council of Europe Convention Against Trafficking in Human Beings. Thus while enforcement operations may succeed in targeting some trafficking offenders and enforcement will have some symbolic value as a deterrent we do not see how the illegal working regime with focus on enforcing immigration control as opposed to combating exploitation or enforcing migrant worker rights can respond to the needs of the victims of trafficking, some of whom may have entered the UK lawfully.

Overall it could be argued that certain aspects of the new regime risk acting as catalysts to trafficking for the purposes of sexual exploitation and forced labour. As evidenced by reports by agencies such as the ILO, the TUC and Anti Slavery International trafficking is a response to 1) the demands of the UK's deregulated

economy with its weak employment protection and its flexible workers organised via complex sub-contracting chains, temporary contracts, and use of agencies and 2) the lack of legitimate employment opportunities and immigration routes for individuals in the sending countries. As the Points Based System and the new illegal working regime seeks to control supply of migrant labour centrally one might anticipate that demand for trafficking will increase if immigration controls do not respond to the needs of the economy or for legal migration routes.

Aspects of the new immigration regime such as permitting employers to exert greater control over their employees' immigration processes via sponsorship, permitting temporary retention of documentation, and "shopping" their employees for violating immigration rules may be regarded as being of the greatest assistance by all those who are in the business of exploiting workers and undermining trade unions and other worker organisations

In order to tackle trafficking for forced labour it must be viewed as a form of worker exploitation and to tackle it we recommend

- focus on penalising employers principally for exploitation of migrant workers rather than for administrative failure to audit immigration documents
- address trafficking for forced labour and labour exploitation through a strengthened labour place inspection organisation i.e. an enhanced Gang Masters Licensing Authority rather than by seeking to extend the arm of immigration control to workplaces
- facilitate the creation of stronger worker organisations including unions and stronger workplace protections generally, including for vulnerable temporary and agency workers who may n turn include migrant workers and trafficked labour
- guarantee in law that all immigration detainees can access legal advice so that those who have been trafficked can assert their rights created pursuant to the Council of Europe Convention Against Trafficking in Human Beings
- In line with the Council of Europe Convention Against Trafficking in Human Beings make use of the discretionary power to grant trafficked people a temporary residence permit
- ideally offer an earned regularisation to the irregular population presently in the UK so they do not fall prey to trafficking within the UK's borders
- liberalise the Points Based System so as to maximise migrant control over their own immigration processes; ensure legitimate immigration routes and access to labour; and reduce demand for trafficking.
- The Government should consider opting in to the EU Council Directive 2004/81/EC; ratifying the UN International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families(18.XII.1990); and the European Convention on the Legal Status of Migrant Workers (Strasbourg, 24.XI.1977).

We have introduced the sliding scale, where those employers who have repeatedly employed illegal migrant workers will be heavily penalised. However, we would also welcome views on other aspects, including the use of existing powers to disbar company officers in the more serious cases where a person is convicted of the new 'knowing' offence, and it has been established that they consented or connived in its commission.

Section 2 of the Company Directors Disqualification (CDD) Act 1986 grants a court discretion to make a disqualification order against a person convicted of an indictable offence (such as section 8 of the 1996 Act or section 21 of the 2006 Act) in connection with the promotion, formation, management, liquidation or striking off of a company, or with the receivership or management of a company's property. The court having jurisdiction is the court which could wind up the company in connection with which the indictable offence was committed, the court before which the person was convicted or, in the case of a summary conviction in England and Wales, any magistrates' court.

An officer (including a director) who knowingly employs an illegal migrant worker (as provided by section 21 of the 2006 Act) would have a relevant factual connection with the management of the company and therefore would potentially be subject to a disqualification order. A disqualification order would disbar the person from acting, without leave of the court, as a director, liquidator or administrator of a company, a receiver or manager of a company's property or in any way, directly or indirectly, be concerned or take part in the promotion, formation or management of a company for a specified period.

A court of summary jurisdiction can specify up to five years disqualification. Otherwise, up to fifteen years can be specified. Contravening a disqualification order is a criminal offence. Following conviction after indictment, the disqualified officer can be imprisoned for up to two years and receive an unlimited fine. He or she could also have a personal liability for all relevant company debts.

The CDD Act 1986 applies to England, Scotland and Wales. Analogous legislation applies to Northern Ireland (Company Directors Disqualification (Northern Ireland) Order 2002).

12. When preparing cases for prosecution under section 21 of the 2006 Act, knowingly employing an illegal worker, should we routinely invite the court to consider disbarring the director alongside any other punishment thought appropriate?

No

Please provide additional comments in the space provided.

We think it is important to ensure in practice that the primary targets of any policy to disbar are directors of those organisations which make massive profits and cost savings from employing irregular migrant workers. They are usually at the end of the contracting chains involving recruitment agencies and gang masters aimed at driving down costs and increasing returns. There will be no major strategic benefit to discouraging unlawful employment if in practice only the directors of small recruitment or other labour providing agencies or directors of small business and charities are considered for disbarring. The main factor in considering disbarring should be the level of exploitation of migrant workers.

Are there any other measures that you feel may prove to be an effective penalty for repeat and/or serious offenders?

QUESTIONS FOR PARTICIPANTS

Information about your organisation

13. Please tick one of the following boxes which would best describe your organisation.

Small business (10 – 49 employees)

14. Which of the following categories does you organisation fall into?

Voluntary sector / Charity

Immigration Advisor/immigration Law Practitioner

15. Please tick the box that best describes the Industrial Sector you organisation falls into.

Law Related Services

16. For statistical purposes, please indicate in which region of the UK your business is based.
England

17. Please complete the following details:
Name of company / organisation / individual

Joint Council for the Welfare of Immigrants

Address of company / organisation / individual

115 Old Street EC1V 9RT

Telephone number 020 7 608 7305

Your name
Rhian Beynon

Your position

,Policy and Communications Officer

QUESTIONS FOR PARTICIPANTS

Further comments are also sought from participants arising from participants arising from the Regulatory Impact Assessment and the Equality Impact Assessment.

We would also welcome information on methods of best practice presently operated by UK employers when complying with current section 8 requirements.