



Home Office

Border & Immigration Agency

SHUTTING DOWN ILLEGAL WORKING IN THE UK

ILLEGAL WORKING ACTION PLAN UPDATE AND NEXT STEPS

**RESULTS OF THE CONSULTATION ON THE IMPLEMENTATION OF NEW
POWERS TO PREVENT ILLEGAL MIGRANT WORKING IN THE UK IN
THE IMMIGRATION, ASYLUM AND NATIONALITY ACT 2006**

NOVEMBER 2007

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This document includes an analysis of the responses received following the publication on 15 May 2007 of *Immigration, Asylum and Nationality Act 2006: Consultation on the implementation of new powers to prevent illegal migrant working in the UK*, which is available in electronic format at:
www.bia.homeoffice.gov.uk

The analysis was completed by Rebecca Gillespie and Jane Carr, Border and Immigration Agency RDS Immigration Research and Statistics, August-September 2007.



FOREWORD BY MINISTER OF STATE FOR BORDERS AND IMMIGRATION AND CHAIR OF THE ILLEGAL WORKING GROUP

Illegal immigration is largely caused by illegal working. That’s why we must shut it down. By closing down the possibility of illegal working, we make the UK a less attractive place for those who would seek to work here illegally as well as those employers who wish to operate illegally.

In May, I set out a seven point plan to shut down illegal working. Today we set out progress on the illegal working action plan, along with the next stages of our reforms and the results of our public consultation on the implementation of new powers to stop illegal migrant working in the UK.

ACTION PLAN UPDATE

ACTION

STATUS

Tougher checks abroad

- Creation of UK Border Agency
- Biometric visas rolling out abroad

Licensing system for businesses employing foreign workers

- Statement of intent published today

Penalties for rule-breakers

- Update on consultation - results published today
- New powers proposed to include maximum £10,000 civil penalty for rule-breakers

Identity cards

- Foreign nationals will require secure biometric immigration documents
- Insecure documents will be phased out

Employer Checking Service

- Employers can now obtain confirmation of an individual’s right to work in the UK

Public communication campaign

- Advertising campaigns so employers and the public know about the changes to the law to begin this month

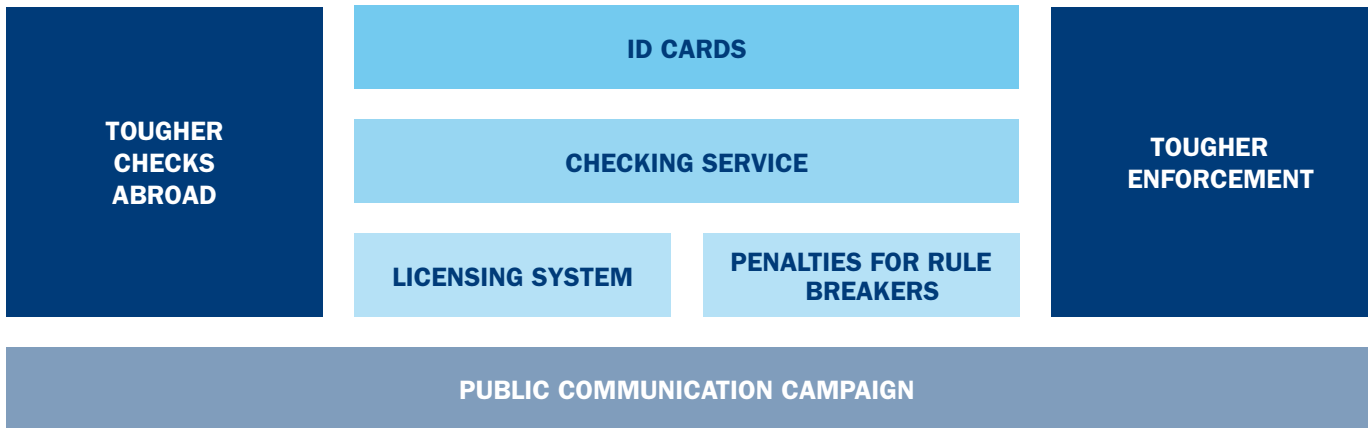
Tougher enforcement

- Increased enforcement activity

Figure 1 outlines how each of the strands fit together.

FOREWORD BY MINISTER OF STATE FOR BORDERS AND IMMIGRATION AND CHAIR OF THE ILLEGAL WORKING GROUP

Figure 1: Key points of attack in the fight against illegal immigration



TOUGHER CHECKS ABROAD

The Prime Minister has announced that the Government will create the UK Border Agency, integrating the work of the Border and Immigration Agency, UKvisas and Customs detection work at the border from HM Revenue and Customs, to apply controls at points of entry and exit on people and goods into and out of the UK. In the UK’s embassies abroad, by April 2008 everyone applying for a visa, including for work or study, will need to provide biometric information during the application process. Anyone who does need a visa – three-quarters of the world’s population – will have their fingerprints taken, just to visit the UK for a day. Registering their biometric information at this early point will link a person to a single identity and allow us to check them against our records at each stage of their journey and once in the UK. E-borders, for the first time, enables us to track people in and out of the country and check people’s names against our databases. We’ve already captured data on 29 million passenger movements and issued 15,000 alerts to border agencies resulting in over 1,200 arrests. By using the latest technology available to us, we are demonstrating our commitment to strengthening the UK border. The increased capture of biometrics will enable us to develop verification services for employers and public authorities in relation to migrant workers and service users they encounter in the UK.

LICENSING SYSTEM

In April I announced the timetable for the implementation of the new Points Based System for people to come to the UK from outside the European Economic Area (EEA) for work or study. This Australian-style system will help us to bring to the UK the valuable skills we need while making us more robust against abuse.

I am publishing today a Statement of Intent on how businesses who want to sponsor migrants to work in the UK will need a licence.

Only trusted, licensed employers will be able to bring in migrant workers from outside the EEA. Migrant workers will need a certificate from a licensed business just to apply for a visa. Entry clearance will only be issued when immigration checks are carried out and biometric data such as fingerprints and facial images collected as part of the visa application process.

The new arrangements will be backed up by compliance and inspection, and where civil penalties for employing illegal workers are served, this will have a bearing on the sponsor’s rating and whether their licence is revoked.

PENALTIES FOR RULE BREAKERS

Our public consultation on the implementation of new powers to prevent illegal migrant working in the UK included proposals for a civil penalties regime for

FOREWORD BY MINISTER OF STATE FOR BORDERS AND IMMIGRATION AND CHAIR OF THE ILLEGAL WORKING GROUP

employers. Over the summer we have also engaged employers and representative bodies in discussion on these powers, provided by the Immigration, Asylum and Nationality Act 2006.

The results of this consultation are included in this report today, together with an analysis of the responses received to the illegal working consultation.

The new penalty system needs to reflect a proportionate approach to non-compliance, whilst providing a sufficient deterrent effect so that employers won't want to risk their profits and reputation by using slipshod personnel practices and employing illegal migrant workers. Two of the key items on which I propose to ask Parliament's approval are that:

- the maximum level of civil penalty that can be issued will be £10,000 but there will be a sliding scale which will provide for leniency towards first time offenders who seek to comply with the regulations and co-operate with the authorities; and,
- employers should carry out follow-up document checks on their employees with time-limited leave to remain, no less frequently than every 12 months. This will make it more difficult for overstayers to remain in employment in the UK. For the purpose of carrying out these checks the phased roll-out of identity cards for foreign nationals will make it easier for employers to determine a person's entitlement to work in the UK. Identity cards will clearly assert a migrant's status and the duration of their leave and work rights.

Our consultation included two draft codes of practice which set out for employers the factors that may be considered when the level of penalty is determined; and how to avoid a penalty, while operating non-discriminatory recruitment and employment practices.

The latest drafts of the codes of practice for employers have been revised in light of the responses to the consultation and are also being published today, as we lay the necessary regulations before Parliament.

The system of civil penalties will be reinforced with the introduction of the tough new criminal offence of knowingly employing an illegal worker. An employer convicted of this offence could face a prison term of up to two years as well as an unlimited fine.

These robust measures are supported with robust safeguards, with employers having the right to object to the Border and Immigration Agency or appeal to the Courts if they feel the service of a civil penalty is unjust. We are committed to working closely with colleagues in the Department for Business, Enterprise and Regulatory Reform and the Equality and Human Rights Commission in order to monitor any impact of these new measures on race discrimination claims and Employment Tribunals.

IDENTITY CARDS

As the UK Borders Act 2007 has now completed its passage through Parliament, we are preparing to implement new powers to roll out secure, compulsory biometric identity cards for foreign nationals who are residing in the UK for six months or more. These secure identity cards will allow us to phase out insecure twentieth century documents from the list of those documents an employer can accept, so that employers can be safe in the knowledge that holders of an identity card are who they say they are, and are entitled to do the job they are offering.

We will be consulting shortly on the roll out of compulsory identity cards for foreign nationals under the UK Borders Act 2007.

