

**'TOPIC INSPECTION PACK'**

**MIGRANT WORKING**

**Revised March 2010**

<b>CONTENTS</b>	<b>Page</b>
<b>Introduction</b>	<b>1</b>
<b>Definitions</b>	<b>2</b>
<b>Background</b>	<b>3</b>
<b>The UK Immigration System</b>	<b>6</b>
<b>Key Messages</b>	<b>10</b>
<b>HSE Activities:</b>	<b>13</b>
- Internal	
- External	
<b>Industries:</b>	
- Agriculture and agricultural produce processing	<b>16</b>
- Construction	<b>18</b>
- Contract cleaning	<b>19</b>
- Health and social care	<b>21</b>
- Manufacturing	<b>22</b>
<b>Intelligence Sharing/Memoranda of Understanding:</b>	<b>24</b>
- Section 28	<b>25</b>
- Legal gateways to disclosure	<b>26</b>
- Memoranda of Understanding	<b>27</b>
<b>Managing Health and Safety: Key Issues:</b>	<b>28</b>
- Terminology	
- Introduction	
- Responsibility for health and safety	<b>28</b>
- Risk assessment	<b>30</b>
- Information, instruction, training and supervision	<b>31</b>
<b>Enforcement Guidance:</b>	<b>33</b>
- Accommodation	<b>33</b>
- Transport	<b>35</b>
- Personal protective equipment	<b>35</b>
- Welfare arrangements	<b>37</b>
- Information, instruction, training and supervision	<b>39</b>
<b>Language issues</b>	<b>40</b>
<b>Other Issues:</b>	<b>43</b>
- Employers' Liability Insurance	
- Consultation	
<b>Further Information</b>	<b>44</b>

<b>Annex 1 – Joint Working Protocol</b>	<b>46</b>
<b>Annex 2 – Temporary and Migrant Workers: Basic questions to ask</b>	<b>57</b>
<b>Annex 3 – Liaison with FOD on complaints investigation and recording</b>	<b>58</b>
<b>Annex 4 – Gender issues in risk assessment</b>	<b>62</b>
<b>Annex 5 – Useful links to external websites</b>	<b>64</b>

## INTRODUCTION

1 Migration to the UK has a high profile politically and with the media. There are two main strands of concern. The first is the government's decision to allow workers from eight eastern European and Baltic Member States (Latvia, Lithuania, Estonia, the Czech Republic, Slovakia, Poland, Hungary and Slovenia) of the European Union (EU) that joined in 2004 (the so-called 'A8') to work without restriction in the UK; resulting in claims that such workers will work under less favourable employment conditions than indigenous workers. Workers from Romania and Bulgaria (the so called 'A2') were later permitted to migrate under transitional arrangements that barred them from taking most unskilled jobs in the UK, with the exception of seasonal agricultural work. It is rare for health and safety to feature in stories about such concerns, although migrant workers' lack of qualifications and experience in the sectors in which they choose to work in the UK are potential factors in incidents. Secondly, there are concerns about the exploitation of migrant workers, particularly of undocumented (illegal) migrant workers. Health and safety sometimes features in media coverage about such workers, usually as part of a wider picture, involving allegations about low wages, illegal deductions from wages, tax and benefit and poor living conditions often in respect of tied accommodation.

2 The Government has introduced a programme of reform to strengthen border controls and put in place a new partnership with employers to regulate the process for recruiting skilled workers into the country from outside the European Economic Area (EEA). These changes and the implications for the Health and Safety Executive (HSE) are described later in this Topic Pack.

3 The HSE has consistently affirmed its view that all workers in Great Britain, should be afforded the protection of health and safety law, irrespective of their migration status. HSE research published in 2006 concluded that migrant workers are at no more risk than any other workers doing the same job. A review of published research in 2008 identified no further studies suggesting an excess of incidents or ill health among migrant workers, though HSE continues to monitor the situation and review relevant research, in particular from elsewhere in the EU.

4 Figures for the numbers of migrant workers in Britain continue to be difficult to determine. The economic downturn has slowed, but by no means stopped, the number of A8 and A2 entrants, while the number of registered A8/A2 workers who have returned home due to the downturn is not known.

5 Migrant workers are employed in most commercial and industrial sectors but in particular in the agriculture and food processing, construction, healthcare, hospitality and catering, the contract cleaning industry and warehousing. Concerns over health and safety have focused on the comparatively large number of migrants employed in low-skilled, often manual, physically demanding jobs, not on the comparatively small number of highly skilled professional migrants employed for example in the National Health Service, or the financial services and IT sectors. Although some migrant workers are self-employed, some are employed directly and some employed on permanent, full-time contracts, many are supplied on a casual or temporary basis by independent labour providers based in the UK or abroad.

6 Field Operations Directorate (FOD) Management Board has agreed that migrant workers (as one category of the vulnerable worker) are one of a selection of issues that form mainstream work to be dealt with as part of the examination of a duty holder's management of health and safety. The focus of inspection activity is an assessment of the arrangements and conditions under which they are employed.

7 This Topic Pack seeks to provide:

- HSE (and local authority) staff with background information on the employment of migrant workers in the UK;
- advice and guidance on the issues that need to be considered when inspecting dutyholders who directly employ or use migrant workers supplied by independent labour providers;
- advice on sources of intelligence and opportunities for partnership working with other agencies in the public and voluntary sectors; and
- advice and guidance on enforcement.

