



16 September 2010

## Response to the UK Border Agency on limits on non-EU economic migration in the UK

### 1. Introduction and context of our submission

Permits Foundation is a corporate initiative that supports international mobility by promoting open work authorisation for expatriate spouses and partners worldwide. This issue is a concern to international companies and organisations which, in view of the increasing number of dual careers, experience work permit restrictions for partners as a serious hurdle to employee mobility, diversity and equal opportunity. It is an issue that affects men and women of all nationalities, including British families abroad, in both the private and public sectors.

More than 40 major international companies and organisations support Permits Foundation, which is independent and not-for-profit. <http://www.permitsfoundation.com/sponsors.htm>

In line with our primary goal, the trigger for this submission is to answer your question on dependants. At the same time, the prospect of caps on Tiers 1 and 2 (particularly intra-company transfers) has generated such concern among our sponsor companies that we respond also to your wider questions so that you can view our answer on dependants in its full context.

For many companies, both UK-based and international, the UK is a major hub for knowledge transfer and global business expansion. To benefit from this, the Government must maintain an attractive climate for international investment and the highly skilled employees and their families who come to live here temporarily. We believe that the introduction of restrictive quotas on highly skilled business migration risks smothering the UK's economic recovery and damaging its competitive position longer term.

Permits Foundation sponsors are blue chip international companies. An illustrative cross section shows that 13 of them employ at least 1.4 million employees worldwide, of which 200,000 in the UK, including some 2100 PBS migrants, which is less than 1 per cent of UK staff. Even including EU citizens, the total proportion of expatriate staff employed is around 1.5 per cent across the board, although certain business sectors such as the oil industry tend to have higher percentages. Most of these companies also employ a significant number of British staff outside the UK under international mobility policies to transfer knowledge, skills and technology in their group. International development opportunities for British staff in turn benefit the UK economy when these staff return home.

Global mobility policies imply a degree of interdependence between countries in the number and timing of international assignments, which fluctuates as business needs change. Employers sense a serious risk that an adverse immigration climate in the UK will damage the country's reputation as a global business hub and spill over to other countries where British staff are assigned. This could cause a double rebound for the UK economy, reducing interest in inward investment from overseas companies and reducing prospects for British staff to work abroad.

**The global and UK employment figures above also illustrate another hard fact. While the UK is currently a major hub, it is far from being the only one. In the sample shown, less than 15% of these companies' global manpower is employed in the UK. Companies have a range of options for relocating operations if it becomes too difficult to transfer staff to the UK.**

## 2. Response to UKBA questions

### Tier 1 Options

**Q1. Do you agree that operating a pool for highly skilled migrants on the basis described above will be the fairest and most effective approach? Please select one answer only.**

**No**

**Q2. If you answered yes or no to the previous question, please give your reason(s) in the box below.**

Generally speaking, we would say that Tier 1 applications are less critical to large international employers as a whole than Tier 2, although relative usage differs. The usefulness of Tier 1 to employers often lies less in the recruitment of a highly skilled migrant who has already entered the UK, and more in the prospect that an excellent job applicant or recent international recruit may be eligible to apply for Tier 1 if they do not meet the 12-month pre-employment condition for a Tier 2 intra-company transfer. Also Tier 1 is a direct route to permanent settlement and this may be attractive to some job applicants. Since the consultation paper suggests that Tier 1 applicants do not have a job offer, we want to clarify that this is not always the case. Sometimes a job offer triggers the Tier 1 application.

We are not convinced that the pool system would meet the criteria of fairness, predictability, selectivity and operability, which the government undertook to ensure.

With respect to **fairness and predictability**, we consider this option to score negatively. The pool system can lead to a period of 6 months delay and uncertainty during which the points required to be selected are not known to either candidates or employers and may change regularly with supply and demand.

