

International Migration Programme

Study of Employment and Residence Permits for Migrant Workers in Major Countries of Destination

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Introduction

The purpose of this study is to provide an overview of current policies and procedures governing employment and residence permits for migrant workers in major countries of destination around the world. The study is intended to inform national and regional reviews of policies on the admission of migrant workers.

This study is structured around a series of key issues for policy-makers: determining policy goals and options; assessing labour market demand for foreign workers; devising mechanisms for regulating admission and selecting migrant workers; and defining the conditions attached to employment permits. For each decision the main alternatives used across the study countries are explained, the pros and cons presented, and concrete examples provided.

The final section of the study specifies its implications for a review of national policies and procedures. Annex 1 provides brief overviews of current trends and policy development in labour migration in the countries surveyed for this study, and is followed by a compilation of key sources and references.

2. Methodology

2.1 Sources

This is a desk study, and the principal sources of information have been reports (published and unpublished) from international organizations with a competency on labour migration policies and statistics, including the International Labour Office (ILO), the International Organization for Migration (IOM), the Organization for Economic Co-operation and Development (OECD), the Organization for Security and Cooperation in Europe (OSCE), and the World Health Organization (WHO) (with a particular focus on the migration of health workers). Additional sources include websites for the Department of Labour or equivalent in the study countries; websites for corporate immigration law firms such as Fragomen; reports of the first meeting of the Global Forum on Migration and Development (GFMD); and some academic reviews.

2.2 Selection of study countries

Thirteen destination countries have been surveyed for this study – Australia, Canada, France, Germany, Italy, Ireland, Japan, New Zealand, the Netherlands, South Korea, Spain, the United Kingdom, and the United States. A series of criteria were used to determine this selection.

First, by and large the selection covers countries that receive among the largest legal inflows of foreign workers around the world. **Australia, Canada, New Zealand, Spain,** and the **United States**, for example, all received inflows of 100,000 foreign workers or more in 2005 (OECD, 2007). At the same time it is important to note that for some countries that are known to receive large numbers of migrant workers – for example Russia and South Africa – reliable statistics are unavailable. Additionally statistics are often not comparable across countries as different national systems include different categories of worker in their statistics.

Second, the selection is intended to include countries with a wide and illustrative variety of policy approaches towards employment and residence permits. For example **Australia, Canada, New Zealand** and the **United States** are so-called settlement countries where the focus is on permanent settlement, whereas labour migration in **Germany, Spain** and the **United Kingdom** is mainly intended to be temporary. While most countries included target both low- and high-skilled migrant workers, the balance between the two varies considerably across the study countries largely depending on local labour market needs in the short- and long-term.

Third, there are specific policy responses in certain of the study countries that of particular interest. **The Republic of South Korea**, for example, is in the process of reforming an employment permit scheme criticized for denying basic rights to migrant workers and driving some into irregular work. **New Zealand** has developed special schemes to attract health workers. **Canada** has developed a model policy for protecting domestic workers.

A final criterion for the selection of the study countries is the availability of detailed information on their labour migration policies. In many central and eastern European countries, for example, policies are still being developed and definitive labour migration regimes do not yet exist.

3. Determining policy goals and options

3.1 Policy goals

An initial decision to be made by policy-makers is what the main policy goal for labour migration programmes is, as this will influence what type of policy approach is most appropriate (Martin, 2003). Usually the primary goal is to alleviate labour shortages. Additional policy objectives often include the reduction of irregular migration, which is a major policy objective of many bilateral recruitment agreements such as those struck by **Spain** and the **Republic of South Korea**. Some programmes, such as the working holiday maker schemes in **Australia**, **Ireland**, **New Zealand**, and the **United Kingdom**, are also intended to promote special post-colonial or political relationships and cultural ties and exchanges. The Industrial Trainee Scheme, which is being phased out in the **Republic of South Korea**, has as an additional objective the training of migrants (Ruhs, 2006). Another goal may be to protect native workers through restricting migration into segmented labour markets, as is the case for low-skilled non-farm labour migration programmes in the **United States**. Circular migration programmes have as an additional objective promoting development in origin countries. The **Netherlands** is among a number of European Union (EU) countries currently considering establishing pilot programmes for circular migration (Koser, 2008).

3.2 Alternative or complementary strategies

If alleviating labour shortages is the primary goal, then it is equally important to recognize that there are alternative or complementary strategies for employers and governments to respond to shortages of labour. These include increasing the capital- or technology-intensity of production; relocating to countries where labour costs are lower; increasing the working time of currently employed workers; trying to recruit inactive or unemployed local workers; and switching to less labour-intensive services (Ruhs, 2005). In the Gulf Cooperation Council (GCC) countries Shah (2006) also identifies alternative strategies to reduce the demand for foreign workers, including the creation of job opportunities for nationals through training and market mechanisms, and the indigenization of the labour force through administrative mechanisms.

3.3 Temporary or permanent labour migration

A third decision to be made at an early stage concerns whether to prioritize temporary labour migration, or migration channels that lead to a secure residence status or permanent settlement. As a generalization, traditional countries of immigration such as **Australia**, **Canada** and the **United States** have determined that an element of permanent immigration is required to ensure economic growth and to sustain basic welfare provisions. Most European countries, however, still emphasize facilitation of temporary labour migration, although in certain European countries like the **Netherlands** and the **United Kingdom** policies are being developed to facilitate the acquisition by migrant workers of permanent residence status.

In this respect European countries normally distinguish between skilled and lower-skilled migrants, making it easier for the former to acquire permanent residence status. Indeed across all the countries surveyed for this study, different procedures pertain to skilled and lower-skilled migrants, and another important initial decision by policy-makers is which of these groups policies are intended to focus on. This will largely be determined by gaps in the labour market.

Temporary migration programmes can have considerable benefits for destination countries, for example they can help to adjust to low or negative population growth and labour shortages; increase the flexibility of labour markets to respond to seasonal and cyclical fluctuations in the economy; fill labour gaps in specific sectors or industries; and strengthen the competitiveness of certain sectors in the global market (Abella, 2006). At the same time there are risks involved (Ruhs, 2006). Destination countries may expect return and readmission commitments from origin countries that may not have the institutional capacity to fulfill the commitment. Too many restrictions on migrant workers may drive them underground. Temporary migration programmes can attract irregular migration. And there are socio-economic costs of family separation for the migrant workers.

4. Assessing foreign labour demand

There are two main ways to assess the need for foreign labour in a destination country, or in particular regions or employment sectors, namely through establishing quotas or through labour market testing.

4.1 Quotas

Quotas set fixed numerical limits for the admission of labour into a country. They are usually set annually, often at a high level of government (for example in the **Republic of South Korea**), and are normally determined in consultation with social partners.

There is no general consensus on how to define and measure labour shortages. The government in the **United Kingdom** has created quarterly sector-based panels to enable updates from employers on the labour market situation. The **Netherlands** carries out employment projections, based on flows in and out of the labour market and on expectations of labour demand to assess potential future shortages within occupations and sectors. In **France**, **Germany**, and **Spain**, local authorities play an important part in identifying labour shortages.

Quotas can be applied to both skilled and lower-skilled migration. In the **United States**, for example, Congress sets an annual quota for the number of skilled and specialized migrants admitted under the H-1B programme.

Italy also operates a quota system, introduced by Law 40/1998 for non-EU labour migration. The quotas are issued annually on the basis of Prime Ministerial decrees, and divided up according to region, type of labour, job category and nationality. Most quota jobs in Italy relate to medium or lower-skilled work.