EMPLOYER CHECKING SERVICE

We recognise that with new obligations and tougher sanctions on employers, we in turn need to up our game on the level of support we can provide to help employers comply with the new legislation. Back in May, I announced a pilot checking service in a joint venture between the Border and Immigration Agency and the Identity and Passport Service to validate British passports and the entitlement to work of migrants in certain categories for employers. The pilot with the Identity and Passport Service began in July. Further enhancements have broadened the range of checks that we can offer employers through the

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Employer Checking Service, and we will now include the validation of visas through access to the UKvisas database. By the time the civil penalties system is introduced, the Employer Checking Service will cover a broad range of categories, including outstanding applications in the categories below:

- Exceptional Leave to Remain to Indefinite Leave to Remain
- Non-EEA dependants and spouses (Certificates of Application)
- Discretionary Leave
- Humanitarian Protection
- Appeal
- Bulgarian and Romanian nationals' applications
- Validation of Application Registration Cards (ARC)
- Wider Indefinite Leave to Remain applications
- Student applications

The phased introduction of identity cards for foreign nationals will provide the opportunity to develop employer verification services still further.

PUBLIC COMMUNICATION CAMPAIGN

Employers and others need to know about our new arrangements and the role that employers should play. Employers will need to know how the changes we're making under the Points Based System and the new civil penalty regime will affect recruitment and employment practices. We will run advertising campaigns, starting later this month, so employers know where to get the latest information and support from the Border and Immigration Agency. Detailed information will be available on the Border and Immigration Agency website in December, and direct communication with employers in relevant sectors will start in January.

TOUGHER ENFORCEMENT

While we are trying to make things simpler for migrants and employers who play by the rules, we are strengthening our policing of illegal working; introducing new illegal working measures is just part of the picture. We will:

- increase illegal working enforcement activity on the ground;
- implement the new data gateway in the UK Borders Act 2007 with HM Revenue and Customs to provide for intelligence exchange and joint working, and consider the need to new gateways with other authorities; and
- introduce a seamless response with other workplace enforcement agencies such as the Gangmaster Licensing Authority and the Health and Safety Executive where illegal working is encountered.



Liam Byrne MP

Minister of State for Borders and Immigration

RESULTS OF THE PUBLIC CONSULTATION ON THE IMPLEMENTATION OF NEW POWERS TO PREVENT ILLEGAL MIGRANT WORKING IN THE UK

EXECUTIVE SUMMARY AND RESPONSES

This report describes the findings from a public consultation on the implementation of new powers to prevent illegal migrant working in the UK and sets out the Government response. The consultation ran from 15 May to 7 August 2007 and the 43 responses received by 17 August were analysed. Percentages given are based on the number of respondents who answered the particular question, not the total of 43 who responded to the consultation.

The report details the results of analysis undertaken into responses to the consultation, in the order of the consultation questions, as follows:

- Recruitment practices (questions 1 - 2)
- Support for employers (questions 3 - 4)
- Code to prevent unlawful discrimination (question 5)
- Code on the administration of civil penalties (questions 6 - 10)
- Trafficking for forced labour (question 11)
- Effective penalties (question 12)

RECRUITMENT PRACTICES

Respondents' comments

The majority of respondents (69%) felt that the measures outlined in the consultation document would lead to additional costs in recruitment practices. Respondents also felt that the codes may act as a disincentive and deter employers from employing those with a time restriction on their employment.

Government response

All UK employers are already advised to carry out pre-recruitment checks under the existing provisions of section 8 of the Asylum and Immigration Act 1996. The measures in the Immigration, Asylum and Nationality Act 2006 do not add substantially to the obligations of employers. Many employers already carry out

periodic checks to ensure that migrant workers in their workforce retain the right to work in the UK. While the introduction of follow-up checks will pose an additional financial burden in terms of time taken to undertake the checks on those who do not, we do not consider that this is a disproportionate cost when considered against the cost an employer is likely to incur if we remove staff who are illegal migrant workers from the workforce with no notice.

We are concerned that the new measures may have a greater impact on small businesses, therefore we will undertake to work with colleagues in the Department for Business, Enterprise and Regulatory Reform to review any impact in 12 months' time.

SUPPORT FOR EMPLOYERS

Respondents' comments

There was a mixed response regarding how well the requirements for employers under the current (1996) legislation are understood. An active communication campaign, informing employers of the new measures and the support available to them, was the common suggestion with regard to how the Government could improve its communication methods.

Government response

We are commencing a further nationwide media advertising campaign this autumn, highlighting the new measures we're bringing in and directing employers to sources of information. We have developed web-based guidance, including a step-by-step guide on the checks employers can make to ensure that they do not employ illegal migrant workers. We are also working closely with HM Revenue and Customs, using their existing employer communication methods to reach employers and by providing information at their EmployerTalk events around the country.

Respondents' comments

When asked about the provision of services to assist employers to comply with their duties under the legislation, around half of respondents (48%) referred

RESULTS OF THE PUBLIC CONSULTATION ON THE IMPLEMENTATION OF NEW POWERS TO PREVENT ILLEGAL MIGRANT WORKING IN THE UK

to the current Employers' Helpline and verification service. Respondents proposed that the verification service should be widened to include other categories of worker; the Helpline should provide printed confirmation of employees' work entitlement and give clear unambiguous answers regarding employees' entitlement to work. The most commonly mentioned additional service was increased support and services to enable employers to carry out accurate document checks. The majority of respondents (64%) stated that employers would not be prepared to pay for the use of such support services.

Government response

We are committed to improving the level of support we provide to employers; as well as our web-based support we have made significant enhancements to our telephone helpline, with the Employer Checking Service now allowing employers to verify an individual's right to work in the UK. With regionalisation of the Border and Immigration Agency, and the introduction of compliance officers, we are also building on the face-to-face relationships the Agency has with businesses. We always strive to ensure that advice given by the Employers' Helpline is accurate and note the comments made in response to this question.

CODE TO PREVENT UNLAWFUL DISCRIMINATION

Respondents' comments

The Code to prevent unlawful discrimination recommends that employers conduct document checks on all prospective employees to avoid allegations of unlawful discrimination. Forty-five per cent of respondents felt that this recommendation would be followed; however, 61 per cent felt that following this recommendation would not be enough to safeguard against unlawful discrimination.

Government response

We are concerned that respondents to the consultation do not feel that the safeguards we have included will be sufficient to prevent unlawful discrimination. There can be no excuse for racially

discriminatory employment practices. We are providing a range of support methods for employers, including the Code of practice for employers on how to avoid unlawful discrimination in recruitment and employment practices. Employers are further assisted by the provision of a helpline and checking service so that they can be confident that they are complying with the law in this area. In order to assess whether these new measures have an effect on discrimination claims, we will work closely with colleagues in the Department for Business, Enterprise and Regulatory Reform and the new Equality and Human Rights Commission to monitor the impact and review the impact of the measures in 12 months' time.

CODE ON THE ADMINISTRATION OF CIVIL PENALTIES

Respondents' comments

The majority of respondents (57%) felt that the timing of follow-up checks should be standardised. Responses as to the timings of such checks were mixed however, with 45 per cent proposing they should be carried out 28 days after the document's expiry and the same proportion of respondents proposing alternative periods.

Government Response

The Government considers that the timing of follow-up checks should be standardised, to no less frequently than every 12 months. Employers could select a convenient day in the year, perhaps in line with payroll administration, when they will undertake checks on their existing employees with time-limited leave to be in the UK, to ensure that they retain the right to work here. Alternatively, the checks could be made at appropriate times for individual staff, whether in terms of their leave expiry date or working patterns, within the 12 month period. The introduction of identity cards for foreign nationals will also make it easier for employers to determine a person's immigration status and its duration.

Respondents' comments

Just under half the respondents (46%) felt that £10,000 was the right maximum civil penalty for

RESULTS OF THE PUBLIC CONSULTATION ON THE IMPLEMENTATION OF NEW POWERS TO PREVENT ILLEGAL MIGRANT WORKING IN THE UK

those employers who conduct no document checks at recruitment and have been found to repeatedly employ illegal migrant workers.

Government response

We consider that **£10,000 is the right maximum level of civil penalty to be issued in these circumstances as it will provide an appropriate deterrent effect to those who may be tempted to use illegal labour.**

Respondents' comments

Seventy-one per cent of respondents felt that employers should receive a written warning for the first offence in the generality of cases. The majority of respondents felt that, in certain circumstances, employers should be able to pay fines in instalments (88%) and that a maximum period in which to pay the fine should be set (81%). Although there was little consensus as to what this maximum period should be, most respondents stated either one year (30%) or two years (25%).

Government response

The Government has considered the idea of producing a written warning for every first offence in the generality of cases. However, we have real concern that such a warning for every first offence may give employers licence not to comply with the legislation until they have received a warning. This would be a significant weakening of the current legal controls, under which an employer can be prosecuted for a first offence. Instead, we have worked into our sliding scale, the possibility for an employer to only receive a written warning for a first time offence where that employer has undertaken a partial check, reported their suspicions to and co-operated with the Border and Immigration Agency. We will also take into account the employers' ability to pay a penalty.

TRAFFICKING FOR FORCED LABOUR

Respondents' comments

Most respondents (50%) were unsure as to whether the new measures would impact upon trafficking

for forced labour. Thirty-three per cent felt that the measures would not affect trafficking, while 17 per cent felt that the measures would.