With respect to **selectivity**, we also consider this option to score negatively. We doubt whether the current points and bands for age, qualification and salary, together with additional points for English level and maintenance ability, are sufficiently fine-tuned to differentiate among the better candidates in a quota situation. New Zealand's system, which was quoted as an example, is more sophisticated and includes points for having a job offer.

**Operability:** Negative. With a potential 6-month waiting time, employers cannot rely on making job offers to these candidates. The really top candidates may choose to go elsewhere and the objective to get the brightest and the best may be lost.

If this option would be seriously considered, we recommend a detailed impact assessment to be shared and discussed with employers before a firm commitment be made.

### Tier 2 Options

**Q3. Do you agree that operating a first come first served system for skilled migrants available to individual sponsor employers will be the fairest and most effective approach?**

**No**

**Q4. If you answered yes or no to the previous question, please give your reason(s) in the box below.**

**Operability/effectiveness:** Years of bitter experience and frustration with the US quota system makes employers strongly opposed to a quota system based on first come first served. Even if the quota operates on a quarterly basis, the spectre of quotas being filled within a very short window looms large. This would be very inefficient and would not allow employers to respond quickly to changed circumstances.

**Fairness:** Doubtful. We question whether UK consular offices overseas would be able to guarantee a common standard of processing time. If not, a first come first served system may not operate fairly between nationalities. A more detailed assessment is necessary.

**Predictability:** About the same as queuing for the January sales. Apart from “getting there early”, businesses will find it difficult to plan with certainty.

**Selectivity:** Negative. There is no judgement of quality in a first come first served system.

**Q5. Do you believe that where a quarterly quota is filled applications that have not yet been considered should be rolled over to the following release? Please select one answer only.**

**Yes**

**Q6. If you answered yes or no to the previous question, please give your reason(s) in the box below.**

This yes should be seen in the context that we do not support the first come first served system. However, if a quarterly system would be introduced, then rolling over unsuccessful applications would be less of an administrative burden than starting the whole process again. However, fairness and predictability for completely new applications would be negative since they immediately go to the back of the queue.

## Points for highly skilled migrants

**Q7. Do you think the Government should consider raising the minimum criteria for qualification under Tier 1 of the Points-Based System? Please select one answer only.**

**Yes**

**Q8. If you answered yes or no to the previous question, please give your reason(s) in the box below.**

This is a qualified yes since employers were generally satisfied with the current minimum criteria in Tier 1 General.

In a constrained quota climate, raising the minimum criteria would allow more selectivity. However, as stated in the answer to Q2 above, the current criteria may not allow sufficient differentiation. It may be advisable to consider points for a job offer.

A further consideration is that if Tier 1 General applicants arrive or remain (post study) in the UK without a job offer, they are not immediately contributing to the economy. In a constrained quota situation, this would be an argument for raising the minimum criteria to become more selective.

**Q9. Do you think the Government should provide for additional points to be scored for the following factors? Please select one answer for each factor.**

Additional points would allow a higher level of differentiation than is necessary in a non-quota system.

**Higher level English language ability? No.** The current level is C1, which is adequate for a non-native speaker to attend most British universities. It therefore seems adequate for first entry to the country under Tier 1. Requiring a higher level would in effect be less fair to nationalities where English is not the first language and English education is less widespread.

**Skilled dependants? Yes.** For Tier 1, which is a route to permanent immigration, additional points for skilled dependants could be considered. This should be seen in the context of Tier 1 as the mechanism to allow highly skilled migrants to come to the UK and look for a job in an unconstrained

situation. However, we are also aware, as mentioned in the answer to Q1, that a job offer is often the trigger to a Tier 1 application. So in a constrained situation, we lean towards recognising the best person for the job without reference to family composition.

**UK experience? Yes**

**Shortage skills? Yes**

**Health Insurance? No** Whilst this suggestion has merit in reducing the burden on public services, it would need a detailed impact assessment as to the practicality or operability of expecting this before someone has established in the UK. Also, they may not be permitted to remain in their base country scheme if they are moving for other than a temporary period. So fairness also has to be considered.