The government in **Spain** also establishes fixed quotas after consultation with social partners and regional governments and authorities to identify shortage sectors in the labour market. Originally this quota system was used as a means of regularizing workers in unauthorized situations, but it is now open only to migrant workers coming from outside Spain (OSCE/IOM/ILO, 2006).

Quotas provide a clear reference framework on the admission of foreign labour for politicians, administrators, employers, civil society and the general public. Quotas can also serve important political objectives regarding the need for migrant labour and to calm public concerns regarding the influx of migrants. Quotas are usually adjusted every year in response to economic and political changes. Governments can also create sub-quotas for example according to sector (**United Kingdom**), occupation (**Italy**), receiving region (**Australia**), and firm size (**Germany**).

An important drawback with quota systems, however, is the difficulty of ensuring that the number of permits allocated *ex ante* matches labour market needs ascertained *ex post* (OECD, 2007). For example **Italy** had to double its quotas between 2005 and 2006. Despite this increase the quota was still reached within a few days in 2006, and there were still far more applications (490,000) than permits (170,000). In response the government decided to allow all immigrants who had completed an application to stay; and in 2007 it announced a major overhaul of the current system. Additionally quota systems often involve a high level of regulation and bureaucracy and are therefore frequently criticized by employers for their lack of flexibility and inability to respond to fluctuating labour demands. Finally, it can be difficult in practical terms to match potential migrant workers

with employers, thus creating opportunities for unscrupulous foreign labour intermediaries or agents who take advantage of vulnerable workers.

4.2 Labour market tests

Most destination countries in Europe apply a labour market test to first-time applicants for a work permit and also to migrant workers seeking to change jobs if they have not met the minimal time requirements for free access to employment (these minimal time requirements range across the study countries – see Section 6.2 below). Labour market tests assess whether there are workers available for the work in question in the domestic labour market.

The labour market test normally requires employers to advertise the post with the national labour authorities for a specified period or to demonstrate that they have taken other active steps to recruit for a specified period of time. In the **Netherlands** advertising the post and active recruitment are both required. EU member states are required to apply the EU preference principle and governments must ensure that employers do not hire non-EU or third country national workers before satisfying the authorities that no suitable EU workers can be found, including third country nationals legally resident in their territories.

Several countries make exceptions to the labour market test in respect of admission of highly skilled workers or of categories of workers for sectors where there are particular shortages, such as health workers. For example applicants for the Green Card under the new Employment Permit Act in **Ireland** do not need to pass a labour market test, whereas those for Work Permits do (for more details on the differences between the Green Card and Work Permit in Ireland see Section 5.12 below). Similarly applicants for the *Carte de Séjour Salarié en Mission* in **France** are exempt from the labour market test that does however apply to the *Détachement* and *Introduction* permits (see Section 5.12). The **United Kingdom** has also introduced a ‘two-tier system’, whereby certain sectors or occupations that are verifiably known to suffer from shortages of local workers are exempted from the labour market test, while other sectors remain subject to the test.

The **United States** has an ‘attestation’ process for employers wishing to apply for an H-1B work permit, whereby employers attest that the rate of pay offered to the migrant workers will be higher than the prevailing wage for the occupation, and that the employment of the H-1B permit holder will not adversely affect the working conditions of similar US workers. In this system in effect employers not the government have practical control over migrant worker entries and employment (Martin, 2005).

In countries with low unemployment rates and strong employment services, the process of labour market testing tends to be quick and straightforward, as in **Ireland** after the enlargement of the European Union (EU) where the annual number of permits issued was simply determined by employers’ demand for migrant workers (Ruhs, 2005a). However, when employers request migrant workers despite high unemployment rates, the process can be contentious, as in the **United States** where some farm employers request migrant workers despite unemployment rates above ten percent. With unemployment rates rising in a number of GCC countries, especially among the male youth, labour market testing also has the potential to be contentious there (Shah, 2007).

5. Regulating admissions and selecting migrant workers

In general, the mechanisms for regulating admissions and selecting migrant workers vary between employment-based immigration programmes and temporary labour migration programmes.

5.1 Employment-based immigration programmes

Employment-based immigration programmes promote the admission of migrant workers with a view to their settlement in the destination country, although the criteria governing the transition to permanent residence status vary considerably (see Section 6.6 below). These programmes tend to be focused on skilled workers. They are well-established features of immigration systems in **Canada** and the **United States** (which operates an Employment-based Immigration Preference System); while in Europe **Germany** and the **United Kingdom** are beginning to develop similar programmes.

There are three main mechanisms for regulating admission and selecting migrants under these programmes: points systems, work permits, and facilitating foreign students to remain to work and eventually settle after their studies. Unusually in the **Republic of South Korea** ancestry is a criterion – the Employment Management Scheme is limited to foreign workers in the service sector who have Korean ancestors; while the **United Kingdom** allows Commonwealth nationals who have grandparents born in the United Kingdom or Islands to come to the United Kingdom to take or seek employment or self-employment.

5.1.2 Points systems

Several European countries have opted for a points system along the lines of those long in use in **Canada**, **Australia**, and **New Zealand**. The criteria against which points are awarded vary between the study countries, but tend to include education and qualifications, work experience, and certain indicators that the applicant has the potential to settle in the destination country in the long-term. Bonus points may be awarded to attract skilled workers to particular sectors or regions.

To be eligible to enter **New Zealand** under the Skilled Migrant Category for example, applicants must score at least 100 points in their Expression of Interest to be eligible. At the moment only those scoring above 140 points are actually being admitted under this category. Points are awarded against the following criteria: an offer or current position in skilled employment in New Zealand (50-60 points); work experience in skilled employment (10-30 points); qualifications (50-55 points); age (5-30 points); close family ties in New Zealand (up to 10 points). Additional points are given to occupations, recognized prior to arrival, that are included in the Long-Term Skill Shortage List (LTSSL), which includes almost all health occupations. Bonus points are also granted to an employment offer for the regions outside the capital. Finally additional points are also available if the applicant also has a skilled partner.

To enter **Canada** as a skilled worker applicants must earn at least 67 points in the six selection criteria: education, proficiency in the two official languages; work experience; age; secured employment in Canada; and adaptability, assessed according to whether the applicant has, *inter alia*, previously studied or worked in Canada or has family members living there.

In the **United Kingdom**, the pilot Highly Skilled Migration Programme requires candidates to accumulate points based on the following criteria:

- Education qualifications (30 points for PhD, 25 points for a Master's, 15 points for a graduate degree)
- Work experience (25-50 points)
- Past earnings over the 12 months prior to the application (25-50 points) – young professionals (under 28 years of age) are required to meet a lower earnings limits, and the income level the applicant is required to demonstrate is adjusted to their country
- Achievement in the chosen field (15-25 points)
- Partners' achievements
- Knowledge of English is also mandatory, and applicants must also demonstrate ability to continue to work in their chosen field in the United Kingdom; sufficient savings and potential income to accommodate and support themselves and their families without recourse to public funds while they look for work; and willingness to make the United Kingdom their main home.

Applications from doctors (general practitioners) are currently give priority.

The **United Kingdom** is planning to incorporate the existing points-based Highly Skilled Migration Programme and the Ordinary Work Permit Scheme into an integrated Points-Based Migration System. The system will define five tiers, from the highly-skilled (Tier 1) to temporary workers (Tier 5), and applicants in each tier will be required to earn sufficient points awarded for attributes which predict a migrant's success in the labour market, as well as control factors relating to whether an applicant is likely to comply with the conditions of their stay.

In a 2006 position paper the government of the **Netherlands** announced its intention also to introduce a points system.