Government response

As many respondents stated, if convicted under the existing trafficking offence, a trafficker could face a much stiffer penalty of up to 14 years in prison and/or receive an unlimited fine. The new offence of knowingly employing illegal migrant workers will sit alongside the law on trafficking and facilitation and will provide an additional means for dealing with those who employ migrants as part of a pattern of forced labour or exploitative practices. This is buttressed by:

- **the comprehensive UK action plan on trafficking;**
- **intelligence gathering, awareness raising and anti-trafficking enforcement action under the police-led Operation Pentameter 2; and**
- **our ongoing efforts to implement the Council of Europe Convention against trafficking.**

Our media advertising campaign as well as press reports of our operational activity and successful prosecutions may make traffickers think again about what they will risk by trying to operate in the UK.

PENALTIES

Respondents' comments

When asked whether company directors should be disbarred for knowingly employing an illegal worker, respondents gave a mixed response. Forty-one per cent felt that they should be disbarred while the same proportion felt that they should not.

Government response

We believe this is the right thing to do and will now examine how we may use the existing powers to their fullest extent.

APPENDIX 1: ANALYSIS OF RESPONSES RECEIVED TO THE CONSULTATION ON THE IMPLEMENTATION OF NEW POWERS TO PREVENT ILLEGAL MIGRANT WORKING IN THE UK

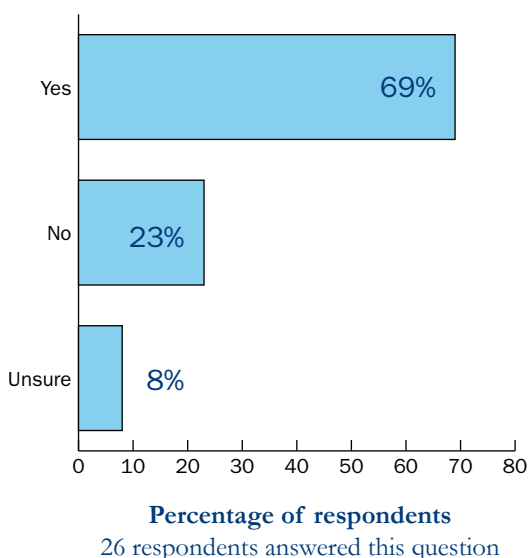
1. RECRUITMENT PRACTICES

Question 1a: will the measures outlined in this consultation document lead to significant additional economic costs to recruitment practices?

- 1.1 Twenty-six respondents answered this question. Sixty-nine per cent stated that the measures outlined in the consultation document would lead to a significant increase in costs to recruitment practices, however 23 per cent felt that they would not (see Figure 1).
- 1.2 All 26 respondents who answered this question commented further and stated how and why they thought recruitment practices would be influenced. The most commonly mentioned theme was the cost and time associated with conducting follow-up checks on employees' travel or identity documentation. Over 50 per cent of respondents made reference to this theme. Additionally, 23 per cent of respondents felt that such costs would impact disproportionately upon small businesses. The following comment reflects this view:

As most small business owners are not legal experts and deal with their own paperwork ... the small business owner is likely to incur extra cost in terms of loss of time which they could be spending

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



in enhancing their productivity rather than conducting administration.'

Question 1b: Aside from financial costs, would these measures give rise to additional indirect costs?

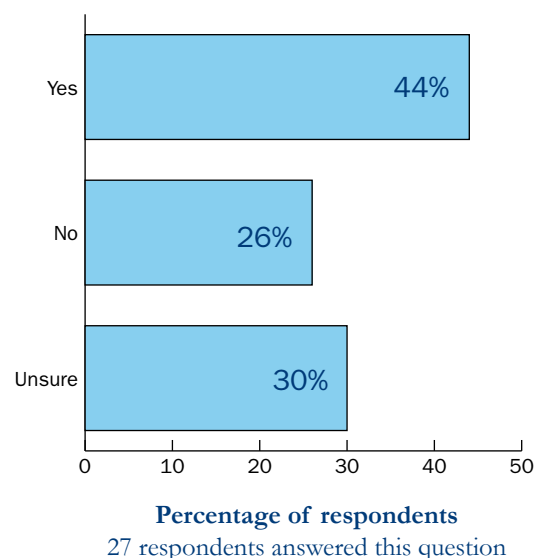
- 1.3 Sixteen respondents answered this question and a large majority (81%) felt that there would be indirect costs. The most commonly referred to theme was related to the Government's new measures acting as a disincentive and deterring employers from employing those with a time restriction on their employment. This opinion is reflected in the following comment:

'Given a choice between two candidates, one with restrictions and the other without, an employer might be more inclined to choose the candidate with no restrictions. There is therefore the potential for ... discrimination in that respect.'

Question 2: Will the proposed codes significantly impact upon recruitment practices?

- 1.4 Twenty-seven respondents answered this question. Forty-four per cent felt that the proposed codes would impact significantly on recruitment practices, while 26 per cent did not think that recruitment practices would be significantly influenced (see Figure 2).

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



APPENDIX 1: ANALYSIS OF RESPONSES RECEIVED TO THE CONSULTATION ON THE IMPLEMENTATION OF NEW POWERS TO PREVENT ILLEGAL MIGRANT WORKING IN THE UK

1.5 Twenty-three respondents elaborated further on this question. A variety of possible impacts on recruitment practices were provided but two key themes emerged: the potential for racial discrimination, and extra administration.

1.6 Thirty per cent of respondents commented that the new measures may give rise to racial discrimination with employers being reluctant to employ people with a limited entitlement to work in the UK. For example, one respondent commented:

‘It is unrealistic to assume that some employers will not favour those individuals who hold passports on the basis of having traditional, established documentation ... Those with more acceptable documentation (i.e. a national passport) may have a competitive advantage.’

1.7 Twenty-two per cent of respondents referred to the administrative burden of implementing changes in human resources procedures and/or information technology systems in order to monitor follow-up checks. This is reflected in the following comment:

‘Small employers may need to upgrade computer systems. All employers will need to upgrade H.R. procedures to monitor employees working on list 2 documents.’

APPENDIX 1: ANALYSIS OF RESPONSES RECEIVED TO THE CONSULTATION ON THE IMPLEMENTATION OF NEW POWERS TO PREVENT ILLEGAL MIGRANT WORKING IN THE UK

2. SUPPORT FOR EMPLOYERS

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

2.1 Twenty respondents answered this question. There was a mixed response with 45 per cent of respondents stating that the current legislation was understood, and the same proportion stating that it was misunderstood (see Figure 3a).

Question 3b: How much have the Government communication methods described above contributed to a good understanding of the current (1996) legislation?

2.2 Eighteen respondents answered this question with the majority (72%) stating that the communication methods used by the Government have contributed ‘a little’ to understanding of the current legislation (see Figure 3b).

Question 3c: If you do not think the current (1996) legislation is well understood, please outline why you think this is so.

2.3 Twenty respondents commented on this question. Forty per cent felt that there was confusion over what constituted acceptable documentation. The following comment reflects this view:

‘Main areas of confusion are around the various stamps in the passports, spotting and dealing with fraudulent documents and the new Worker Registration Scheme.’

2.4 Many respondents (45%) referred to a lack of general communication about the legislation and support services. Respondents stated that more active communication was needed as not all businesses received guidance on legislation and changes in requirements were not always communicated. It was felt that, whilst guidance and support was available, it was not very well publicised. For example, the following comments were made:

‘We believe employers have not been in the practise [sic] of looking carefully and thoroughly at the guidance however, and indeed they may not always be aware of its existence. The Government websites may be useful, but they are not very well publicised to employers. We doubt many employers are aware of the telephone helpline.’

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

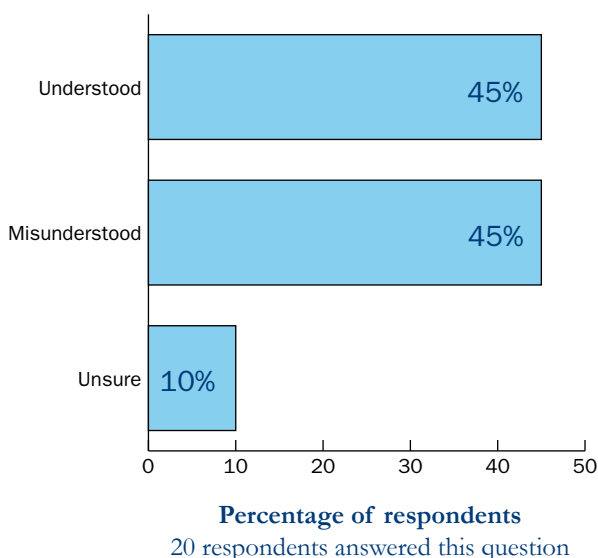
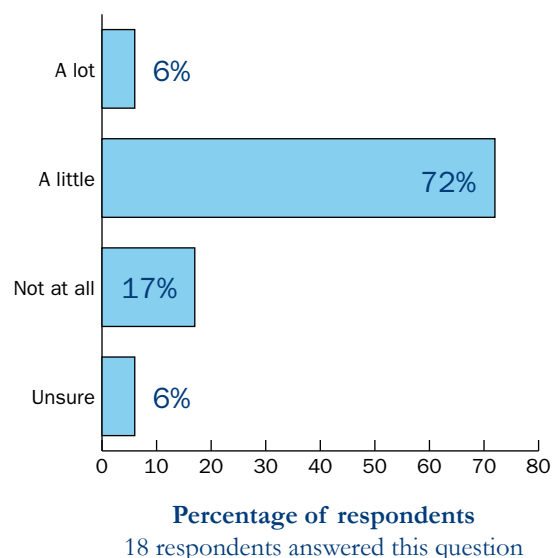


Figure 3b. How much have the government communication methods described above contributed to a good understanding of the current (1996) legislation?