**Q10. Do you think there are any other factors that should be recognised through the points system? If yes, please give details below.**

**Yes**

For Tier 1, in a constrained quota situation, the existence of a job offer should be considered.

## **Investors and entrepreneurs**

**Q11. Do you agree that Tier 1 Investors should be excluded from the annual limit?  
Please select one answer only.**

**Not answered**

**Q12. If you answered yes or no to the previous question, please give your reason(s) in the box below.**

**Q13. Do you agree that Tier 1 Entrepreneurs should be excluded from the annual limit?  
Please select one answer only.**

**Not answered**

**Q14. If you answered yes or no to the previous question, please give your reason(s) in the box below.**

**Q15. How can the UK make itself more attractive to investors and entrepreneurs who have the most to offer in terms of driving economic growth? Please give your ideas below.**

**Not answered.**

## Intra-company transfers

**Q16. Do you agree that the Intra-Company Transfer route should be included within annual limits?**

**No**

**Q17. If you answered yes or no to the previous question, please give your reason(s) in the box below.**

Permits Foundation is opposed to hard limits. If any cap is to be introduced, ICTs should be excluded.

In addition to the general points made in our introduction and conclusion,

1. Tier 2 ICTs are business related transfers and are not eligible for permanent immigration.
2. They are strong net contributors to the UK economy, both through the tax that they pay and the business that their companies generate.
3. ICTs assigned to established operations are not a significant drain on public services. Looked at over a wide range of employers, they represent only 1% of the total number of employees, though this percentage can be higher in particular sectors such as the oil industry. Generally, established blue chip international companies have a strong policy of training and development of all staff and that is not dependent on the employment of migrant labour.
4. The majority of international employers pay or greatly subsidize the cost of private housing, children's primary and secondary schooling and medical insurance.
5. With respect to the question whether ICTs on assignments of less than 12 months should be exempted from a quota, we have not found widespread support for this proposal. There may be a superficial rationale since the international passenger survey only counts assignments of 12 months or longer for its overall estimates of net immigration. However, the PBS statistics suggest that the number of short-term assignments is increasing so their usage merits being counted. Employers vary significantly on the extent to which they use short-term assignments. They are more widely used in the consultancy field, whereas companies with a traditional operating environment are more likely to assign ICTs for a period of 2-4 years, with hardly any short-term ICTs. An exemption of short term ICTs would impact unfairly on established companies that would be left dealing with the quota. Furthermore, we do not find that a short assignment per se to be a reliable basis for selectivity, in terms of admitting those who make the biggest contribution to the UK economy and least use of public services. If any differentiation
6. If a cap would be introduced for ICTs, we maintain it would be more rational to select for exemption companies that can demonstrate that their ICTs make a positive business and fiscal contribution to the UK that outweighs any use of public services. Evidence of training of the UK workforce could also be taken into account. Our separate submission to the MAC discusses this in more detail.

## Dependants

**Q18. Do you agree that dependants should be included towards the limit?**

**No**

**Q19. If you answered yes or no to the previous question, please give your reason(s) in the box below.**

Our firm view is that dependants should be excluded from any cap. Ensuring that employers can choose the best person for the job, irrespective of family size or composition, is what will add most to the UK economy.

We also believe that there is a fundamental right to respect for family and private life and to marry and found a family without discrimination. These rights are embodied in the European Convention of Human Rights and transposed into UK law through the Human rights Act 1998. We believe that any system or cap that restricts or discourages migrants' access on the basis of family status or encourages access to a migrant with no dependants would be challenged legally.

In addition to these fundamental principles, we maintain there would be huge damage to the UK's ability to attract highly skilled employees if they were not certain whether their family could accompany because of a cap on numbers.