## DEFINITIONS

8 **Migrant worker** - HSE has adopted the following definition:

- **A migrant worker is someone who is or has been working in the UK in the last 12 months, and has come to the UK from abroad in the last 5 years.**

9 **Employment Agency** – The Employment Agencies Act 1973 defines an employment agency as:

- **The business (whether or not carried on with a view to profit and whether or not carried on in conjunction with any other business) of providing services (whether by the provision of information or otherwise) for the purpose of finding workers employment with employers or of supplying employers with workers for employment by them.**

10 **Employment Business** – The Employment Agencies Act 1973 defines an employment business as:

- **The business (whether or not carried on with a view to profit and whether or not carried on in conjunction with any other business) of supplying persons in the employment of the person carrying on the business, to act for, and under the control of, other persons in any capacity.**

More information is available from the Department for Business, Innovation and Skills (BIS) **website** (formerly the Department for Business Enterprise & Regulatory Reform (BERR) at <http://www.berr.gov.uk/whatwedo/employment/employment-agencies/index.html>.

11 **Labour Provider** – A labour provider is defined as:

- **A person or corporate entity that supplies workers to a third party**

The provider may be an employment agency or business or a gangmaster.

12 **Gangmaster** – A gangmaster is defined in the Gangmasters (Licensing) Act 2004:

- **A person (“A”) acts as a gangmaster if he supplies a worker to do work to which this Act applies for another person (“B”)**

A gangmaster may be an individual, partnership or corporate entity. Further information is available from the Gangmaster Licensing Authority website <http://www.gla.gov.uk/>.

13 **Labour User** – A labour user is defined as:

- **A person who hires or uses workers supplied by a third party**

## **BACKGROUND**

14 Many of the industries for which HSE is responsible require a flexible workforce to undertake a range of (often unskilled/manual) tasks. Many employers seek to reduce labour costs by sourcing workers on a just-in-time basis, supplied on temporary contracts by independent employment agencies and labour providers. In some sectors employers find it difficult to source suitable indigenous labour and rely on migrants from EU and non-EU countries. Many are prepared to work in unpleasant and potentially unsafe/unhealthy conditions for comparatively low wages. An unknown proportion is believed to be working illegally in the UK.

15 Research carried out by HSE, other Government departments (OGDs) and non-governmental agencies into the migrant workforce has sought to clarify their countries of origin, where they are working, what they are employed to do and whether they are at increased occupational health and safety risk, in comparison with the indigenous workforce. Notwithstanding, information about the temporary and migrant working populations in Great Britain (GB), particularly in sectors other than agriculture, food processing, contract cleaning, healthcare and construction, remains unclear. However, the research does suggest that factors including unfamiliarity with the workplace/UK health and safety culture and English, combined with a historically poor record of compliance in sectors where migrant workers are strongly represented, may predispose them to a greater level of risk than UK workers.

16 Government remains concerned at the potential for abuse and exploitation of temporary and migrant labour. There is evidence of wide-scale illegal practices including illegal employment, bonded labour, avoidance of tax and National Insurance, payment of low wages, benefit fraud, provision of poor housing, excessive working hours, lack of employers liability insurance and neglect of health and safety responsibilities. As a

result, this area of work continues to have a high political and media profile and poses reputational risks to HSE.

17 Partly in response to these concerns and to the Morecambe Bay tragedy, the Gangmasters Licensing Authority (GLA) was established in April 2005 to regulate the provision and use of labour in agriculture and related sectors.

18 The provision and use of labour in agriculture and shellfish gathering and all processing and packaging of food and non-food products derived from agricultural produce, fish or shellfish are regulated by licensing regimes, under the Gangmaster (Licensing) Act 2004 (the 2004 Act) unless specifically excluded by virtue of secondary legislation. The licensing regimes, which make no distinction between temporary and migrant workers, and related offences are managed and enforced by the GLA.

19 As a result of increasing enforcement activity by the GLA, other cross-Government initiatives and improving links with other regulatory agencies, it is hoped that new and better intelligence on labour providers and users will progressively be generated. This intelligence will be used to inform future work.

20 Migrant workers are a special case of the more general problem associated with managing the health and safety of casual and temporary labour. In addition to the generic issues, migrants present particular challenges in areas such as language, supervision and safety culture.

### **Migrant workers in the UK**

21 The number of economic migrants working in the UK is not known with any certainty. Most recent reports indicate that the number of foreign nationals working in the UK now exceeds 2 million. What is known is that:

- Migration for work is not new, but the issue has gained prominence because of the rapid increase in the number of migrant workers coming to Britain.
- Migrant workers are often transient; knowing how many there are in a local area at a particular time, and predicting future change, is inherently difficult.
- The geographical spread of migrant workers is much wider than even a few years ago. Migrants are no longer found only in large conurbations, but are working in rural areas or in regions that have had little or no previous history of migration, whether temporarily or for settlement.
- In 1996 foreign nationals made up 3.5% of the UK workforce. By 2007 this number had risen to 7.5%.
- Whilst many workers still come from countries with longstanding links to the UK, particularly the Commonwealth, ex-Commonwealth and the Philippines, an increasing number come from Europe, especially from countries that joined the EU in 2004. On 1 May 2004, ten countries, Cyprus, Czech Republic, Estonia, Hungary,

Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia, joined the European Union (EU). The UK Government put in place transitional measures to regulate A8<sup>1</sup> nationals' access to the labour market (via the Worker Registration Scheme) and to restrict access to benefits. The most recent EU member states, Romania and Bulgaria, joined on 1 January 2007.