APPENDIX 1: ANALYSIS OF RESPONSES RECEIVED TO THE CONSULTATION ON THE IMPLEMENTATION OF NEW POWERS TO PREVENT ILLEGAL MIGRANT WORKING IN THE UK

‘Furthermore, the ‘employing migrant workers’ and ‘business link’ websites were helpful tools and easy for employers to access. However many employers are not aware of these services and the Border and Immigration Agency should ensure that there is a clear campaign directed towards employers about the types of services available to them.’

Question 3d: What improvements to the Government communication process would aid understanding of the proposed codes and assist employers in complying with the law?

2.5 Twenty-three respondents answered this question. The predominant theme was an active communication campaign informing employers of the new measures and codes of practice and the support available to ensure compliance. Sixty-five per cent of respondents referred to this theme and a number of communication methods were suggested. The list below reflects those methods mentioned by more than one respondent:

- Roadshows and seminars across UK;
- Articles in business and human resources journals and the general press;
- Mailshots and newsletters;
- Advertising in the general press;
- Providing all employers with hard copies of guidance;
- Promoting web-based resources and support;
- BIA representatives (a) visiting employers and (b) attending trade events.

2.6 Whilst a third of respondents (33%) who referred to communication campaigns in their response mentioned the use of website resources and electronic communications, a small proportion of respondents (9%) felt that other routes of communication should also be utilised. For example, one respondent commented:

‘Making a significant investment in getting information to employers and having web based information available but not relying 100% on web based information.’

Question 4a: Would the provision of any other services assist employers in complying with their duties under the legislation?

2.7 Twenty-seven respondents answered this question. Around half (48%) commented on the Employers’ Helpline and verification service currently being implemented to check the work entitlement of individuals who have an outstanding application with the BIA. Of these respondents: 46 per cent referred to the verification service being widened to include other categories of worker; 38 per cent suggested printed confirmation of advice about employees’ entitlement to work should be provided by the Employers’ Helpline; and 31 per cent suggested that the Employers’ Helpline needed to provide clear, unambiguous answers regarding a person’s entitlement to work.

2.8 The most commonly mentioned theme when referring to additional services was increased support and services to enable employers to carry out accurate document checks. This was referred to by 22 per cent of respondents. One respondent made the following comment:

‘The Home Office guidance is very useful but does not give all the answers. The ‘employing migrant workers’ website clearly sets out the three step process but again does not provide sufficient information to help an employer be able to decide conclusively about whether the individual can take up the job which is being offered. It really needs to show a complete list of all the current stamps not just sample stamps ... It would be extremely helpful if employers were able to contact a helpline who would review the documents in issue ... and then confirm in writing whether or not the individual is able to work in the UK.’

Question 4b: Would employers be prepared to pay a fee for use of these services?

2.9 Twenty-two respondents answered this question. The majority (64%) felt that employers would not be prepared to pay for the use of additional services to enable compliance; however, 18 per cent felt that employers would be prepared to pay for such services.

APPENDIX 1: ANALYSIS OF RESPONSES RECEIVED TO THE CONSULTATION ON THE IMPLEMENTATION OF NEW POWERS TO PREVENT ILLEGAL MIGRANT WORKING IN THE UK

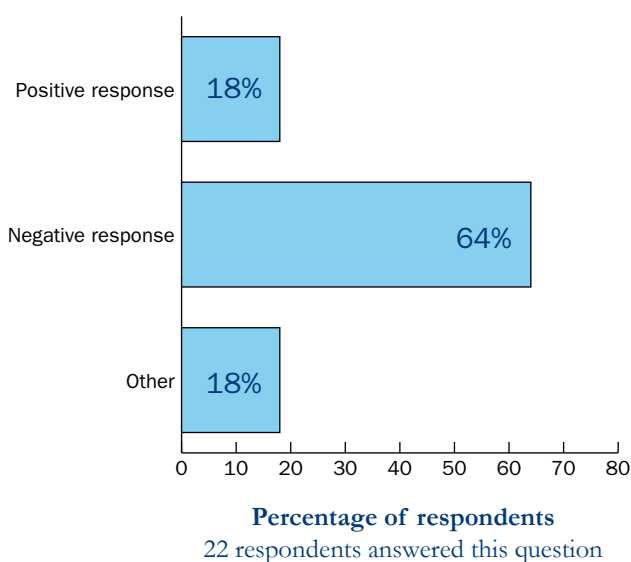
2.10 Respondents who commented further on a negative response referred to additional costs that will already be incurred owing to the new measures. For example, one respondent made the following comment:

‘If employers are to be required to increase their recruitment workload and meet all the related financial costs associated with their increased and continuing recruitment practises [sic], they should not also be required to pay for support from the Home Office.’

2.11 Respondents generally felt that if fees were introduced, the fee level should reflect the type and quality of support and adhere to service level agreements. The following comment reflects this view:

‘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 [Employer Verification Service] 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 [Office of the Immigration Services Commissioner].’

Figure 4. Would employers be prepared to pay a fee for use of these services?



APPENDIX 1: ANALYSIS OF RESPONSES RECEIVED TO THE CONSULTATION ON THE IMPLEMENTATION OF NEW POWERS TO PREVENT ILLEGAL MIGRANT WORKING IN THE UK

3. CODE TO PREVENT UNLAWFUL DISCRIMINATION

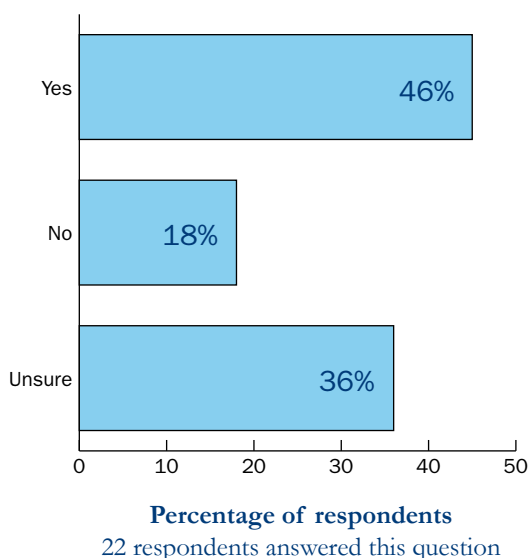
Question 5a: The Code recommends that employers conduct document checks on all prospective employees to avoid allegations of unlawful discrimination. Do you think this recommendation will be followed?

3.1 Twenty-two respondents answered this question. Forty-five per cent felt that the recommendation that employers conduct document checks on all prospective employees to avoid allegations of unlawful discrimination would be followed. However, 36 per cent were unsure about this and 18 per cent stated that the recommendation would not be followed (see Figure 5a).

Question 5b: Do you think the recommendation is enough to provide a safeguard against unlawful discrimination?

3.2 Twenty-three respondents answered this question. The majority (61%) felt that the recommendation would not be enough to provide a safeguard against unlawful discrimination but 35 per cent thought that it would be (see Figure 5b).

Figure 5a. Do you think this recommendation will be followed?



Question 5c: Are there alternatives that would provide further safeguards against unlawful discrimination?

3.3 Twenty-three respondents commented further on this topic. The most commonly referenced theme (35%) was that the Code itself could lead to discrimination as it might encourage employers to consider only those employees who did not appear to be migrants. The following comment reflects this view:

‘There are concerns that the duties placed on employers to check the immigration status of employees may have ... adverse impacts. ... employers may engage in practices of racial profiling and, albeit inadvertently, racially discriminate against minority ethnic applicants who are citizens or otherwise have permission to work.’

3.4 Other comments referred to the need for the Code to be clear and easy to administer so there could be no misunderstanding as to what was required. The following comment reflects this view:

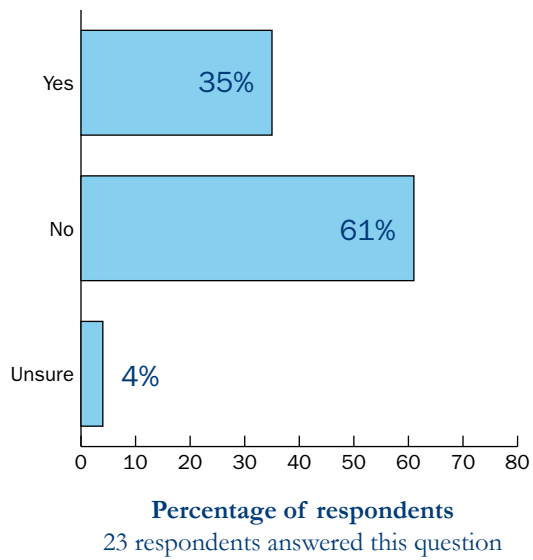
‘... it will be important to reiterate to employers exactly what checks they must carry out, what records they must keep and for how long and what is regarded as the correct documentation.’