The main advantage of points systems is that points can be modulated year by year and by varying the criteria for obtaining bonus points. Governments can thus easily steer the system. At the same time points systems have three major drawbacks. First, they imply a system for verifying qualifications and diplomas awarded in countries of origin, which is not always easy. Second, they assume the 'transferability' of qualifications, thus for example that a university degree has the same value as a qualification, whatever the country in which it is awarded. Third, they assume that qualifications are equivalent to skill; that educational level guarantees a worker's competencies. The way that the **United Kingdom** has tried to overcome these problems is to add a wage level requirement to the points system, determined by region of origin. In effect the assumption is that a high salary in the region of origin is an indicator of recognition of qualification and skill.

5.1.2 Work permits

While work permits are usually issued for temporary employment, mechanisms are increasingly being applied that may eventually lead to free access to the labour market (Section 6.2) and a secure or permanent residence for work permit holders (see Section 6.6). This is more generally the case for skilled than lower-skilled workers (Cholewinski, 2005; Ruhs, 2005b).

Although the rules that apply to the work permit system vary across countries, the following procedures normally apply (OSCE/IOM/ILO, 2006):

- Application for admission is usually made outside the country in response to a formal job offer
- Permission for admission is granted by consular officials in the origin country
- An employment or work permit is granted to the employer or workers, or sometimes both
- The worker often has to obtain separate permission for residence
- The employment or work permit is time-limited, but can usually be renewed if the job is still available
- Free access to employment of their choice can be granted to migrant workers after a certain number of years of work or residence

In the **United Kingdom** the Ordinary Work Permit Scheme is aimed at skilled workers. Entrants under this scheme have the right to apply for permanent residence after five years. The scheme is in effect a demand-driven system because it is the employer who applies for the work permit.

The scheme is divided into two parts: Business and Commercial work permits and Training and Work Experience work permits. Business and Commercial work permits are divided into two tiers. Tier 1 includes Intra-Company Transferees (ICTs), board-level posts, positions related to inward investment, sponsored researchers, and skills shortage occupations (including all health care workers). Tier 2 encompasses all other posts. Business and Commercial work permits are also subject to a series of skills, qualifications and experience criteria. No labour market test is applied in respect of Tier 1 work permits. In contrast a labour market test is applicable for Tier 2 work permits, and the employer has to advertise the position for at least four weeks before submitting a work permit application.

The Training and Work Experience work permit is issued for temporary positions for training and work experience and beneficiaries are normally not able to switch to Business and Commercial work permits. Workers with these permits must leave the United Kingdom for a period of between 12 and 24 months before they can return on a further permit.

In **Ireland** a new Employment Permit Act entered into force in January 2007, with a view to favouring skilled labour immigration from outside EU and European Free Trade Association (EFTA) countries. Among the key changes was the introduction of a so-called Green Card for highly skilled employees in most occupations with an annual salary above EUR 60,000, and in a restricted number of occupations in sectors with skills shortages with an annual salary range between EUR 30,000 and EUR 60,000. Applicants do not need to pass a labour market test. A new intra-company transfer (ICT) scheme has also been established to facilitate the transfer of key personnel and trainees.

Foreign nationals who do not qualify for a Green Card or ICT Permit in Ireland may apply for a Work Permit. In most cases, the foreign national must earn at least EUR 30,000. On a limited basis, work permits may be issued for positions with annual salaries below EUR 30,000. There is a list of low-skilled occupations for which a Work Permit will not be issued. A labour market test is required. Either the employer or the foreign national may apply for the Work Permit.

Under the Immigration Act in **Germany**, highly skilled workers, such as senior academics, researchers, and senior managers in business and industry, may be granted permanent residence upon arrival. Self-employed foreigners may also immigrate to Germany if their business is of economic interest and can be expected to have a positive economic impact.

Canada also has an entry route for business immigrants, covering investors, entrepreneurs and the self-employed. The qualifying criteria for investors include: prior business experience; a legally obtained minimum net worth of CDN \$800,000; and a written indication of the intention to invest at least CDN \$400,000. The criteria for entrepreneurs and the self-employed vary in detail, but also include a commitment to create employment for Canadian citizens.

In **Japan** there are five different categories of work permit for skilled workers: intra-company transferee; investor or business manager; legal or accounting services; engineers; and specialists in international services. These work permits are issued for one to three year durations at the discretion of the Immigration Bureau. Extensions can be filed in Japan.

In **France** there are four types of business work permits: *Détachement*, for assignees who will remain on the payroll of their foreign employer; *Introduction*, for assignees entering France to provide services to client companies and who will be placed on a French payroll; *Carte Compétences et Talents*, a three-year combined residence and work permit for influential cultural and scientific figures and exceptional athletes; and *Carte de Séjour Salarié en Mission*, a three-year combined work and residence permit for *Détachement* and *Introduction* eligible individuals who are intra-company or intra-group transferees and have worked for an affiliated foreign entity for a minimum of three months. Applicants for the *Carte de Séjour Salarié en Mission* are exempt from the labour market test that applies to the *Détachement* and *Introduction* permits.

Work permit regulations may be less rigorous where foreign workers are being attracted to fill particular skills gaps in the labour market. In **Canada**, for example, there is a permit for facilitated entry for Information Technology (IT) workers, falling into one of seven IT job descriptions. Similarly in **New Zealand** there is an accelerated procedure for applicants for work permits in the health sector.

There are a number of drawbacks with work permits systems. First, where work permits are held by the employer and not the worker, there is a risk of exploitation. If the employer holds too much authority over the worker, this may lead to abusive situations, particularly if it is difficult or impossible for the migrant to change employment while he or she is in the country (see Section 6.2 below). A study in **Ireland**, for example, demonstrated that the Irish Work Permit System can be an obstacle to access for migrant workers to dispute-resolution mechanisms. It demonstrated that the 'fear factor' is the single most important factor influencing workers in not taking action against an exploitative employer. They are fearful of intimidation, losing their job and being without income. However, their greatest and over-riding fear is that of losing their work permit and being deported. They are therefore unwilling to take any action that might result in their being dismissed by their employer and thus becoming undocumented.

Consequently, one way of affording protection generally to migrant workers in ordinary work permit employment is to ensure that they hold the work permit and that they have the right to change employer after a short period (see Section 6.2).

A second drawback is that the increasing diversity of work permits has resulted in a growing number of new types of residence permit. The **United Kingdom** is currently streamlining its procedures to try to rationalize the multiple permits available. To date, all foreign nationals seconded to **France** temporarily have been required to hold two permits -

a nine-month work permit and one-year residence permit - both of which have needed to be renewed separately. The new Act introduces a new three-year permit that combines work and residence authorization for assignees who are intra-company and intra-group transferees. For such individuals, the combined residence and work permit will replace the current system of applying for two permits. However, foreign nationals entering France to provide services to client companies must continue to apply for the nine-month work permit and one-year residence permit.

Third, there have been criticisms that work permits systems can be overly bureaucratic.

Finally there are concerns that work permit systems may exacerbate the 'brain drain'. One response, in **France**, is that work permits are only issued to qualified immigrants from a developing country if the sending country has signed a co-development agreement with France or if the immigrants in question agree to return to their country of origin within six years.

5.1.3 Students

In several destination countries new attention is being paid to the future of foreign students. More and more countries have come to regard students as future skilled workers who should be encouraged to stay in destination countries either long term or at least for a number of years after they graduate.

The 2006 law in **France** made access to employment easier for foreign students and they can now work for up to 60 percent of the annual working time specified in the Labour Code. Those with a Master's degree are allowed to stay after their studies for six months to find a job related to their training. If successful they may obtain a renewable residence permit of one year duration.