22 The following data is taken from the Home Office Accession Monitoring Report No. 18 May 2004 – March 2009, which reports the findings of the Worker Registration Scheme.

- In the twelve months to March 2009 there were 141,000 initial applicants to the Worker Registration Scheme (WRS), compared to 215,000 to March 2008 and 239,000 to March 2007. This continues a downward trend.
- The number of applicants making approved initial applications in quarter 1 of 2009 was 21,000 compared to 47,000 in quarter 1 of 2008 and 50,000 in quarter 2007. The decrease is mainly explained by the fall in approved Polish applicants.
- Workers applied to work for employers based all over the UK. Between May 2004 and March 2009, Anglia had the greatest number of workers registering with employers, with 15% of the total. This is followed by the Midlands and London with 13% and 12% of the workers registered. Northern Ireland and Wales had the fewest registrations with 4% and 3% respectively.
- The vast majority of these workers are young, 78% aged between 18 and 34. Only 8% of all workers have dependents that travel with them.
- 62% of registered workers indicated that they intended to stay in the UK for less than three months.
- Between May 2004 and March 2009 the proportion of workers from Latvia and Lithuania working in agriculture was greater than any other nationality. 23% of Latvians and 19% of Lithuanians worked in agriculture compared to 10% of all workers.
- Polish workers made up the largest proportion in every sector between May 2004 and March 2009, with 69% of those registering to work in manufacturing, 67% in administration, business and management (includes those working for employment agencies who may in fact be working in other sectors) and 63% in hospitality and catering.

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<sup>1</sup> That is, nationals of these new EU states excluding those of Cyprus and Malta

## THE UK IMMIGRATION SYSTEM

23 This section of the Topic Pack outlines the UK's new system of immigration rules, explains how it works, and describes the possible implications for HSE's work.

24 Key things to note about the new system:

- It removes more than 80 existing work and study routes into the UK from outside the EEA, replacing them with five tiers
- It introduces a points system for the new tiers, with points awarded for workers' skills, experience and age, weighted according to demand for those skills in any given sector
- It does not apply to workers from within the EU/EEA. Migrants from Central and Eastern European EU Member States can continue to come and work in the UK under existing arrangements for the A8 States or under transitional arrangements in the case of workers from the A2 States.

25 The tiers are as follows:

- Tier 1 – Highly skilled individuals who contribute to growth/productivity
- Tier 2 – Skilled workers with a job offer, to fill gaps in the labour force
- Tier 3 – Limited numbers of low skilled workers needed to fill temporary labour shortages
- Tier 4 – Students
- Tier 5 – Youth mobility and temporary workers: people allowed to work in the UK for a limited period of time to satisfy primarily non-economic objectives

26 The new system is being introduced in phases:

- Tier 1 for highly skilled migrants is already in place.
- Employers planning to recruit skilled workers (Tier 2) from outside the EU/EEA should have registered with the UK Border Agency (UKBA) by 1 October 2008. A register of employers is available on the UKBA website <http://www.ukba.homeoffice.gov.uk/workingintheuk/tier2/sportspeople/sponsorship/registerofsponsors/>
- Tiers 3 and 5 are temporary routes and migrants in them will not be able to switch out of them once they are in the UK. Tier 3 is currently suspended and the Home Office has no plans to introduce it unless there is a clear indication that workers

from within the EU/EEA are not available to fill low-skilled posts during temporary labour shortages.

- Tier 4 is operational, and from February 2010 requires students wanting to study in the UK to have a 'Confirmation of Acceptance for Studies' (CAS) letter from their prospective sponsor institution when applying.
- Workers in tiers 1,2 and 4 will be eligible to switch between these tiers subject to meeting the requirements of the tier they want to switch to.

27 It should not now be possible for employers to take on new tier 3 workers from outside the EU/EEA, except on small scale legacy schemes in the food and catering/hospitality sectors, which are likely to expire in 2010. Inspectors and visiting staff should not actively enquire about workers migration status during visits or investigations, but should be aware of the possible indicators of illegal employment (see Annex 1), and the implications where tier 3 workers are illegally employed (for example, sudden non-availability of witnesses). Where firm evidence of illegal employment comes to inspectors or visiting staff's attention, the employer's details (not those of individual workers) should be passed to David Coackley, B2, Nottingham Office ([david.coackley@hse.gsi.gov.uk](mailto:david.coackley@hse.gsi.gov.uk)) vpn 513 2922 as HSE's nominated Single Point of Contact (SPoC) - see **Annex 1**, page 46.

28 Complaints officers, Working Time Officers and administrative staff may, from time to time, receive calls alleging use of illegal migrant labour at workplaces. **On no account** should this information be passed to the UK Border Agency at this stage. Without further investigation, it is impossible to be certain that the information is accurate, or from a reputable source. When the complaint is investigated, the indicators listed in the table at **Annex 1** should be borne in mind. Where firm evidence of illegal employment comes to inspectors or visiting staff's attention as a result, the **employer's** details (not those of individual workers) should be passed to the SPoC.