3.5 Finally, some (13%) commented that, for the Code to be effective, it should be mandatory and attract a penalty when not adhered to. The following comment reflects this view:

‘... it is generally the case that where there is a recommendation that does not attract a penalty if it is not followed, that recommendation may be ignored.’

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Figure 5b. Do you think this recommendation is enough to provide a safeguard against unlawful discrimination?



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4. CODE ON THE ADMINISTRATION OF CIVIL PENALTIES

Question 6a: Should the timings of the follow-up checks be standardised?

4.1 Twenty-three respondents answered this question. Fifty-seven per cent felt that the timings of follow-up checks should be standardised, while 30 per cent thought that checks did not need to be standardised (see Figure 6a).

Question 6b: When and how should the follow-up checks be undertaken?

4.2 Twenty respondents answered this question. There was a mixed response with 45 per cent of respondents stating that 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 (see Figure 6b). However, the same proportion had other suggestions as to when and how the follow-up checks should be undertaken, although there was no consensus as to what form these checks should take. The variation was mainly to do with how close to the

expiry date the checks should be undertaken, as the following comments show:

‘Employers should commit [in writing] to reviewing, acting on and monitoring any necessary Work Permit extension/visa renewal together with their employee at least six weeks before the expiry of the visa.’

‘Checks should be completed 2-3 months before the end of the expiry date, regardless of the time frame involved.’

4.3 Two respondents also commented on how handling potential changes in an employee’s status should also affect the frequency of the checks. Their opinion differed, however, as to whose responsibility it was to check for such changes, as the following comments show:

‘... employers need to be aware ... that other events may mean that employees have no longer a right to work, so an obligation to check regularly a worker’s position would help pick up such changes but increase the administrative burden.’

‘Employers should also be required to put an obligation on their employees to inform them of

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

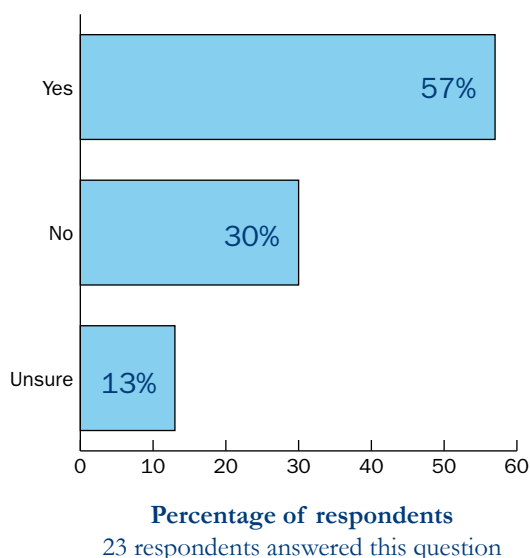
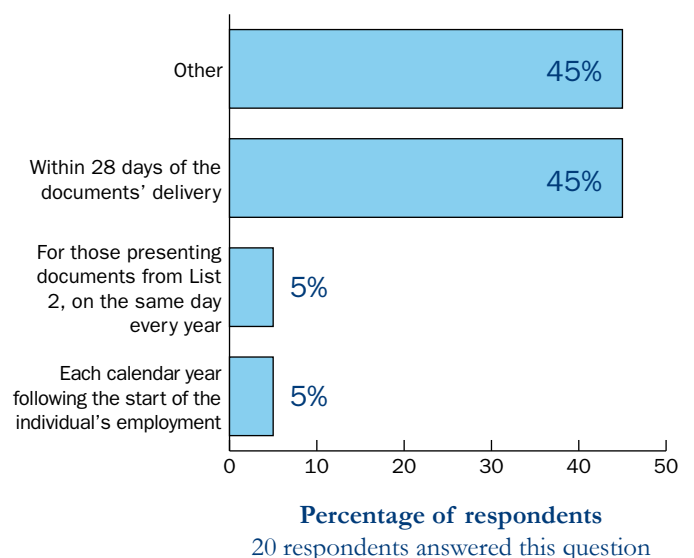


Figure 6b. When and how should the follow-up checks be undertaken?



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changes to their circumstances that might affect their working rights.'

4.4 How the employer should be reminded that a check was imminent was also mentioned, but again, different suggestions were given, as the following comments show:

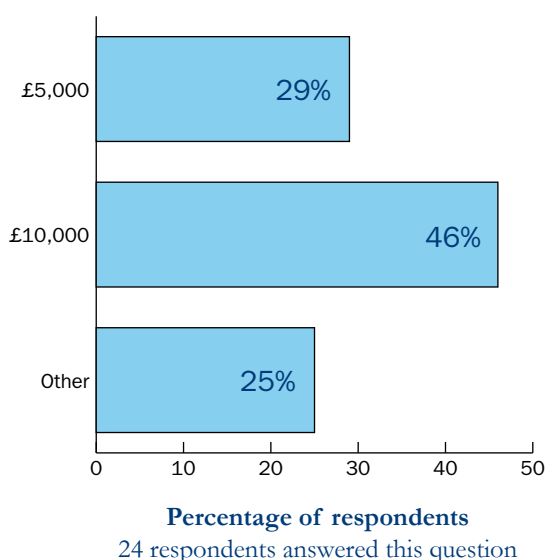
'... members in our survey thought they would develop a flagging system within their databases for when a work permit is due to expire.'

'Ideally the employer would make a note in a diary of the expiry date and check when renewal is due. Possibly the Government should provide a reminder/trigger service in that respect, for arguably it is they, not the employers, who should be primarily responsible for ensuring compliance.'

Question 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?

4.5 Twenty-four respondents answered this question. Forty-six per cent felt £10,000 was the right maximum civil penalty for those employers who had conducted no document checks at recruitment and had been found to repeatedly employ illegal migrant workers. In contrast, 29

Figure 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?



per cent felt that £5,000 was the right maximum civil penalty (see Figure 7).

4.6 Twenty-six respondents provided additional comments about the level of the civil penalty although there was no consensus as to the actual charge to be levied; rather, the majority (58%) felt the amount should be proportional based on a variety of circumstances such as the nature of the offence, the size and turnover of the company, the advantage gained and the level of worker exploitation. The possibility of a cap being set was also mentioned, as was the possibility of non-monetary penalties. The following comments show the range of suggestions given:

'... in the circumstances of a persistent offender it is likely that they have gained a direct competitive advantage by employing irregular workers. Therefore their penalty should take into account the amount of money they should have been paying to the workers based on work of equal value at direct competitor wages.'

'Repeat offenders deserve a higher penalty but the greatest factor in applying a penalty should be the level of worker exploitation.'

'Any fine should be proportionate to the scale of the offence and the company involved. There should be a cap on the overall fine if the company has a low turnover.'

'For fines to have a punitive element they need to be of a considerable consequence to the organisation. For some companies £10,000 is not a considerable amount. If higher limits cannot be set then you should look at other non-financial measures, for example, publication of all companies fined in a period as for many companies reputational risk is very important.'

4.7 Two respondents made the point that the level of the charge must reflect what is permitted by statute. The degree of guidance and support from the Government was also considered important to three respondents. The following comment reflects this view:

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‘The increase in the civil penalty is only acceptable if the immigration service provides relevant and useful information which is easily available to employers to help them understand any immigration conditions attached to a worker’s leave.’

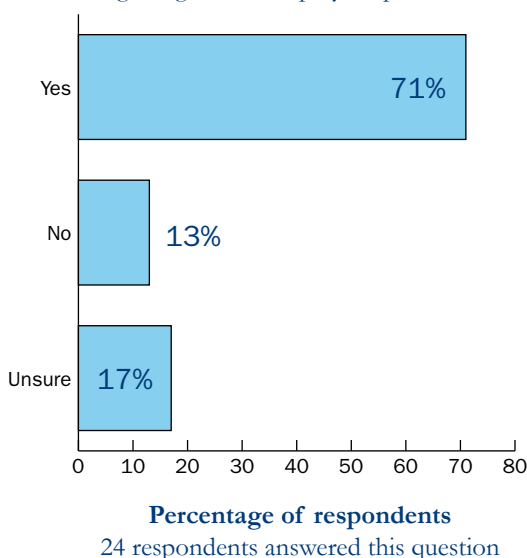
4.8 Finally, it was suggested that employers should not be harshly penalised where checks had been undertaken or mistakes made. The following comment reflects this view:

‘It is important ... that where these checks have taken place an employer will not be liable for a civil penalty.’

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

4.9 Twenty-four respondents answered this question. Seventy-one per cent felt that, in the generality of cases, employers should receive only a written warning for the first offence (see Figure 8).