The 2007 Employment Permit Act introduced a similar two-stage system in **Ireland** which permits graduates of tertiary education institutions in Ireland to remain in Ireland for six months after termination of their studies to search for employment. If they are then offered a job, they can apply for a change of status.

The 2006 position paper of the government of the **Netherlands** also envisages an extension of the period of job search during which a graduate is allowed to stay in the country and to lower the current income thresholds for jobs.

In **Canada**, a significant new policy initiative in 2005 was the expansion of initiatives to attract foreign students. Foreign students at Canadian post-secondary institutions, who previously were entitled to work for a year after graduation outside Canada's main cities, can now prolong for a second year. Since April 2006, foreign students have also been allowed to seek off-campus employment during their studies.

In **Japan** foreign students are described as 'ambassadors for the future' and the government is developing new policies to enhance entries of foreign students. At the same time there is some concern that migrants entering as foreign students intend to work rather than study, and revisions of student entry procedures are taking place within the wider context of immigration control.

5.2. Temporary labour migration programmes

Temporary labour migration programmes are designed with the intention that migrant workers will return home after the completion of their employment. Consequently, the arrangements for hiring temporary workers are normally much more flexible than those under work permits (OSCE/IOM/ILO, 2006).

5.2.1 Types

There are many types of temporary labour migration programme and many levels of government involvement in their design and operation. The conditions attached to them also vary widely, for example as regards their duration, the possibility for renewing them, the extent to which they permit dependents to join the foreign worker in the country of destination, and the extent to which they tie workers to specific employers. These are discussed in more detail in the Section 6. The main types of temporary labour migration programme across the study countries are: seasonal programmes, sector-based schemes, working holidaymaker schemes, trainee programmes, and domestic workers (Martin, 2007).

The most common temporary labour migration programmes are seasonal labour migration schemes. They tend to:

- Be valid for limited periods of time only
- Require workers to return home for a defined period before re-entering the country
- Target migrant workers from specific countries
- Extend very limited rights to migrant workers.

The procedural criteria and conditions for seasonal work in **Italy**, for example, include:

- Duration of seasonal work permit can range between 20 days to a maximum of nine months
- Seasonal migrant workers have priority for re-entry into Italy
- After two years of employment, migrant workers may obtain a three year work permit
- Family reunion is limited to spouses and minor children

The key admission criteria under the Seasonal Agricultural Workers Scheme (SAWS) in the **United Kingdom** are:

- Applicants must live outside the EEA, be 18 years of age or older, and be students in full-time education
- Applicants must approach nominated recruitment organizations directly, or through their university or college
- Successful applicants receive a work card
- Entry clearance must be obtained from the nearest British diplomatic mission

- Dependents cannot accompany the SAWS workers

In **Germany** the seasonal workers programme operates under MoUs signed by the German Labor Ministry and Labour Ministries in source countries, in particular Poland. The German Employment Service tests the local labor market, and also monitors employers on rights. In 2006 a new regulation was introduced which specified that ten percent of seasonal workers are now expected to be recruited from the German labour market instead of from central and eastern Europe.

In order to make up for sector-specific labour shortages, temporary migration programmes may admit migrants for employment in specified sectors only. In the **United Kingdom** the Sector Based Scheme (SBS), for example, is intended for the temporary employment of workers in low-skill occupations in the food manufacturing and hospitality sectors. Key features and criteria include:

- Applicants must be aged between 18 and 30
- Entry clearance must be obtained from the nearest British diplomatic missions
- Work permits will only be issued for a maximum of 12 months and migrant workers must leave the United Kingdom after this period
- Employers are obliged to inform the authorities if they have any doubts as to whether the workers has left the United Kingdom
- Switching from SBS to another work permit scheme is not permitted
- Previous holders of an SBS work permit may re-apply for admission under the SBS for another permit, but only after they have been outside the United Kingdom for at least two months
- Dependents cannot accompany the SBS work permit holder to the United Kingdom

Australia has an expanding and innovative Working Holiday Maker (WHM) scheme. From 1 July 2006 people admitted under the WHM scheme have been able to study or train for up four months and work for up to six months with any one employer. The range of industries covered by the scheme has expanded from agriculture to include other primary industries. An additional amendment is that WHMs who have completed at least three months of seasonal work in regional Australia are now able to apply for a second WHM visa.

Japan currently implements a Working Holiday Maker programme for Australia, New Zealand, Canada, South Korea, France, Germany and the United Kingdom. The government is currently streamlining procedures for the scheme, while the Ministry of Foreign Affairs is also considering expanding the range of countries subject to the programme.

In the **United Kingdom** the Training and Work Experience Work Permit is issued for temporary positions for training and work experience and beneficiaries are normally not able to switch to other work permits. Workers with these permits must leave the United Kingdom for a period of between 12 and 24 months before they can return on a further permit.

In **Japan** training and technical internship programmes are well-established. At times interns have overstayed their visas at the end of the programme period, and there have also

been concerns that some interns have not received their allowances or full wages. A current review is seeking to respond to these challenges. First, a new residence status is being developed for interns, with clear limits on duration. Second, interns are being better informed of their rights while employers are being more closely monitored.

In the **Republic of South Korea**, the Employment Permit Scheme in place since 2004 was expanded in January 2007 to replace the Industrial Trainee System which has been phased out. Introduced in 1994, the Industrial Trainee System used to be the main framework for the admission of low-skilled labour migrants. Targeted at menial occupations, migrants under this scheme were formally considered as trainees and as a result did not enjoy the legal status of workers. This practice often resulted in below-minimum wages. In contrast, the new Employment Permit System, while still focusing on low-skilled occupations, provides these migrants the same basic rights and treatment in the labour market as Korean nationals. Employers must also pay into the social security system for these workers.

In many countries the treatment of domestic workers has been criticized (GCIM, 2005). The ILO has identified a number of fundamental steps for the protection of domestic workers, including: legislation, policy development, monitoring, prohibiting abuse, prosecution, and labour market flexibility (OSCE/IOM/ILO, 2006). Across the study countries, the Live-in Caregiver Programme in **Canada** is widely cited as providing best practice in this area. Importantly, it allows workers to change employers whilst in the country provided that the new employment offer is confirmed by the authorities, although the workers themselves appear not always to be aware of this right. Trade unions across Western Europe have been active in protecting migrant domestic workers: in **Spain**, for example, the *Unión General de Trabajadores* (UGT) has undertaken significant work. In **France** employers are offered financial incentives to declare cleaning women to the social insurance and tax authorities.

A type of temporary labour migration specific to **Germany** is the system of secondment under *Werkvertrag*, where contract workers are posted to Germany for employment, but continue to be employed by their employer in the origin country (Martin, 2007).

5.2.2 MoUs and bilateral agreements

Temporary labour migration programmes may be open to nationals of any country, as is usually the case for skilled migration programmes or those targeting specific sectoral shortages, or they may operate on the basis of bilateral recruitment agreements and MoUs (OECD, 2004). Current examples of MoUs include some of the recent programmes signed between **Spain** and major origin countries for migrants there, including Columbia, Ecuador and the Dominican Republic; and between **Germany** and Poland to facilitate a contract worker scheme.

The main difference between MoUs and bilateral agreements is that the latter are legally binding. There has been a significant increase in bilateral agreements in recent years – in 2004 there were reported to be 176 bilateral recruitment agreements signed by OECD countries (OECD, 2004). The reason that increasing numbers of countries are signing bilateral labour agreements is that they offer an effective method for regulating the recruitment and employment of foreign workers; they allow for greater state involvement in the migration process; they can be tailored to the specific supply and demand characteristics of the origin and destination countries; and they can provide effective mechanisms for protecting migrants.