29 Forced labour is another factor that visiting staff should be alert to where migrant workers are employed. The offence of forced labour was created by regulation 71 of the 2009 Coroners and Justice Act. A person ('D') commits this offence if s/he requires another person to perform forced or compulsory labour and the circumstances are such that D knows or ought to know that the person is being required to perform such labour.

30 A forthcoming Ministry of Justice Circular will outline the factors that may, depending on the circumstances, indicate that an individual is being subjected to forced or compulsory labour. The essential elements are those of coercion or deception, which may be demonstrated in a number of ways. The kind of behaviour that would normally, of itself, be evidence of (but is not limited to) coercion includes:

- Violence or threats of violence by the employer or the employer's representative; threats against the worker's family, or threats to expose the worker to the authorities, for example because of the worker's immigration status or offences they may have committed in the past; the person's documents, such as a passports or other identification, being withheld by the employer; restriction of movement; debt bondage; and withholding of wages.

31 If HSE staff encounter evidence of such factors during their work, they should inform the police immediately. Forced labour may be indicative of more serious criminality, and staff safety should accordingly be a priority.

32 The Ministry of Justice Circular also notes other factors that may be indicators of (but are not limited to) forced labour. These include :

- The worker being given no information, or false information, about the law and their employment rights;
- Excessive working hours being imposed by the employer;
- Hazardous working conditions being imposed by the employer;
- Poor accommodation provided by the employer;
- Poor or misleading information having been given about the nature of the employment;
- The person being isolated from contact with others.

33 HSE staff should use discretion in judging whether these factors amount to forced labour in any particular case, as they will obviously also be encountered in a range of non-compliant workplaces where there is no forced labour element present. Where HSE enforcement action for health and safety offences and police/CPS enforcement action for forced labour offences against the same dutyholder arising out of the HSE investigation appears likely, appropriate liaison arrangement should be put in place at the earliest opportunity.

### **Sponsorship duties**

34 Employers and institutions must apply for a licence to sponsor and bring migrants into the UK under tiers 2,4 and 5 (and 3 if/when re-introduced). They must also meet a number of sponsorship duties. Correspondingly, all applicants in these tiers must give a certificate of sponsorship from a licensed sponsor when applying to come to the UK or for permission to stay.

35 All sponsors get an A or B rating when licensed, which will be published on the Home Office website's register of sponsors. A B rating is a transitional rating. This means a B rated sponsor will have to improve performance sufficiently within a relatively short time to be upgraded to an A rating or risk having its licence withdrawn. Serious breaches of the rules may lead to sponsors being removed from the register of sponsors and prevented from employing migrant workers. More information on the rating system is available on the UKBA website at <http://www.ukba.homeoffice.gov.uk/employers/points/sponsoringmigrants/sponsorsandratings/awardaandbratings/>.

## **HSE and the new immigration system**

36 The requirements of the new points based system may be relevant to inspection/investigation, for example when seeking to establish competence.

37 In relation to sponsors (employers or institutions), information about management failings where:

- A sponsored migrant worker has been injured or made ill at work: and
- His or her status as a migrant is, in the inspector's opinion, a significant factor in the incident or ill health episode.

This intelligence may be relevant to the Home Office's future determination of the sponsor's eligibility and therefore, should be passed to the SPoC for consideration of the need for onward transmission to the Home Office.

## **Research**

38 In 2005 HSE commissioned research to find out more about the jobs migrants are employed to do, and to determine whether they are at greater risk than the indigenous workforce. Migrant workers should not be viewed purely in terms of low-skilled and vulnerable workers. There is significant migration of workers into 'high-level' sectors such as: banking; IT; education; and medicine etc. Such migrants' level of education and language skills probably ensure that they are at no greater risk than their indigenous peers.

39 The research report 'Health and safety and migrant workers in England and Wales' (RR502) (see <http://www.hse.gov.uk/RESEARCH/rrhtm/rr502.htm>), published in 2006 concluded that migrant workers are more likely to be working in sectors and occupations where there are existing health and safety concerns and that it is their status as new workers that may place them at added risk, due to their relatively short periods of work in the UK and limited knowledge of the UK's health and safety system. There is insufficient evidence to show that being a migrant worker is in itself a risk factor. However, migrant workers tend to work in higher-risk sectors of the economy and since the greatest risk factor for an incident at work appears to be the job workers do, migrant workers would, as a group, seem to face disproportionately higher risks. HSE already targets its activity towards those at greatest risk, and should therefore be targeting migrant workers working in high-risk sectors or occupations.

40 There are other factors, which are more likely to characterise migrants than the indigenous workforce. These need to be taken into account and include: language and communication barriers; differences in approach to health and safety in the workplace in their countries of origin; and irregular or uncertain employment/immigration status. This last category covers not just those who are deliberately or inadvertently working illegally, but also those who may have been misled about their rights to live and work in the UK.

41 The research suggests that, for migrant workers, health issues such as stress, and the health effects of repetitive tasks and long hours/shiftwork may be particularly important.

### **Incident and ill health data**

42 As with the overall numbers of migrants and of those working illegally, accurate and comprehensive data on injury and ill health experience of migrant workers is not available. Migrants will not generally be represented in our traditional sources of information e.g. the Labour Force Survey (LFS) and Self reported Ill Health Surveys. Employers are not required to record the ethnicity of accident victims or to report that information to HSE.