We also wish to point out that the extent to which employees are accompanied by dependants depends naturally enough on the age of the employee and also on the length of assignment. Employees on a short term assignment of less than 12 months are less likely to be accompanied by a partner or school-age children, simply because of the impracticality of a spouse leaving a job and children being taken out of school for less than 12 months. We don't feel this needs to be taken account of in the work permit regulations, but simply point out that there are some self-limiting factors. Government statistics showing that for each PBS migrant there is 0.75 dependant, hide a significant variation. Large international companies with stable UK operations are more likely to send staff for a period of 2-4 years and with the norm 'married plus 2 children'. These companies would be disproportionately hit by including dependants in any cap.

Considering these points together, we would argue that excluding dependants from any cap would best meet the tests of fairness, predictability selectivity and operability.

### Working rights of dependants

Although your question does not touch on the right of dependants to work, we feel we should comment on this essential element of UK migration policy. In 2008, Permits Foundation conducted a global survey of the employment aspirations of 3300 spouses and partners and the impact this has on international mobility. At that time, there was no question about the basic right to accompany and the survey concentrated on the issue of access to employment. The UK was well represented both as host country and country of nationality of the respondents,

- Almost 60% of respondents said that they would be unlikely to relocate to a country where it is difficult for a spouse or partner to get a work permit.
- A majority of spouses and partners said that their own employment and career was important in the decision of the family to relocate. This was even more significant for younger age groups, those with a university degree, male spouses and university graduates and unmarried partners.
- Around a quarter of international staff had either turned down a previous assignment or terminated an assignment early because of concerns about the partner's career.
- These figures are likely to be the tip of the iceberg because the survey only questioned those who were already on assignment. Moreover, the problem is likely to increase over time as demographics change. This indicates the challenge that both employers and countries face in attracting the 'brightest and the best'.



## Wider society issues with respect to dependants

The survey also looked at wider social issues such as the impact of working on adjustment to the host country, family relationships and health or well being. Whilst a majority of those surveyed wanted to work, others were very happy to take a career break, for example to raise children. However, there was a clear link between working and positive feelings about the assignment.

- Spouses who were working were more likely to report a positive impact of working on adjustment to the host location, family relationships and health and well-being than spouses who were not working.
- 30-40% of not-working spouses reported a negative impact of not working on these same factors.

Thousands of individual comments from current accompanying spouses bore testimony to both the economic and wider societal implications of access to employment. The vast majority of respondents were highly educated with 36% holding a bachelor's degree, 40% a masters degree and 6% a doctorate. 85% of them were women.

*"Both my partner and I have invested a lot in our education and career and either one of us could be offered an international job. We would only accept if we were fairly sure that both of us could work. As an absolute minimum we would need to know that whichever of us is 'accompanying' could get a work permit."*

*"If I work, I will make best use of my skills, pay income tax and have more money to spend locally."*

*"The implications of not working on my health (especially mental health) are so vast that I will never consider to relocate to such a country (where is not possible to get a work permit – ed.). I was unemployed for 1 year when I came here and that was the most miserable year in my entire life. I will not repeat that, and my husband stands by my decision."*

*"I have been an expatriate for more than eight years. Being able to work and contribute is vital for me. Not having a job generates a lot of stress for me and therefore for my family. Not only for economic reasons, is it absolutely much more than that."*

*"It puts a tremendous strain on a marriage when one career is "more important" and that carries over to the employee's job performance when the home life is unhappy."*

*"I decided to follow my husband...to keep our family balance and I hoped to share my personal expertise in the host country. Now I feel guilty ... because I cannot make my expertise available.... and I cannot continue to grow in my own development."*

*"There is serious depression, insecurity, loneliness, boredom, and a feeling like no one understands - it takes the help of others who have been through it.....No one prepares the employed spouse how to deal with or understand the misery of the unemployed spouse, which doesn't help."*

*"Now that I am back in the workforce and have resumed my career, it would be psychologically very difficult to take another break. It would be very hard for me to go to a new location where I couldn't work..... It has made an incredible difference to how my children see me (a mother, a wife, and now a professional) and to their expectations of what they, as women, will be able to do with their own lives. My daughter's comment to me - "I didn't realise girls could work too Mum"- was a huge wake-up call. Our wonderfully tolerant, versatile expat children shouldn't have their world view limited in this way".*

This last comment, which we are pleased to say was from a non-European spouse who was able to return to work when she moved to the UK, shows how the issue has implications far beyond the immediate economic pressure to attract the brightest and the best. Any erosion of work authorisation for dependants would be an affront to personal dignity and equal opportunity in a modern society, impacting on generations to come.