Destination countries normally select bilateral partner origin countries for four main reasons (Bobeva and Garson, 2004). Some countries use bilateral agreements to manage

migration by asking sending countries to sign in exchange readmission agreements for migrants in an irregular situation – this is the case of agreements signed between **Italy** and Romania, and between **Spain** and Morocco. Some countries may wish to promote specific economic ties or wider regional economic integration, as is the case of bilateral agreements signed between **Germany** and some central and eastern European countries. Another objective is to strengthen cultural ties between partner countries, as is the case for the Working Holiday Maker programme in **Australia**. Finally, some countries may sign bilateral agreements to prevent indiscriminate international recruitment in specific sectors, especially health – this is the case for a number of bilateral agreements between the **United Kingdom** and sub-Saharan African nations.

It is worth noting that this range of goals makes the effectiveness of bilateral agreements difficult to gauge, because at times these goals can conflict, and ‘...the effectiveness of agreements will depend on the weight assigned to each goal’. (OECD, 2004:8).

ILO has identified 24 basic elements of bilateral labour agreements (Table 3.1).

Table 3.1 – 24 basic elements of bilateral labour agreements

1.	The competent government authority	13.	Employment contract
2.	Exchange of information	14.	Employment conditions
3.	Migrants in an irregular situation	15.	Conflict resolution mechanism
4.	Notification of job opportunities	16.	The role of trade unions and collective bargaining rights.
5.	Drawing up of list of candidates	17.	Social security
6.	Pre-selection of candidates	18.	Remittances
7.	Final selection of candidates	19.	Provision of housing
8.	Nomination of candidates by the employers	20.	Family reunification
9.	Medical examination	21.	Social and religious organizations
10.	Entry-documents	22.	Establishment of joint commission
11.	Residence and work permits	23.	Validity and renewal of agreement
12.	Transportation	24.	Applicable jurisdiction

Source: Geronimi (2004)

MoUs or bilateral agreements may also be agreed between the government of the origin country and representatives of specific employment sectors in the destination country. One example is the MoU adopted between the Philippines government and the Department of Health in the **United Kingdom**. Provisions in such sector-based MoUs may include the identification of longer-term measures to be taken by employers in that sector for filling labour shortages domestically. Consequently they may provide for temporary foreign labour migration in the short-term, but preclude such migration becoming a permanent solution over the long-term. Employers may also be subject to obligations to guarantee security in the workplace and provide basic language training necessary for undertaking the work (OSCE/IOM/ILO, 2006).

Alternatively MoUs or bilateral agreements may be agreed by particular sub-national regions in destination countries to respond to specific local labour shortages. **Australia**, **Canada**, and **Italy** have all merged regional and rural development with immigration goals. In **Italy**, for example, the Friuli-Venezia-Giulia region has been actively recruiting agricultural workers in Romania.

5.2.3 Recruitment

In some countries recruitment of temporary labour to fill sectoral gaps in the labour market takes place by the government, either centralized at the national level or devolved to local or regional authorities. In **France** and **Italy**, recruitment occurs in regional employment offices that monitor labour shortages in their areas. Some countries also recruit directly in origin countries, through the creation of representative offices abroad. In the case of **France**, the *Office des migration internationales* has offices in Morocco, Poland, Tunisia and Turkey to run recruitment services and expedite permit applications.

In most OECD member countries senior staff in employment, labour or immigration ministries conduct the negotiations with other governments. In a few cases, however, national employment offices develop and implement the recruitment procedure with origin countries. An example is in **Germany** where the Federal Employment Agency hires seasonal workers directly in the origin countries through their respective local employment services. Policy development and design of recruitment schemes normally also occurs within employment, labour or immigration ministries. Often these schemes are designed with assistance of or consultation with representatives of employers, trade unions, and foreign workers.

In **Spain** the government contracts the International Organization of Migration (IOM) to recruit low skilled temporary workers from Ecuador on its behalf. This recruitment process involves IOM staff and officials of the Ecuadorian and Spanish governments, with employers playing only an indirect role. Spanish enterprises register their labour needs with their embassy in Quito, but IOM manages a database of Ecuadorian applicants and selections are made by a team from IOM and the Spanish Ministry of Labour. IOM then works on the drafting of contracts and helps migrants secure passports, visas and tickets for the journey. The Government of Guatemala, IOM and FERMES, an agricultural non-profit agency in Quebec operate a similar arrangement for agricultural workers on temporary schemes in **Canada**.

Recruitment can also be managed by employers facing labour shortages. They sometimes recruit directly in origin countries where no bilateral agreements exist, as is the case for employers in **Ireland** and the **United Kingdom**. In other cases they can use intermediaries such as private recruitment agencies in sending or receiving countries. In the **United Kingdom**, for example, there are nine approved Seasonal Agricultural Workers Scheme (SAWS) operators. Five of these are sole operators that recruit SAWS participants to fill their own seasonal worker need. Four are multiple operators that recruit SAWS participants on behalf of farmers and growers in the United Kingdom. The operators are responsible for:

- Sourcing and recruiting eligible workers to take part in the scheme
- Assessing and monitoring the ability of employers to provide suitable work placements to SAWS workers
- Ensuring workers are treated fairly and lawfully
- Ensuring farmers and growers are provided with people who are suitable to do the work on offer

The recruitment procedures of the Commonwealth Caribbean and Mexican Agricultural Seasonal Workers Programme in **Canada** are often cited as a model. The programme allows Canadian farmers to import foreign workers for up to eight months a year from a range of countries including Guatemala and Mexico. In both cases migrant workers are recruited and employed under the terms of a government-to-government MoU

that makes the Mexican and Guatemalan governments responsible for recruiting workers and negotiating their wages with Canadian authorities. A second programme admits Guatemalan workers specifically to Quebec, Alberta and British Columbia. The Guatemalan Ministry of Labor recruits workers, and the Guatemalan consulate in Montreal provides liaison services to migrants while they are in Quebec.

A third main mechanism for recruiting foreign workers is private recruitment agencies. These operate in both origin and destination countries. Their function can range from a straightforward matching service to a comprehensive hiring package consisting of recruitment, skills testing, travel, visa, and living arrangements (OECD, 2004). Criticism of private recruitment agencies occurs mainly when there is evidence of corruption in some agencies that do not provide socially protected jobs. Such agencies have been accused of requiring excessively high commissions, and providing unsafe and unsanitary work and living conditions. The method for recruiting workers for the United Kingdom's Sector Based Scheme, for example, involves private agencies in sending countries operating unregulated to match workers to individual employers, with no reference to state institutions until the employer applies for the work permit.

6. Conditions attached to the employment permits

There is wide range of experiences among the study countries relating to the conditions attached to employment permits, as regards their duration and renewability; occupational mobility; procedures governing migrants' rights upon loss of employment; possibilities for permanent residence; family reunion; and other social rights. As a generalization, better conditions are attached to employment-based immigration programmes, and offered to skilled workers.

6.1 Duration and renewability

The length of time a work permit is valid needs to be considered carefully as it can have important consequences. Programmes with permits with too short a duration and no possibility for renewal may find it difficult to attract even unskilled workers. One often-cited criticism of the **United Kingdom** Sector-Based Scheme (SBS) for temporary labour migration, for example, is that it only permits entry for one year initially, which it is argued is not sufficient time for most labour migrants to generate the net financial gains necessary to make migrating financially worthwhile. This is especially the case for migrants travelling long distances, who will normally incur greater initiation costs than those moving shorter distances. Similarly the period of six months offered to graduating students to find work in **France** has been found to be insufficient – one study found that on average higher education graduates take eight months to find a job. Finally, in the context of a global competition for a limited pool of skilled workers, programmes that do not guarantee long term legal security are unlikely to attract the best workers.