43 However, detailed analysis of 25 fatal accidents to migrant and foreign workers (using a wider definition than the migrant worker definition in para 8) in the construction sector reinforces wider evidence from the LFS on risk and vulnerability in the early months of a job and highlighted that:

- 11 out of 20 fatal accidents where the time on site was known happened in the first ten days on site and 5 of these happened on the first day – these proportions are very similar to a comparison group of 25 non migrant construction workers who died in the same period;
- 7 of 17 who died whose tenure in the UK was known had been in the country for less than a year;
- 6 of the 17 migrant or foreign workers killed whose previous experience of construction was known had 'limited' experience or 'none';
- The pattern of accidents (by type) is broadly the same as that for other workers in the sector.

44 To help capture intelligence on injuries and ill health to migrant workers HSE introduced changes to the requirements of recording investigations on COIN. These included recording whether an injured person is a migrant, their country of origin and whether language was an underlying factor in connection with an incident. Since the introduction of these new features 114 cases (were an investigation had taken place) had been recorded on COIN.

Of which:

- 32 were fatalities;
- 64 were major injuries;
- 17 were over 3 day; and
- 1 case of ill health

**Note: The above figures are raw data taken from COIN and should be treated with caution.**

## KEY MESSAGES

### General

- HSE is committed to improving health and safety protection for all workers, whatever their immigration status.
- Migrant workers are entitled to the same protection under health and safety law as other workers, whether working in the UK legally or not.
- There is currently no clear statistical evidence that migrant workers are at any more risk than any other workers doing the same job.

### For employers

- The employment of migrants is often characterised by a contractual relationship between one or more labour providers and a labour users. In these circumstances it is important that the labour user and labour provider(s) agree and clarify between themselves, the relationship and the responsibilities for the health and safety of the workers supplied.
- Systems must be put into place to ensure that labour users and labour providers exchange relevant information to ensure that legal requirements (such as accident reporting) can be met. See in particular HSE's guidance on the Businesslink website ([www.businesslink.gov.uk/agencyworkers](http://www.businesslink.gov.uk/agencyworkers) for Scotland [www.businessgateway.com](http://www.businessgateway.com)).
- Risk assessments must take account of the needs of non-UK nationals, in particular of:
  - language issues;
  - basic competencies including literacy, numeracy, physical attributes, general health, relevant work experience etc; and
  - cultural attitudes that could adversely affect health and safety management culture (e.g. risk-taking behaviours); and
  - the compatibility/equivalence (if any) of vocational qualifications e.g. lift truck driving qualifications obtained abroad. Advice on this can be obtained from the UK National Reference Point ([www.uknrp.org.uk](http://www.uknrp.org.uk)).
- Employers should ensure not only that necessary health and safety information, instruction and training is provided but also, that it has been understood and is being acted upon.

Further advice for employers is available on the HSE website – migrant worker pages at <http://www.hse.gov.uk/migrantworkers/employer.htm>

A HSE Information Sheet on risk assessment and control for businesses that use migrant workers is also available at <http://www.hse.gov.uk/migrantworkers/employer/protecting.pdf>

## For workers

- Your employer has to protect your health, safety and welfare. You have the right to work in places where all the risks to your health and safety are properly controlled.
- You have a right to know who employs you. If you don't know, ask.
- Your employer must give you health and safety information and training that you understand.
- There are some things you have to do under UK health and safety law.
  - Make sure what you do at work does not put you or other people at risk.
  - Help your employer to reduce health and safety risks in the workplace.
  - Use any work equipment in the way that you were trained.
  - Use anything supplied for your health and safety properly.
- If you are concerned about your health and safety at work, speak to your supervisor, manager, safety representative or HSE.

Further advice for workers is available on the HSE website – migrant worker pages at <http://www.hse.gov.uk/migrantworkers/worker.htm> and in the leaflet INDG410 “Working in the UK from overseas? – Your health and safety at work in agriculture and food”. Both are available in many languages.

## HSE ACTIVITIES

### Internal

45 The HSE FOD Management Board agreed that migrant workers (as one category of vulnerable workers) are dealt with as part of the examination of a duty holder's management of health and safety during inspection and other operational activity. The focus of inspection activity is an assessment of the arrangements and conditions under which they are employed. Other HSE activity includes research, investigation and advice, guidance and promotional activities.

46 Since April 2003 the Agriculture & Food Sector has held the operational policy and operational lead (on behalf of FOD) on migrant working. The issue was accorded a higher priority and importance in HSE following the Morecambe Bay tragedy in February 2004.

47 Guidance on operational activity in FOD on migrant working - other than in construction – is currently contained in the Operational Minute (OM) 2008/01 Version 2 'Migrant Working 2009-10, which will be revised each year.

48 There are clear links with the HSE Strategy. **Everyone has a role** as this work requires close co-operation between HSE and other government departments and local authorities as well as community and voluntary groups. In improving the capacity of industry to understand and manage the risks associated with migrant workers HSE will help others to **create healthier and safer workplaces**.

49 HSE continues to monitor research in this field, particularly european studies; which is considering whether additional research on the relative risk to migrant workers is appropriate; and is seeking improvements in the availability of statistical information about incidents and interventions involving migrant workers.