A condition of being granted a permit as a dependant in the UK is that they have no recourse to public funds. This creates a potential win-win situation for the economy. If spouses work, they contribute to the economy and if they don't work, they are no drain. The generally high level of education that spouses have and the ability frequently to speak several languages means that they complement rather than replace British workers.

Permits Foundation makes a strong plea to the UK Government to retain its policy of allowing dependants to work. The UK's practice in this regard has long been a model of best practice and currently around 20 countries have caught up in recent years, with the number continuing to grow.

We refer you to the following additional documents:

**Permits Foundation global survey summary report:**

[http://www.permitsfoundation.com/docs/permits\\_survey\\_summary.pdf](http://www.permitsfoundation.com/docs/permits_survey_summary.pdf)

**Final report:** [http://www.permitsfoundation.com/docs/permits\\_survey\\_final\\_report.pdf](http://www.permitsfoundation.com/docs/permits_survey_final_report.pdf)

**Overview of regulations on dependants in other countries:**

<http://permitsfoundation.com/docs/Permits%20Country%20Summary%20March%202010.pdf>

**Permits Foundation submission to the MAC in 2009, with further comments on dependants.**

[http://www.permitsfoundation.com/docs/Permits\\_Foundation\\_response\\_to\\_UK\\_MAC.pdf](http://www.permitsfoundation.com/docs/Permits_Foundation_response_to_UK_MAC.pdf)

## The shortage occupation and resident labour market test routes

**Q20. Do you believe that the Shortage Occupation and Resident Labour Market Test routes should be merged in this way (as described in the consultation document)? Please select one answer only.**

**No**

**Q21. What, if any, do you think would be the advantages of merging the Shortage Occupation and Resident Labour Market test routes?**

**None.**

**Q22. What, if any, do you think would be the disadvantages of merging the Shortage Occupation and Resident Labour Market test routes?**

1 Employers who have a vacancy in an established shortage area (confirmed by the MAC) would be forced to advertise. This would be a waste of time and money.

2. Employers who have a vacancy that they have advertised and no one found would still not be permitted to recruit a migrant worker because the job is not in a shortage area. This would result in lost business opportunity.

**Q23. When do you think this change should be implemented? Please select one answer only.**

Immediately (i.e. in less than three months time)

In three to six months time?

In six to twelve months time?

In more than twelve months time?

Don't know

**Not applicable.** We don't agree with this

**Q24. What considerations should be given to advertising requirements?**



**Not applicable**

## **Sponsor responsibility**

**Q25. Do you believe that the Government should extend sponsor responsibilities in these ways (as described in the consultation document)? Please select one answer only.**

**No**

Q26. If you answered yes or no to the previous question, please give your reason(s) in the box below.

**a) on training , upskilling etc.**

Large international companies have strong policies of training and staff development, which are independent of the volume of migrant labour. They train staff because it is good for performance, good for employee motivation and development and good for business. We are of the opinion that any requirements to demonstrate this could be part of "highly trusted employers' scheme, leading to exemption from any quotas.

**b) should employers be asked to hold health insurance for their employees?**

In terms of operability, we are not convinced that is it feasible to require employers to demonstrate have health insurance for every PBS migrant and family member. However, as stated above, this could be part of as overall assessment to consider whether a company should be exempted from any limit.