Most seasonal temporary labour migration programmes impose quite strict limits on permit holders. Seasonal workers admitted to the **United Kingdom** under the SAWS programme, for example, are issued a work card with a validity ranging from five weeks to six months. If the work card is issued for less than six months, it is possible to apply for a new work card when the first one expires. Any new work card will take into account any time already spent as a seasonal worker – for example if the original card was valid for two months the new card will be valid for no longer than four months. Six months is the maximum period permissible for seasonal employment under the SAWS programme. After six months it is not possible to extend the work card. Workers are permitted to reapply to the SAWS programme after a three month gap, during which time they will not have permission to remain in the United Kingdom. In contrast, in **Italy** seasonal migrant workers may obtain a three year work permit after two years of employment for a limited or unlimited time if the conditions to do so exist. Applications are made on their behalf by an Italian employer.

In **France** a temporary residence permit is issued for three years to holders of a seasonal work contract who undertake to maintain their customary place of residence outside France. Holders may not work for more than six months in any 12 month period and may not reside in France for more than six consecutive months.

Working holiday maker schemes also tend to have limited duration. However a recent amendment in **Australia** is that WHMs who have completed at least three months of seasonal work in regional Australia are now able to apply for a second WHM visa. This is another example of more liberal regulations to attract workers to particular regions.

In contrast temporary labour migration programmes aimed at more skilled workers tend to offer longer initial periods for permits, a straightforward procedure for renewal, and often also a path to permanent residence. In **France** skilled workers are granted an initial

permit for three years and in the **United Kingdom** for five years. In **Japan** the five categories of work permit for skilled migrants are issued for one to three year durations at the discretion of the Immigration Bureau. Extensions can be filed in Japan.

6.2 Occupational mobility

There is a wide variety of experiences across the study countries regarding the extent to which migrant workers are ‘contract workers’ tied to a particular employer, or ‘free agents’ with uninhibited access to the labour market.

In general, entrants under highly skilled migration programmes can be free agents, either immediately upon entry or after a certain number of years – although there are exceptions. Low-skilled migrants in contrast tend to be tied to particular employers either for the duration of their permit or for longer periods than is the case for highly-skilled migrants, and the rules governing their access to other jobs are more rigorous.

Regional free labour markets such as the EU allow freedom of movement, so that EU nationals can move and seek jobs on an equal basis with local workers. Foreign students, working holiday makers, and other migrants who are primarily in the destination country for a purpose other than work, are also generally free agents in the labour market. Their employers need only satisfy minimal wage laws (Martin, 2007).

Particularly highly-skilled workers may be granted immediate open access to the labour market. The Highly Skilled Migrant Programme in the **United Kingdom**, for example, allows foreign professionals with sufficient points to work as free agents. In contrast the H1-B visa in the **United States** restricts even highly-skilled migrants from changing employers. The visa enables employers to hire foreign professionals with at least a university education. Even though H1-B visa holders can remain in the country for six years and in time be granted permanent residence status, they are essentially tied to their employers. The United States does offer programmes with more freedom but on a much smaller scale than the H1-B. Foreign students, for example, can find jobs as an adjunct to their studies without any employer restriction. Under the North American Free Trade Agreement (NAFTA), Canadian and Mexican professionals with proof of qualifications and a job offer can enter the United States and are permitted to change employers later on (Agunias, 2007).

Skilled entrants under most work permit programmes in Europe have the ability to gain free access to the labour market (and permanent residence) after a stipulated number of years. In **Australia** the necessary period is two years, in the **Netherlands** and **Spain** three years, and in the **United Kingdom** five years.

Occupational mobility is far more restricted for low-skilled workers, in a variety of different ways. In most GCC countries, workers are sponsored by a specific employer and effectively tied to them. Under the **United Kingdom** SAWS programme, workers require prior authorization to change jobs, but must remain within the agricultural sector and cannot switch into work permit employment. The ‘attestation’ procedure in the **United States** in effect restricts the sectors into which migrant workers can move in order to prioritize the employment of national workers. In **Italy** seasonal workers are required to work for a minimum period of two years before being eligible to apply for a work permit.

In **Ireland** there are three circumstances that allow work permit holders to move jobs. One is redundancy (see Section 6.3 below). A second is under special circumstances such as workplace exploitation, and these are dealt with on a case by case basis. Third work permit holders may change job after one year but only to a job within the same employment sector.

Advocates frequently argue that freedom to change jobs in destination country labour markets can be an important protection for lower-skilled migrants, allowing them to escape abusive employers, for example in the context of domestic work in GCC countries (Shah, 2007). However, most temporary migration programmes aim to fill particular job vacancies, so that most temporary workers are required to work for the employer whose need for migrants has been certified, for example through labour market tests. The cases in which governments do not officially determine that migrants are needed, such as intra-EU migration, generally involve relatively small numbers of migrants or involve migrants whose primary purpose is something other than work.

Across the study countries, the Live-in Caregiver Programme in **Canada** is widely cited as providing best practice in this area. Importantly, it allows workers to change employers whilst in the country provided that the new employment offer is confirmed by the authorities, although studies have also demonstrated that the workers themselves appear not always to be aware of this right.

Recognizing the reluctance of most governments to provide total labour market flexibility for temporary migrants, one proposal is more systematically to facilitate the portability of temporary work permits within a defined job category and after a certain period of time (Ruhs, 2006), as already takes place in a piecemeal manner in a number of study countries. The duration of the period could be determined on the basis of a realistic assessment of the time needed for employers to recover at least part of their original migrant worker recruitment costs (IPOL, 2007).

Even where unskilled migrant workers do have limited rights regarding occupational mobility, they have been found in various studies either not fully to understand their rights, or to be nervous to assert them. Various strategies, including the right to trade union membership and collective bargaining, information dissemination, and access to NGOs, have been proposed to try to bridge this gap. This has been a vigorous recommendation for improving the SAWP programme in **Canada**, for example.

6.3 Loss of employment

There is a consensus in the specific ILO and UN standards that if a migrant worker loses his or her job, he or she does not necessarily or immediately have to leave the country but should be viewed as part of the normal workforce. In cases in which migrants involuntarily lose their jobs because of illness, or because the employer terminates the employment relationship or goes bankrupt, ILO Convention No.143 (Article 8) considers that:

1. On condition that he has resided legally in the territory for the purposes of employment, the migrant worker shall not be regarded as in an illegal or irregular situation by the mere fact of the loss of his employment, which shall not in itself imply the withdrawal of his authorization of residence or, as the case may be, work permits.
2. Accordingly, he shall enjoy equality of treatment with nationals in respect in particular of guarantees of security of employment, the provisions of alternative employment, relief work and retraining.

There is a consensus that a reasonable period (not less than six months) to seek employment in the event of the termination of previous employment and equality as regards access to core benefits are basic rights that should be granted even to temporary migrants to empower their rights and protect them from exploitation (IPOL, 2007).

In **Ireland**, the national Training and Employment Authority (FAS) has recently confirmed that non-EEA work permit holders who have been made redundant can access both the self-service facilities of the FAS Employment Services offices as well as availing of an interview with an Employment Services Officer if they wish. In addition, a new policy has been agreed whereby work permit holders who become redundant can now be registered on FAS's database and actively matched against any suitable and available jobs.

6.4 Social benefits

Other social rights, for example access to public services, also vary between countries and programmes.