### External

50 HSE has obtained some additional funding from the Migration Impacts Fund (MIF) administered by the Department for Communities and Local Government (DCLG) for 2009 -10 and 2010 – 11 and, subject to the continuing availability of the funds, proposes to carry out the following projects (many in conjunction with local authorities or other partners):

- SE Region - work to develop and distribute benchmarked free training guidance materials for employers of migrant workers on industrial estates
- NW Region – actively monitor conditions in migrant worker accomodation, with a focus on gas safety
- London and other major conurbations – extension of the current outreach worker approach in the construction industry

- SW Region – adoption of the outreach worker approach in the agriculture/horticulture and catering/hospitality industries
- Midlands - adoption of the outreach worker approach in the agriculture/horticulture industries and exploring improved methods of communication with migrant communities in a meaningful and sustained way.
- NE Region – provision of simple guidance and targeted awareness sessions to augment existing awareness work and stimulate take up of ESOL provision
- National – production of a DVD containing standards and ‘how to’ train, instruct and supervise a migrant work force in support of forthcoming HSE guidance on this topic; short DVD or podcast for distribution to English for Speakers of Other Languages (ESOL) providers for use with migrant worker ESOL courses; and a series of ‘advertorials’ in relevant migrant worker publications.

51 In June 2007 the Department for Business, Innovation and Skill (BIS) set up a Vulnerable Workers Enforcement Forum to examine the ways in which enforcement agencies can work more effectively together to ensure vulnerable (including migrant) workers are properly protected. The final report of the Forum published in August 2008 made a number of recommendations. These included the creation of a Fair Employment Enforcement Board (FEEB) whose purpose is:

- To focus on helping vulnerable workers and their employers by improving enforcement and raising awareness of employment rights and related legislation. Its remit is focused on enforcement of the law and its work includes overseeing the development and implementation of key projects set out in the conclusions of the Vulnerable Worker Enforcement Forum; and reviewing, advising on and encouraging progress towards effective joint working between the Government’s workplace enforcement bodies.

HSE is represented by on the FEEB by Stephen Williams (FOD Head of Division – London).

52 The FEEB is supported by a monthly Enforcement Programme Board whose purpose is:

- To drive forward the implementation, at working level, of key projects aimed at helping vulnerable workers and their employers.

HSE is represented on the Programme Board by Jeremy Bevan (Policy Advisor, Worker Involvement and Inclusion Team).

The key projects are:

### **Awareness raising**

- Single enforcement helpline (launched May 2009 as the Pay and Work Rights Helpline – see [http://www.direct.gov.uk/en/DI1/Director/DG\\_177940](http://www.direct.gov.uk/en/DI1/Director/DG_177940))

- Joining up enforcement bodies on a practical level
- Information sharing (legal gateways)

53 HSE is involved in supporting and encouraging 'responsible employer' schemes in various areas, and has been involved in developing performance standards for these.

54 HSE External Relations teams continue to liaise at local level with Regional Development Agencies, Local Strategic Partnerships and voluntary sector bodies to gather and disseminate intelligence on good practice in relation to the management of migrant worker health and safety.

55 HSE's Infoline has the capability to hold a three-way conversation between an Infoline adviser, the caller, and an interpreter where the caller does not speak English. This facility is available in over 100 languages.

56 Guidance on issues that Inspectors should focus on at proactive/preventive inspection visits where migrants are known or suspected to be employed is attached at **Annex 2**.

57 HSE provides a variety of guidance leaflets on health and safety in different languages. For example, HSE has provided translations of basic health and safety guidance in 25 languages (in addition to English and Welsh). Inspectors have access to advice on dealing with language issues, and the Infoline interpreter service where necessary on site on an ad hoc basis.

58 HSE has developed a series of webpages that provide information and practical guidance and a more readily identifiable and accessible channel of communication with employers and workers on these issues. The website at <http://www.hse.gov.uk/migrantworkers/index.htm> links to other relevant sites.

59 HSE has worked with other Government departments to ensure basic information about its work and the UK health and safety system is available in leaflets produced for migrant workers pre-entry to the UK, most recently through relevant embassies.

60 HSE has participated in the BIS co-ordinated Pay and Work Rights Helpline. The Helpline is a co-ordinated cross agency service offering vulnerable workers, which includes migrant workers, information, advice and a complaints handling service on a wide range of workplace rights issues.

61 For HSE the *only* topic covered is working time. However, some callers may also have health and safety concerns. A protocol for handling these has been agreed, to ensure that HSE keeps other agencies participating in the Helpline informed of progress where the complaint or concern is also partly about issues where they have the enforcement lead. **See Annex 3 and OC 800/XX for details.**

## **INDUSTRIES**

62 Migrant workers are to be found in most sectors, for which HSE and the local authorities have enforcement responsibilities under the Health and Safety (Enforcing Authority) Regulations 1998.

63 Those, for example, working within agriculture and food, construction, healthcare, education, the waste collection and disposal sector and for cleaning contractors operating in industrial premises fall within HSE's jurisdiction.

64 Those working in the hospitality and catering sector, in some healthcare-related occupations (especially private care homes) and for cleaning contractors in commercial premises come within the jurisdiction of the local authorities.

65 Migrant workers are extensively employed in non-standard work patterns, such as those supplied by employment agencies and businesses, by contractors and gangmasters; and as mobile workers whose place of work frequently changes; or as in the case of office cleaners working anti-social hours e.g. nights and/or weekends.

66 It is believed that substantial numbers of migrant workers work for employment agencies, employment businesses or gangmasters. Agency workers are protected by health and safety at work legislation - which does not distinguish, in the level of protection it offers, between those who are permanently or temporarily, legally or illegally employed. Agency workers are also covered by health and safety law whether they are employed or self-employed.