## **English language requirement**

**Q27. Do you think that the Government should raise the English language requirement for Tier 2?**

**Please select one answer only.**

**Yes**

**Q28. If you think that the Government should raise the English language requirement for Tier 2, to what level do you think it should be raised? Please select one answer.**

**Intermediate**

It's currently level B1. We think it could go to C1 without being a problem for international employers, possibly with the exception of specialist shortage skills or special start-up projects.

## **Reducing demand for skilled migrants**

**Q29. If a supply of migrant workers is no longer readily available, what action will you take to train and source labour from the domestic market? Please give details below.**

The sponsors of Permits Foundation are all blue chip companies that have strong policies of training and staff development, which are independent of the volume of migrant labour. They train staff because it is good for performance, good for employee motivation and development and good for business.

At the same time, companies employ a small proportion of expatriate staff not only to fill vacancies but also to transfer knowledge, skills and technology, to develop staff for a global business, to encourage diversity and to create the “corporate glue” that binds global companies together. The expectation that a restriction on access to migrant workers will lead to a corresponding increase in training of British staff completely misses the point that many of these ICT migrant workers are needed precisely because they are “outsiders” rather than because of a lack of trained British workers.

Employing internationally assigned expats (as opposed to locally hired international staff ) is expensive. Employers don’t do it lightly.

### 3. Comment on the temporary cap

We also wish to express our concern at the implementation of the temporary cap. In the UKBA’s impact assessment of the interim limits, the rationale was avoid a spike in applications in the short term in advance of an expected limit in 2011. The UKBA viewed the risk of a spike as being higher for Tier 1 applicants, since they do not require a job offer and lower for Tier 2, where applicants are linked to a sponsor’s wish to fill a specific vacancy. Nevertheless, Tier 2 (General) has borne the brunt of the temporary cap, with many employers being faced with a reduction of 15% or more on previously agreed numbers. We consider this to be an irrational and unreasonable, sudden response to the stated risk in prior to a wider consultation exercise. It is bad for business and therefore bad for the UK economy.

### 4. Conclusions and recommendations

International employers view potential caps on business related migration and particularly intra-company transfers (ICTs) and shortage occupations as bad for business and bad for the UK economy.

ICTs and their families are a highly educated and skilled talent pool. The transfer of knowledge, skills and technology that they facilitate provides refreshment and upgrading of human capital in the UK employment market, boosting the economy and providing additional tax revenues. This more than offsets any minimal use of public services.

International employers maintain that they are in the best position to judge whom they should employ and when they need to transfer or recruit foreign staff to meet business and staff development needs. Evidence that self-regulation works in the PBS system is seen in latest figures showing a reduction of some 12,000 in Tier 1 and 2 migrants, triggered by the slower economy.

Permits Foundation recognises that the government wishes to deliver on its commitments to bring down net immigration levels to tens of thousands by the end of the current parliament. Instead of targeting highly skilled business migration, which makes a major contribution to the UK’s economic growth, while amounting to only a small proportion of total migration, employers feel that the government should focus on the estimated half a million illegal immigrants and other categories where there is a risk of misuse of the visa conditions. Any sign of unauthorised employment or effective undercutting of UK salary levels should be tackled by stricter enforcement and sanctions for non-compliance. Employers believe that a combination of these measures will bring down net migration to the desired levels, without harming the economy.

Should the government decide to go ahead with caps, Permits Foundation would propose that blue chip employers meeting agreed standards of investment, fiscal contribution and training of British workers, be excluded from the cap. Several employers have indicated that they would consider moving operations away from the UK if they could not be certain of posting international staff when business requires it.

Continuing to grant accompanying rights and work authorisation to dependants is essential to the UK's attractiveness as a destination for investment and skilled workers. It also has long-term wider implications for equal opportunities and the employment of women.

We hope that our submission, and supplementary evidence from our global spouse employment survey mentioned in Question 7, is useful to your deliberations.

We have no objection to any of our materials being made public.

Yours faithfully,

Kathleen van der Wilk-Carlton,

**Board Member, Permits Foundation.**