In **Ireland**, migrant workers' access to public services and benefits, including unemployment benefits, is regulated by the 'habitual residency test', which means that migrants become eligible for certain benefits only after they have been in the country for a certain minimum period of time (Ruhs, 2006). The term 'habitually resident' is not defined in either Irish or EC law, but it is intended to convey a degree of permanence evidenced by a regular physical presence enduring for some time. It implies a close association between the applicant and the country from which payment is claimed and relies heavily on fact. The following are the relevant factors which have been set down in Irish and European law:

- Length and continuity of residence in Ireland or in any other particular country
- Length and purpose of any absence from Ireland
- Nature and pattern of employment
- Applicant's main centre of interest
- Future intentions of applicant as they appear from all the circumstances.

A migrant worker must be habitually resident in Ireland to qualify for the following payments:

- [Jobseeker's Allowance](#)¹
- [State Pension \(Non-Contributory\)](#)¹
- [Blind Pension](#)¹
- [Widow\(er\)'s Non-Contributory Pension](#)¹
- [One-Parent Family Payment](#)¹
- [Carer's Allowance](#)¹
- [Disability Allowance](#)¹
- [Child Benefit](#)¹

¹ <http://www.citizensinformation.ie/categories/social-welfare/social-welfare-payments/>

- [Supplementary Welfare Allowance](#)¹

Another issue that arises in this context is the extent to which any contributions made by migrant workers to social security systems are portable back to their origin country. In most of the study countries bilateral agreements include provisions for portable benefits.

In **France**, national law guarantees general exportability of contributory benefits like old-age, survivor, and other pensions. In addition, France has concluded around 30 social security agreements with countries outside the EU. These bilateral agreements are less advanced in their coordination of portability of social security rights than the EU agreements and do not cover complementary pensions, unemployment, and noncontributory allowances, but include provisions on the portability of old age, survivor, disability, and work accident pensions.

Germany has concluded bilateral social security agreements with 18 countries outside the EU, including all its main migrant-sending countries like Turkey and the countries of the former Yugoslavia. It is also with these countries that Germany has included health care benefits in the bilateral agreements, namely Bosnia-Herzegovina, Croatia, Macedonia, Serbia and Montenegro, Tunisia, and Turkey.

The consensus is that best practice for benefit portability is bilateral social security agreements, preferably based on multilaterally agreed standards.

6.5 Family reunion

Other conditions attached to employment permits, for example governing family reunion and the right of dependents subsequently to work, vary across programmes and study countries.

Generally, temporary labour migration programmes deny the right to family reunion. In the **United Kingdom**, for example, dependents cannot accompany workers admitted under SAWS or SBS programmes. Similarly in the **Republic of South Korea** the Employment Permit Scheme does not allow family reunion (Park, 2004).

In contrast employment-based immigration programmes targeted on more skilled workers tend to permit family reunion, although conditions vary. In **Ireland** Green Card holders are entitled to bring their family with them, whereas holders of regular work permits must live and work in Ireland for at least one year before their family can join them. In the **United Kingdom**, Ordinary Work Permit holders may also be joined by a dependent, defined as a husband, wife, civil partner or eligible partner or children under 18. Under exceptional circumstances work permit holders in the United Kingdom may also be joined by children over 18 and dependent parents. In both cases the dependents require a visa, and proof must be provided that they can be supported without drawing on public funds.

Procedures also vary as regards the ability of dependants to work. In the **United Kingdom** dependents of Ordinary Work Permit holders are entitled to undertake any employment or self-employment provided they hold a valid United Kingdom Entry Clearance. In **Japan**, dependents of all five categories of skilled migrant work permit holders are eligible to apply for a part-time work permit which allows part-time employment of up to 28 hours per week.

¹ <http://www.citizensinformation.ie/categories/social-welfare/social-welfare-payments/>

In **France**, in an effort to prevent immigrant families from becoming dependent on France's welfare system, the law requires immigrants to prove they can independently support all family members who seek to come to France. Specifically, they must earn at least the French minimum wage and not be reliant on assistance from the French state. Access to government assistance is also limited to EU citizens. Those who reside in France longer than three months without working or studying must be able to support themselves without relying on social or medical benefits from the French government.

6.6 Possibilities for permanent residence

Employment-based immigration programmes, such as those in **Australia**, **Canada** and the **United States**, tend to be oriented towards the possibility for permanent residence, and the main variation is the number of years a worker needs to wait before being permitted to apply.

Entrants to the **United Kingdom** under the Highly Skilled Migration Programme are eligible to apply for permanent residence after five years. The stipulated time period for comparable skilled migration programmes varies across the study countries, from two years in **Australia** to three years in the **Netherlands** and **Spain**. Green Card holders in **Ireland** can apply for permanent residence after two years, while Work Permit holders may apply for permanent residency after five years. The government of **Japan** is also considering new regulations to facilitate the acquisition of permanent residence rights by highly-skilled foreign workers.

Possibilities to apply for permanent residence for workers admitted on temporary migration programmes are more limited. Destination states use a range of criteria to decide whether to grant permanent immigrant status to migrants employed on temporary work permits, and these may vary over time (Ruhs, 2006).

Some destination countries facilitate a strictly limited and regulated transfer of migrants employed on temporary labour migration programmes into permanent residence based on a set of clear rules and criteria. One alternative is a 'points' system. To be eligible for permanent residence in **Canada**, for example, applicants must:

- Meet certain minimum work experience requirements
- Prove that they have the funds required for settlement
- Earn enough points on six selection factors – education, language skills, experience, age, arranged employment in Canada and 'adaptability'

Under the Live-in Caregiver Programme in Canada, migrants can apply for permanent residence after working for a cumulative period of two years and within three years of their arrival.

Destination countries may also grant temporary migrants permanent residence on non-economic grounds such as marriage to a citizen or a permanent residence. Under the new Immigration and Integration Law in **France**, spouses of French citizens must wait three years (instead of two previously) before applying for a ten year residence permit. Four years of marriage are required for the spouse of a French citizen to apply for French citizenship.

A third position is never to grant permanent residence to any – or certain categories of – migrant workers admitted on temporary permits. The current work permit policies of many of the GCC states are cases in point. In Kuwait, for example, there is effectively no

possibility for migrants employed on temporary work permits to acquire permanent residence.

7. Implementation

The analysis in this study is intended as a first step in assisting national reviews of policies and procedures for the admission of migrant workers. In this final section a number of concluding remarks are offered concerning next steps.

First, care is needed in assessing the extent to which policies and procedures in other countries can be directly transferred. As already indicated, the specific policy goals for labour migration will influence their configuration, and it is also important to consider alternative strategies. Furthermore it is important that policies and procedures are tailored to the national context. There are significant contextual differences between the study countries that are manifest in differences in, for example, levels of economic development, regulation of labour markets, culture, establishment of democratic institutions, international relations with origin countries, the role and independence of the judiciary, and the capacity of the state to act and implement certain policies. Finally, in general it is very difficult to evaluate how effective labour migration policies are and thus which might work best elsewhere. Pilot programmes are a common method for testing new policies on labour migration.

Second, it is important to understand that the success of labour migration programmes requires complementary policies. These include a strong policy commitment to enforcing immigration and employment laws, especially against employers; active regulation of the cost at which migrant workers are made available to employers; and more effective mechanisms for encouraging employers to search for local workers before demanding migrant labour (Ruhs, 2006). Specific policies and procedures for employment and work permits should be part of a wider policy framework.

Finally, it is important that new policies conform to international standards for the protection of migrant workers. ILO Conventions and Recommendations establish a core set of rights for migrant workers and encourage the development and sharing of best practices worked out in social dialogue between unions, employers, and governments. The rights of migrant workers should include equal protection under labour, anti-discrimination and family law. Best practice stresses empowering migrants by providing them with information about their rights in the labour market, giving them the identification and rights needed to access banks and other institutions abroad, and developing incentives to encourage migrants to report the worst abuses of their rights.