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



4.10 Eighteen respondents provided additional comments about the penalty for a first breach. More than half (55%) felt that not only should first offenders receive a written warning but that this should also be accompanied by guidance and support to aid future compliance. The following comment reflects this view:

‘A first breach of the law involving a relatively small number of illegal workers should not give rise to instant punishment but support. Where an employer had made a mistake it should be helped to comply, not punished severely.’

4.11 Although the majority welcomed written warnings for a first offence, three respondents also mentioned that this should still be discretionary, based on the intent. The following comment reflects this view:

‘Employers who are shown to have failed administratively and not involved in exploitation of their employees should receive a written warning for a first offence. Employers found to be deliberately ignoring procedures and exploiting overseas workers should be fined.’

Question 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.
- b) whether any previous penalties or warnings have been issued.
- c) whether there have been any subsequent improvements in procedures following previous penalties or warnings.
- d) whether the employer has reported his or her suspicions to the border and immigration agency.
- e) whether the employer has co-operated with the Border and Immigration Agency.

4.12 The number of respondents differed between factors and ranged from 21 to 25. Four of the five factors were deemed as either ‘important’ or ‘very important’ in calculating the amount of the penalty. The only factor that caused some

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respondents to differ from this view was the issue of employers reporting their suspicions to BIA. Twenty per cent stated that this factor was not important when calculating the amount of the penalty (see Figure 9).

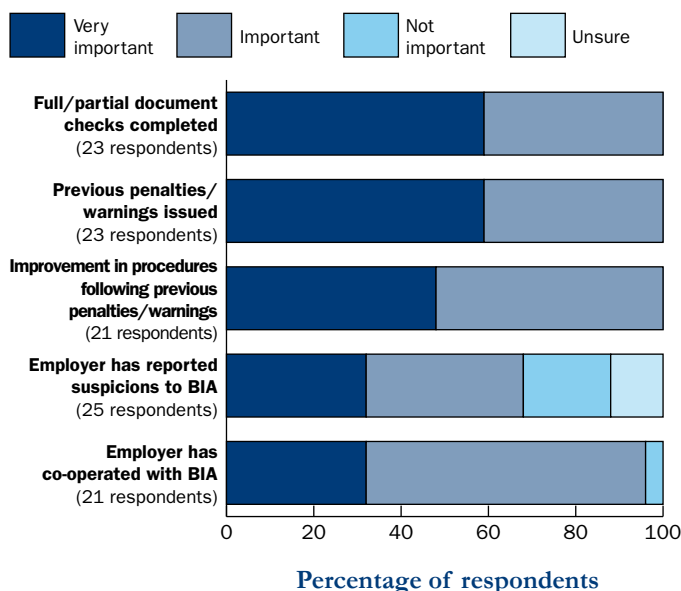
4.13 Nineteen respondents provided additional comments relating to other factors that should be given importance when calculating the level of penalty. Thirty-two per cent of these suggested the fine should be related to the size and turnover of the employer. The following comment reflects this view:

‘The turnover of the company. A £10,000 fine per worker is a much more significant fine for a small company than a larger one. In these cases there should be an overall cap on the fine.’

4.14 Some respondents (16%) suggested the extent of any worker exploitation should be a factor. The following comment reflects this view:

‘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.’

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



4.15 Finally, three respondents who did not agree that employers reporting suspicions to BIA should be given importance when calculating a fine, voiced concerns that this could be used as a means of exploiting employees to reduce their penalty. The following comment reflects this view:

‘We feel this is giving a tool to some exploitative employers to use against workers and undermine unions.’

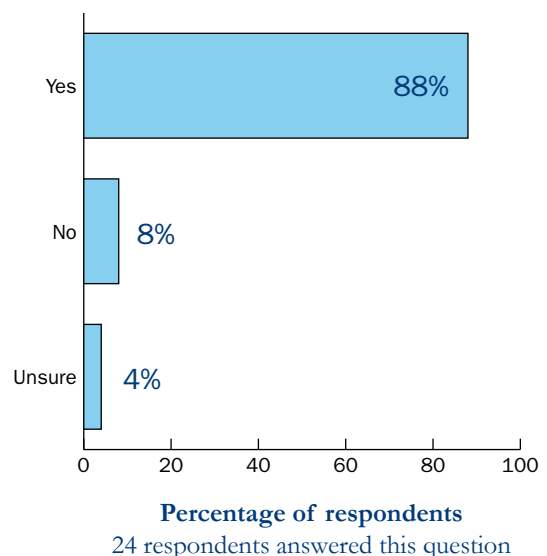
Question 10a: Do you agree that, in certain circumstances, employers should be allowed to pay fines in instalments?

4.16 Twenty-four respondents answered this question and 88 per cent felt that, in certain circumstances, employers should be allowed to pay fines in instalments (see Figure 10a).

Question 10b: If yes, should a maximum period in which to pay the fine be set?

4.17 Twenty-one respondents answered this question and the majority (81%) felt that a maximum period in which to pay the fine should be set (see Figure 10b).

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



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Question 10c: If yes, what maximum period should employers have in which to pay the fine?

4.18 Twenty respondents answered this question. While 30 per cent stated that one year should be the maximum, and 25 per cent stated two years, 35 per cent of respondents provided another suggestion for a suitable period in which to pay a fine (see Figure 10c).

4.19 Of the 35 per cent of respondents suggesting an alternative to the periods provided, five respondents felt the period should be decided on a case by case basis, depending on the size and/or turnover of the organisation. The following comment reflects this view:

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

4.20 Two respondents mentioned that paying the fine should not cause the business to be in the position of declaring itself bankrupt. The following comment reflects this view:

'...the BIA should seek to have similar discussions with businesses as the HMRC [HM Revenue & Customs] has when tax payments are required i.e. with the aim of receiving payment rather than bankrupting the organisation.'

4.21 Finally, one respondent felt that interest should be added to any fine that was not paid immediately while another felt the court should set the period in which the fine should be paid.

Figure 10b. Should a maximum period in which to pay the fine be set?

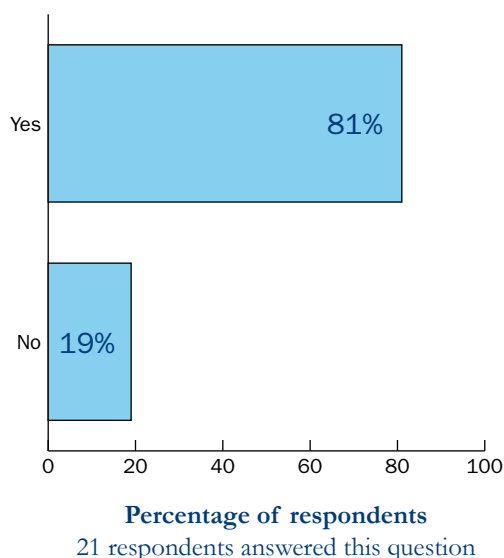
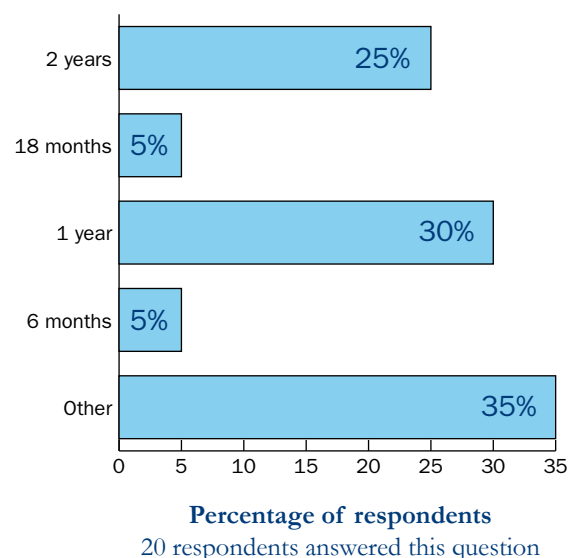


Figure 10c. What maximum period should employers have in which to pay the fine?



APPENDIX 1: ANALYSIS OF RESPONSES RECEIVED TO THE CONSULTATION ON THE IMPLEMENTATION OF NEW POWERS TO PREVENT ILLEGAL MIGRANT WORKING IN THE UK

5. TRAFFICKING FOR FORCED LABOUR

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

5.1 Twenty-four respondents answered this question and a large proportion (50%) were unsure as to whether the measures would impact upon trafficking for forced labour. Thirty-three per cent of respondents felt that the measures would not affect trafficking, while 17 per cent felt that the measures would (see figure 11).

5.2 Fourteen respondents commented further on this question. Respondents who were unsure or felt the proposed measures would not be effective suggested that the traffickers themselves would still not be deterred. The following comments reflect this view:

'... traffickers may conceal from the illegal migrants they bring into the UK the fact that they will not be able to work legally. There have been cases where illegal traffickers have 'dumped' their cargoes of migrants and disappeared.'

'It is doubtful whether the civil penalty regime will have an effect on trafficking. The profits to

be gained from exploitation may greatly outweigh the levels of penalty. Trafficking is often a hidden activity and those engaged in it often willingly and knowingly accept trafficked labour.'