### **Agriculture and agricultural produce processing**

67 The deaths of 23 Chinese cockle pickers in Morecambe Bay in 2004 highlighted the health and safety of migrant workers in agriculture and in the processing and packing of agricultural produce as a matter of particular concern.

68 Much of the work in agriculture and the food processing sectors is seasonal, short-term and low skilled. Changes in these sectors and in the food supply chain in recent years have created demands for a more flexible work force – characterised by casual and temporary working. Migrants make up more than 50% of the workforce in these industries.

69 Two specific schemes exist to enable low skilled migrant workers to be used in the industry:

- The Sector Based Scheme (SBS) allows UK based employers to recruit low skilled workers from Bulgaria and Romania to vacancies in food manufacturing.
- The Seasonal Agricultural Workers Scheme (SAWS) allows farmers and growers in the UK to recruit low skilled workers from overseas to undertake short-term agricultural work. The scheme works on a quota basis. The Government increased by 5,000 the number permitted under this scheme for 2009 to a total of

21,500. Some parts of the industry claim that this still leaves a shortfall of about 5000 workers needed for this type of activity – jobs that indigenous workers are reportedly reluctant to take.

70 Whilst the agriculture industry represents approximately 1.4% of the workforce in Great Britain (GB), (including farming, arboriculture, horticulture and fish farming) it accounts for between 15% and 20% of the fatal injuries each year. The number of non-fatal injuries in the industry is obscured by under-reporting. Only about 25% of the non-fatal accidents to workers is actually reported. The rate of self-reported illness is also significantly higher than the average for all industries.

71 Lack of accurate information about the size of the migrant working population in the industry, the limitations of existing statutory and other reporting systems and gross under-reporting of work-related injury and ill health generally in the industry means it is impossible to estimate the potential contribution of these workers to reported injury and ill health statistics.

72 Although employment in the industry has declined overall, over 500,000 people still work in agriculture. In recent years, the shortage of labour and changes in the UK food supply chain has resulted in a dramatic increase in the number of temporary (including migrant) workers employed in the industry. Recent Government research suggests that more than 600,000 temporary workers (not full-time equivalent jobs) are legally employed to harvest and pack produce on farms and in farm factories (pack houses). A further 150,000 are employed in secondary stage food processing and manufacture. Legal workers are those entitled to work in the UK. This category includes UK nationals, EU nationals (including those from the Accession States) and workers from other nations who hold current visas allowing them to work in the UK.

73 In addition it is estimated that up to a further 200,000 workers may be working in agriculture and the food processing sectors illegally – mainly nationals from outside the EU who do not hold current visas to work.

### **Gangmaster Licensing**

74 The term 'gangmaster' has particular and historic association with agriculture and agricultural produce processing sectors. The Gangmaster Licensing Authority (GLA) was established in April 2005 by the Gangmasters (Licensing) Act 2004, which received Royal Assent on 8 July 2004. The primary objective of the Act is to curb the exploitative activities of gangmasters: a term used widely in agriculture to describe labour providers; some of whom run reputable and legitimate businesses. Others operate illegally and exploit their workforce. Evidence collected by the enforcement agencies of Government departments, suggests this illegal activity takes many forms, including health and safety.

75 The GLA regulates the activities of gangmasters through a licensing scheme. From April 2007 it has been illegal to supply workers to the agriculture, shellfish gathering and associated processing and packaging sectors without a licence. Licences are issued following demonstration of compliance with wide ranging standards conditions; including conditions on health and safety. These are revised from time-to-time (last in April 2009) and are set out in the current edition of the GLA's "Licensing

Standards” available in hard copy or from the GLA’s website  
[http://www.gla.gov.uk/embedded\\_object.asp?id=1013491](http://www.gla.gov.uk/embedded_object.asp?id=1013491).

76 HSE, along with other government departments, is consulted by the GLA on the performance of licence applicants. HSE supplies any relevant factual information it holds on applicants via an electronic template supplied by the GLA.

77 The GLA is able to collaborate closely with other Government Departments and exchange information through legal gateways established by the 2004 Act. Where non-compliances of sufficient severity are discovered during the course of an inspection and, in the opinion of the GLA, are not being properly addressed, it will bring them to the attention of the appropriate government department or agency. This should assist departments and agencies to develop and implement intelligence led strategies for tackling abuse and illegal activity within their respective statutory remits.

78 The 2004 Act allows for the wide ranging sharing of information relating to gangmasters between the GLA and departments and agencies (including HSE and the local authorities) and arrangements have been formalised under Memoranda of Understanding (MOUs). See Annex 1 for further details.

## **Construction**

79 Migrant workers have a vital role in providing skills and filling labour shortages in the UK construction industry. Many are experienced tradespeople; for example, some enter the workforce through the Highly Skilled Migrants Programme.

80 Vulnerable groups have been specifically identified in the Construction Programme. Workers with limited English language skills can still obtain a Construction Skills Certification Scheme (CSCS) card. The Construction Skills touchscreen health and safety test can be taken in a variety of languages or via an interpreter.

81 Migrant labour has been estimated to make up some 8.2% of the labour force in construction. In London and the South East, migrant workers form a higher percentage of the workforce, at around 18%. HSE’s latest Survey of Construction Workers, started in January 2009, indicates that, in Greater London, foreign workers now make up around 37% of the workforce.