Annex 1: Country overviews

Australia

Between 2005 and 2006 143,000 permanent migrants were accepted in Australia, of whom two thirds were admitted in the skilled migrant stream. The points-tested skilled independent category accounted for 50,000 migrants and dependents. The number of admissions sponsored by the States and Territories increased twofold to 8,000. There were also significant increases in temporary migration. Over 190,000 visas were issued to foreign students, and 130,000 under the Working Holiday Maker (WHM) programme.

The main policy change was to the WHM programme. From July 1 2006 people admitted under this programme have been able to study or train for up four months and work for up to six months with any one employer. The range of industries covered by the scheme has expanded from agriculture to include other primary industries, in order to help address seasonal labour shortages in regional Australia. An additional amendment is that WHMs who have done at least three months of seasonal work in regional Australia are now able to apply for a second Working Holiday visa.

For further information see: www.immi.gov.au

Canada

In 2006 over 260,000 people were admitted to Canada as permanent residents. This was a significant increase on 2005, and the most significant increase was for work related migration, which accounted for 60 percent of permanent immigration. One of the main reasons for the overall increase was greater involvement in the immigration process by provincial and territorial governments, targeting specific local economic needs. Temporary labour migration also grew to about 100,000.

A significant new policy initiative in 2005 was the expansion of initiatives to attract foreign students. Foreign students at Canadian post-secondary institutions, who previously were entitled to work for a year after graduation outside Canada's main cities, can now prolong for a second year. Since April 2006, foreign students have also been allowed to seek off-campus employment during their studies.

For further information see: www.cic.gc.ca/english/index.html

France

About 9,000 permanent migrant workers entered France in 2005, comprising a small proportion of total permanent immigration which was dominated by permanent entries for family reasons.

On 24 July 2006 a new Immigration and Integration Act entered into force, with an intention of attracting more skilled labour and facilitating temporary migration. It created three new three-year residence permits for highly qualified workers, for staff who have been seconded in France by their enterprise, and for seasonal workers. It also introduced more flexible working conditions for foreign students, allowing them to work up to 60 percent of their annual work time. Those with a Master's degree are now allowed to stay after their studies for six months to find a job related to their training. If successful, they may obtain a renewable residence permit of one year duration.

For further information see: www.social.gouv.fr/

Germany

Although a change in work permit systems mean that accurate data are not available, it appears that both permanent and temporary migration – including seasonal workers - declined in Germany between 2005 and 2006. The reduction in permanent migration was mainly accounted for by fewer migrants of German origin from the successor countries of the former Soviet Union. The reduction in temporary migration was mainly accounted for by policy changes: In 2006 a new regulation was introduced concerning the admission of seasonal workers, dictating that 10 percent of seasonal workers should be recruited from the German labour market instead of from central and eastern Europe.

For further information see: www.bmas.bund.de

Ireland

About 87,000 immigrants entered Ireland between 2005 and 2006, oriented towards low-skilled occupations.

A new Employment Permit Act entered into force in January 2007, with a view to favouring skilled labour immigration from outside EU and EFTA countries. Among the key changes was the introduction of a Green Card for highly skilled employees in most occupations. Applicants do not need to pass a labour market test and are entitled to bring their family with them. Green Card holders can apply for permanent residence after two years. Under the regular work permit system, on the other hand, a labour market test is required, and the testing procedure has been strengthened under the Employment Permit Act. Immigrants with a regular work permit must have been legally in the country for one year before their family can join them, and may apply for permanent residence after five years.

There are three other notable features of the new Act. First, a new Intra-Company transfer scheme has also been established to facilitate the transfer of key personnel and trainees. Second, new arrangements have been introduced to allow spouses and dependants of employment permit holders to apply for work permits without labour market testing. Third, graduates of tertiary education institutions in Ireland may now remain in Ireland for six months after termination of their studies to search for employment.

For further information see: www.entemp.ie/labour/workpermits/

Italy

Although there were no accurate data, the government of Italy reported that permanent immigration to Italy remained at its 2005 levels in 2006, mainly comprised of family reunion.

Labour immigration to Italy is governed by quotas, which were doubled compared to 2005 to 170,000 in 2006. This still proved insufficient as there were 490,000 applications. In response the government accepted all the applications filed. A major reform of the system is scheduled for discussion in parliament.

The 2006 quotas expanded the number of permits available for home and domestic workers. A new category of fishermen was added, as was the possibility to convert study and training permits into work permits.

For further information see: www.interno.it/

Japan

Immigration to Japan in 2006 grew slightly as compared with 2005, but is still low compared to most other OECD countries. The main new government policies are targeted on reducing irregular migration, especially in the form of overstayers.

For further information see: www.immi-moj.go.jp/english/

Netherlands

There was a decline in the number of permanent immigrants to the Netherlands in 2005, in particular in the shape of family reunion movements originating in Turkey and Morocco. In contrast the number of temporary work permits issued continued to grow and reached about 46,000 in 2005.

In a 2006 position paper the Dutch government proposed a new migration policy to promote highly-skilled migration, including a points system for self-employed immigrants. Improvements in residence opportunities for international students completing their studies in the Netherlands were also envisaged.

For further information see: www.ind.nl/EN

New Zealand

Over 51,000 people were approved for permanent residence in New Zealand in 2006. Temporary labour migration grew to 100,000 in 2006, comprising an increase on 2005 of some 20 percent. The number of student permits declined to 69,000.

In 2007 a new Immigration Act was introduced, simplifying visa procedures, strengthening compliance and enforcement, and developing better projections for future labour demand.

For further information see: www.immigration.govt.nz/

Republic of South Korea

Immigration to the Republic of South Korea continued to grow between 2005 and 2006 across all major visa categories.

The Employment Permit Scheme, in place since 2004, was expanded in January 2007 to replace the Industrial Trainee System which has been phased out. The new scheme, while still focusing on low-skilled occupations, provides these migrants the same basic rights and treatment in the labour market as Korean nationals. Employers must also pay into the social security system for these workers.

There are also several changes concerning procedures for admission to Korea, previously administered by private agencies who often charged excessive recruitment fees. Under the new system, the government plays a stronger role in the admission of labour migrants. Recruitment is limited to sending countries with which Korea has bilateral agreements.

For further information see: www.english.molab.go.kr

Spain

About 680,000 immigrants entered Spain in 2005 – Romania and Morocco were respectively the first and second most important origin countries.

In January 2007, cabinet passed a bilateral agreement with Ukraine to better control and manage migration movements, including the selection and pre-departure training of labour migrants.

For further information see: <http://extranjeros.mtas.es/>

United Kingdom

Between 2005 and 2006 some 427,000 registrations were received in the United Kingdom for workers from new EU member countries. About 17,600 migrants from non-EU countries were accepted under the Highly Skilled Migrant Programme (HSMP).

A new five-tier immigration system was introduced to rationalize current entry channels for work and study, and will be phased in by 2009. Tier 1 will be similar to the current HSMP. Tier 2 will be for skilled workers with a job offer who meet certain requirements. Tier 3 will concern low-skilled occupations currently covered by the Seasonal Agricultural Workers Scheme and Sectors Based Scheme.

For further information see: www.ind.homeoffice.gov.uk/

United States

During the fiscal year 2005 the US registered its highest level of permanent immigration since 1991. More than 1.1 million persons were granted legal permanent resident status (green cards). The largest increase was in the employment-based preference group (250,000 admissions).

A ‘comprehensive immigration bill’ is still being debated in Congress.

For further information see: www.dhs.gov/ximgtn/

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