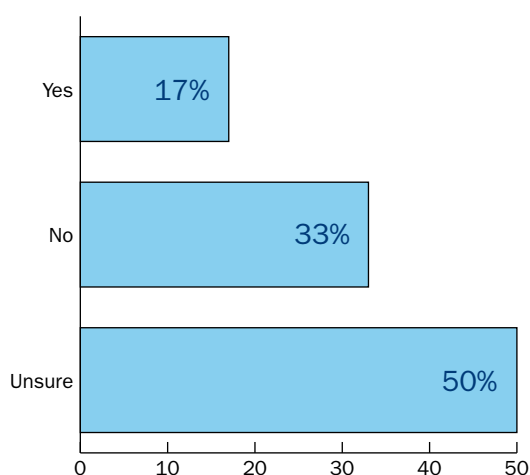
5.3 One respondent expressed concern that the proposed new immigration regime could actually increase trafficking activity, as the following comment shows:

'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.'

5.4 Of those who felt the measures would be effective, two respondents suggested additional ways to enhance their effect on trafficking, as the following comment shows:

'There will also be a need to ensure that banks etc. promptly report shared bank accounts or bank accounts where multiple wage payments are being deposited as these are often evidence of [illegal] 'gangmaster' activity.'

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



Percentage of respondents
24 respondents answered this question

APPENDIX 1: ANALYSIS OF RESPONSES RECEIVED TO THE CONSULTATION ON THE IMPLEMENTATION OF NEW POWERS TO PREVENT ILLEGAL MIGRANT WORKING IN THE UK

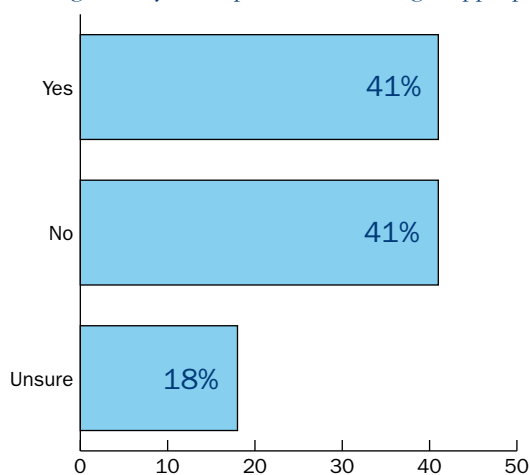
6. PENALTIES

Question 12a: 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 disbaring the director alongside any other punishment thought appropriate?

- 6.1 Twenty-two respondents answered this question. There was a mixed response with 41 per cent of respondents stating that the courts should be invited to consider disbaring directors and the same proportion stating that this should not be the case (see Figure 12).
- 6.2 Eleven respondents provided additional comments on this issue. There was no consensus that this would be an appropriate deterrent, as the following comments show:

'... a specific focus on the director of a company appears to be aimed particularly against small businesses which would be discriminatory ... small and micro businesses usually have only one director compared with large organisations who can have several directors with sizeable departments behind them, which can more easily absorb a large portion of any responsibility or blame.'

Figure 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 disbaring the director alongside any other punishment thought appropriate?



Percentage of respondents
22 respondents answered this question

'... this is a highly significant decision to make on a 'routine' basis and each case should be judged on the individual circumstances. If the BIA was seen to enforce this legislation we believe that adverse publicity would deter the majority of credible businesses from offending.'

'There must be at least one additional circumstance, including, but not exclusively, employing people below the minimum wage.'

'... it is important to ensure that the primary targets of any policy to disbar are directors of those organisations which make massive profits and cost saving from employing migrant workers ... 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 ... are considered for disbaring.'

Question 12b: Are there any other measures that you feel may prove to be an effective penalty for repeat and/or serious offenders?

- 6.3 Seven respondents commented on other measures they felt may be effective for repeat and/or serious offenders. Three respondents felt that publicity and 'naming and shaming' of offenders would prove an effective penalty. The following comment reflects this view:

'Publicity of breaches and penalties imposed will not only highlight agency action and powers but will also be of great concern to companies whose reputation and trading capabilities could be affected.'

- 6.4 Other suggestions included unlimited fines for repeat offenders and frequent, unannounced visits by BIA to problem employers.

APPENDIX 2: BACKGROUND AND APPROACH TO THE CONSULTATION

BACKGROUND

On 15 May 2007, Immigration Minister Liam Byrne launched the Border and Immigration Agency (BIA) consultation paper *Immigration, Asylum and Nationality Act 2006: Consultation on the implementation of new powers to prevent illegal migrant working in the UK*. This paper set out the Government's approach to preventing illegal migrant working and implementing new powers contained in the Immigration, Asylum and Nationality Act 2006.

The consultation document was sent via e-mail to 175 key stakeholders to alert them to the consultation process and to encourage them to complete the consultation questionnaire.

As part of the media launch, the Home Office Press Office arranged a briefing for Home Affairs correspondents, the regional lobby and BME media. Following the briefing, Liam Byrne filmed clips with the BBC, British Satellite News and the Pakistan-based Go TV. He was also interviewed live by Radio Five for their early evening bulletin. The story ran on the BBC Ten O'Clock News.

Articles featured the next day in the following national papers: Daily Telegraph, The Guardian, The Financial Times, Daily Mail, Daily Mirror, The Times and the Daily Star. There were also articles in the following regional newspapers: Evening Standard, London Lite, Birmingham Mail, Eastern Daily Press and the Northern Echo. The story also appeared on the Press Association wire, and on websites for BBC Online, Guardian Unlimited, Government Computing, The Register and Building.co.uk.

Also, a consultation event was held on 17 July with members of the Illegal Working Stakeholder Group and Employer Taskforce to canvas opinions of five of the key consultation questions. A focus group was held with representatives from the Small Business Service's stakeholder database on 3 August to elicit views from the small business community on the new measures. Please see Appendix 4 for a summary of the discussions at these events.

Those who wished to respond to the consultation were asked to do so no later than 7 August 2007. All responses received by 17 August 2007 are included in this analysis.

APPROACH TO ANALYSIS OF CONSULTATION QUESTIONS

The majority of the questions contained in the consultation document were presented with response options (e.g. yes, no or unsure). Each question also gave respondents the opportunity to provide any further comments through the use of free response sections. Responses to each question were first analysed on the basis of the response options provided. Further comments to each question were then coded into commonly occurring themes.

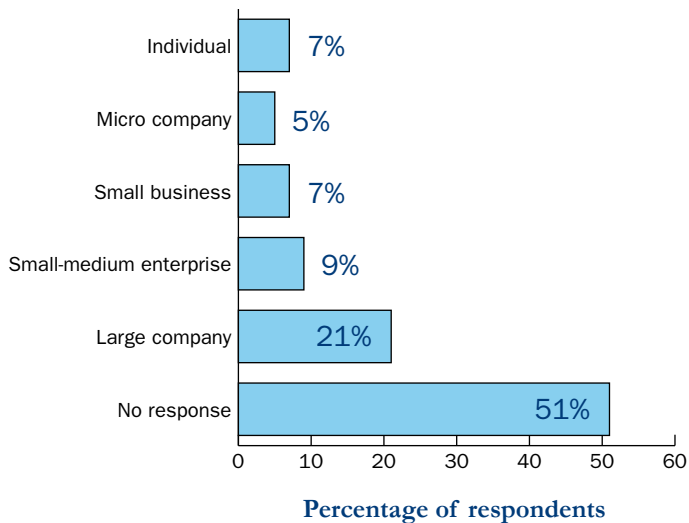
Many respondents did not follow the format of the consultation questions, preferring to provide a general response or to concentrate on areas of interest to them. Where appropriate, responses were coded into the response options for the question(s) addressed by the respondents and further comments coded into commonly occurring themes.

Forty-three responses were analysed. With this number of responses, a full analysis was not possible by organisation size or sector.

Percentages given in the results are based on the number who answered the particular question, not the total of 43 responses. Please note that the percentage scale varies between graphs, depending on the maximum percentage recorded.

APPENDIX 3: DEMOGRAPHIC DETAILS OF THE RESPONDENTS

Figure 13. What is the size of your organisation?

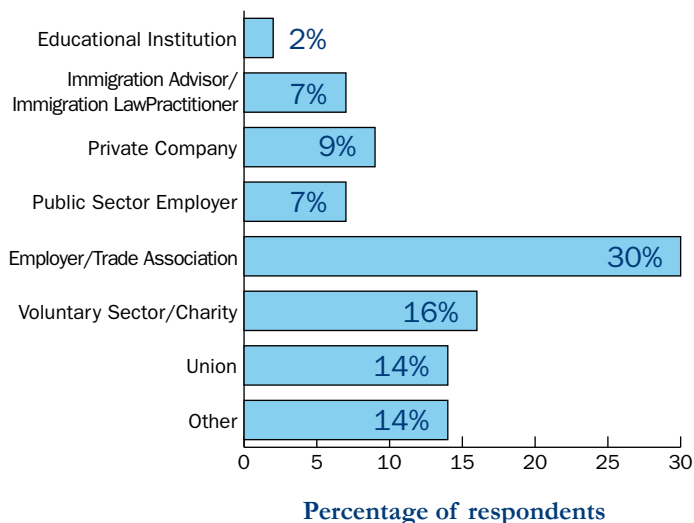


The majority (51%) of respondents did not answer this question. Out of those who did respond, large companies formed the biggest organisation size (21%).

Question 15: What industrial sector best describes your organisation?

Owing to the number of respondents and the diverse nature of sectors under which they operate, it has not been possible to produce a meaningful graph for this question. There was also inconsistency over how the organisations viewed themselves in terms of industrial sector. Unions, for example, described themselves variously as 'other', 'educational' 'law related service' or as from a specific sector such as 'health'.

Figure 14. What kind of organisation do you represent?



Employer / Trade Associations were the largest group to respond to the consultation (30%) followed by Voluntary Sector organisations / Charities (16%), Unions (14%) and Private Companies (10%).

APPENDIX 4: RESPONDENTS BY ORGANISATION

In addition to the following list there was one anonymous response:

Association of Convenience Stores
Association of Labour Providers
The British Chambers of Commerce
British Hospitality Association
BUPA
Citi
Cleaning and Support Services Association
Commission for Racial Equality
Confederation of British Industry
Construction Skills Certification Scheme Ltd
Discrimination Law Association
Employment Lawyers' Association
Engineering Employers Federation
Ernst & Young
Eversheds LLP
Federation of Small Businesses
General Register Office for Scotland
GMB Union
Immigration Advisory Service
Immigration Law Practitioners' Association
Interlegal Translations
Joint Council for the Welfare of Immigrants
Justices' Clerks' Society
London Councils
Manchester City Council
The Methodist Church
MigrationWatch UK
National Association of Schoolmasters Union of Women Teachers
National Farmers' Union
National Farmers' Union (South East Region)
National Specialist Contractors Council
NCP Services Ltd
Northern Ireland Human Rights Commission
Optimum Population Trust
Oxford and Cherwell Valley College
Recruitment and Employment Confederation
Refugee Council
Royal College of Nursing
Scottish National Party
Trades Union Congress
Unite
Union of Shop, Distributive & Allied Workers

APPENDIX 5: FEEDBACK FROM CONSULTATION EVENTS

Two stakeholder events were held during the consultation period. The notes below provide summary of discussions at these focus groups.

FOCUS GROUP 1: WITH REPRESENTATIVES OF THE EMPLOYER TASKFORCE AND ILLEGAL WORKING STAKEHOLDER GROUP – 17 JULY 2007

The Border and Immigration Agency held a joint meeting of two of its key employment-related stakeholder groups, the Employer Taskforce¹ and Illegal Working Stakeholder Group², to obtain their views on the new measures for preventing illegal migrant working. Both Groups were familiar with the subject-matter, and following a short presentation, broke off into workshop groups to discuss five of the key consultation questions. The key points made during discussion are given below.

- 1. What do you perceive the likely impact of the introduction of civil penalties and the new knowing offence will be in your sector / on the employment of migrant workers?**
 - No great effect – those who wish to be compliant will comply, those who operate outside of the current legislation will probably remain non-compliant.
 - Employers may refuse to employ those who are/appear to be migrant workers so that they do not have to undertake follow-up checks.
- 2. Will the proposed changes significantly impact upon recruitment practices?**
 - Some employers may be less likely to recruit migrants or those who appear to be migrants.
 - Bigger impact on SMEs.
 - Some employers may choose to outsource risk and use agencies to recruit and employ staff.
- 3. What further provision of services would assist employers in complying with their duties under the legislation?**
 - Written confirmation of advice given by Employers' Helpline to be sent out to employer, which may be used as an excuse for a civil penalty.
 - Border and Immigration Agency could send notification to an employer when a decision has been made on an outstanding application, and whether or not leave has been extended.
 - Online service so employers can verify a person's right to work, response given via email within 48 – 72 hours.
- 4. What should be the nature of the requirement to conduct follow-up checks?**
 - Timing of checks to be decided by an individual employer depending on their resources – ideally check each migrant worker as and when new application required, others may favour an annual date for follow-up checks.
 - Border and Immigration Agency should provide prompt for employer to undertake follow-up checks.
- 5. What is the right maximum level of civil penalty?**
 - Maximum level of penalty may be disproportionate e.g. £5,000 negligible to a large organisation, but may have a huge effect on a SME.
 - Low maximum may provide perverse incentive to break the law.

Other points raised in discussion:

- What protection will there be for employers under TUPE terms or what level of responsibility be required?
- Definition of a visit should be clear, and what is a reasonable timescale between visits?
- Suggestion to build in a method to help assess the impact of these measures on migrant workers.

¹ A list of members of the Employer Taskforce can be found at: www.bia.homeoffice.gov.uk

² A list of members of the Illegal Working Stakeholder Group can be found at: www.bia.homeoffice.gov.uk

APPENDIX 5: FEEDBACK FROM CONSULTATION EVENTS

- Better defined stamps and endorsements to make it easier to understand restrictions on a migrant's right to work in the UK.

FOCUS GROUP 2: WITH REPRESENTATIVES FROM THE SMALL BUSINESS SERVICE STAKEHOLDER DATABASE – 3 AUGUST 2007

Representatives from UK's small businesses, registered on the Small Business Service (SBS) stakeholder database were invited to attend this focus group, as part of our consultation process to capture their views on five key questions from the illegal working consultation.

Six individuals from small businesses active in a number of commercial sectors attended the event, where a full and open discussion of the new measures took place.

1. What do you perceive the likely impact of the introduction of civil penalties and the new 'knowing' offence will be in your sector / on the employment of migrant workers?

- Difficult for small businesses to understand and comply with the 50 – 60 pieces of employment legislation.
- Difficult for employer to be able to establish who has/has not got right to work in the UK, especially where their right to work depends on a family member's status e.g. dependant of WP holder, family member of EEA national.
- Businesses will continue to employ migrant workers – one attendee described 20% expansion within his business wouldn't have happened without the use of labour from accession states.

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

- Strong feeling that Border and Immigration Agency should be doing more to police immigration – responsibility shouldn't rest with employers.
- Some firms don't want to employ non-British nationals, not because of administrative burdens but because they don't want to give away 'local' jobs.

- Follow-up checks will create a significant additional administrative burden on small businesses.

3. What further provision of services would assist employers in complying with their duty under the legislation?

- Guidance should be ordered thematically from an employer's perspective.
- Sometimes difficult to get through to the Employers' Helpline.
- Advice and guidance needs to be set out properly and according to law rather than interpretation.
- User-friendly website, e.g. Acas provide easy-to-use flow chart on age discrimination, Equal Opportunities Commission pregnancy toolkit.
- Business Link helpful, but no real central point for employers on all employment information required.
- Better information about what documents look like and commonly-encountered (EU) documents.
- Guidance on how to spot forged documents – how far can security safeguards be shared?
- Principles-based approach needed to be clear about what we're trying to achieve from new measures.
- Standard wording/pro-forma to be provided for employers to explain why asking for identity documents.
- Improved education and support.
- Overcome communication problems with tabloids which 'inform' a large proportion of UK population.
- Self-employment is a problem area – link from our website to HMRC employment status checker?
- Scope for HMRC to flag invalid NINOs to employers following end of year returns?
- VAT inspectors have successfully changed the perception employers previously had – HMRC staff now telephone employers to find out if assistance is required.

4. What should be the nature of the requirement to conduct follow-up checks?

- Reminders to both applicants and employers

APPENDIX 5: FEEDBACK FROM CONSULTATION EVENTS

(including non-sponsored employees) should be issued so they are aware that a further application to the Border and Immigration Agency will need to be made.

- Explore possibility of linking reminders to local tax offices?
- Taking a note of the expiry date and completing follow-up checks most favoured option, but allowing up to two months for employer to check extension has been granted.
- Contracts of employment to be issued in line with validity of leave to remain?

5. What is the right maximum level of civil penalty?

- Each case to be judged on its own merits.
- Penalty could be linked to company's turnover (taken from VAT records) up to a specified maximum e.g. 10% of turnover, up to £5,000 per illegal worker found.
- Some way for employer to get redress from employee if they have been duped by the use of forged/fraudulent documents.
- The publicised scale must be non-negotiable and a serious incentive to ensure compliance.
- Potential for 'phoenix companies' to arise to escape repeat offences – clean slate.
- Guidance and instructions must be issued to every employer who receives penalty.

Other points made in discussion:

- The group discussed the best methods of communicating legislative changes to small businesses. The following were identified as useful ways to disseminate information:
 - HMRC PAYE mailing lists
 - Accountants of small businesses can be used as messengers
 - Professional bodies
 - Subscriptions to businesslink.gov – regular email updates sent out on changes to regulations

However, individual businesses have different preferences – there is no 'one size fits all' method here.

- Proposal to conduct further research into:
 - Where migrant workers are across the country?
 - Do small businesses (under-25 members of staff) tend to employ migrant workers?
 - Where are the UK's small businesses located and what do they do?
- It will be important to review the new system after five years and publish the results of any such review.