82 The Construction Workers Survey found that 60% of the foreign workers in construction were based in London, with a further 16% in the South East.

83 Between April 2008 and March 2009, 9 foreign workers, were killed in construction work activities in the UK. This represents 17% of the total number of fatalities in the industry during the year. Of these, three were engaged in erection work, two in groundworks, one in scaffolding and one in painting/decorating. A three-year average of the proportion of migrant worker deaths in construction is between 14 and 15%.

84 The official sources of data from UK Government tend to underestimate the number of recently arrived migrant workers in construction, because of issues of time-lag, self-employment, workers changing jobs once in UK, and failure to register on the official (Workers' Registration Scheme) scheme. The scale of employment of migrant workers in UK construction has seen a sharp rise in recent years, but now appears to be showing a slight decline.

85 Unofficial data suggests that, in the reporting year from 1 April 2006 to 31 March 2007, rates of recently arrived migrant workers in the UK construction workforce may be anywhere between 10- 50% in the larger cities in the UK.

86 HSE has identified migrant workers as a particularly vulnerable group of construction workers. Three Outreach Workers have been recruited to HSE's London office who speak Polish, Romanian and Gujarati/Hindi to help visiting London staff with intelligence to better target migrant workers, directly assist in inspections and investigations, and develop a greater understanding of particular migrant communities. The Outreach Workers have been raising awareness of HSE's role amongst migrant workers, employers, employment agencies, foreign language media, embassies and community organisations by delivering press launches and products such as articles, web pages, posters and over 100,000 credit card sized information cards.

87 HSE provides key language translations of documents, such as the practical checklist in 'Health and Safety in Construction HSG150'.

88 Construction Skills, the Sector Skills Council for construction, has developed web-based materials to support the effective integration of migrant workers into UK construction. It provides UK construction employers with information and support tools to help ensure that any migrants they employ are properly qualified, competent and safe.

89 There is conflicting evidence as to whether migrant workers, particularly those having worked in the UK for two years or less, are suffering more minor accidents than workers in the UK workforce. The major factor in this may well be simply the quality of health and safety management of their employer.

90 The evidence indicating higher rates of minor accidents may be explained by migrant workers having had limited experience of working in construction before arrival in the UK, being employed in higher risk trades such as demolition or roofing and failing to undergo any formal training or testing in the UK. There is also evidence that shorter job tenure may be a factor – as it is for those from the indigenous workforce who are new to their jobs.

## **Contract cleaning**

91 Contract cleaning employs very large numbers of people in all sectors of the economy and includes activities such as recycling, maintenance and renovation work. The industry is dominated by large multi-site companies; four of the largest accounting for 25 per cent of the total turnover. However, it is also characterised by small entrepreneurs some of whom began their careers as employees before setting up their own businesses. 83% of cleaning companies employ between 1 and 10 employees.

92 Most workers in the laundering and dry cleaning industry work in small dry cleaners, but some are employed in large industrial laundries, handling hospital and hotel contracts and in specialised operations such as industrial wipers.

93 Contract cleaning workers are employed under a range of different, sometimes insecure, contracts, carrying high employment risks. Site supervisors or unit managers are often responsible for the organisation and control of work, monitoring of wage sheets and attendance and also for the supervision of health and safety standards and training of new workers in the use of machinery and cleaning materials. They are often also responsible for recruitment, which is done through word of mouth and social networks amongst the existing workforce. These arrangements provide them with significant personal authority, which can be used to exploit workers through informal working, unrecorded cash payments and irregular employment.

94 Office cleaning is often undertaken out of normal working hours, out of sight of the firm's work force and is generally managed by a cleaning contractor rather than directly by the host employer. Because contract workers are distanced from the client firm's work force, they are often isolated and dependent on their supervisors, who control access to and the type of work done. This again can lead to exploitation.

95 Hazards and risks relating to psychosocial issues. Migrant cleaning workers may work alone, which can mean that there are no emergency procedures in the event of an incident. The perceived status of cleaning workers and the composition of the workforce (mainly female) may make them vulnerable to bullying or harassment. Violence, aggression, stress and unfavourable work organisation are often interrelated. Working alone and late at night can make cleaners vulnerable to violence and sexual harassment. Unclear responsibilities, poor induction to the work, lack of training and few or no possibilities to communicate with colleagues, supervisors and client's employees may also be factors in contributing to work-related stress. Monotonous and repetitive tasks and insecure employment positions can also be factors.

96 Women workers are in a majority in the cleaning sector. A significant number of people employed as cleaners are from ethnic minorities. There are no estimates of the numbers of migrant workers in the industry overall (approximately 37% of employees working within cleaning companies in England are believed to be migrant workers), but given that the workers are often employed through agencies for short term and flexible contracts, the presence of migrants is believed to be fairly high.

97 The shortage of indigenous workers in the industry is a reflection of the fact that the work is seen as being physically hard, low skilled and not well regarded. Although the industry is dependent on migrant workers, there are no special schemes under which they can enter the UK for employment in the sector. Students, people on business visas and those who work irregularly, all form part of the work force in this sector.

98 Over 3,000 serious accidents involving cleaners are reported to HSE each year. The health and safety risks can be significant because the work often involves heavy manual work, use of hazardous cleaning substances and the use of cleaning equipment with which the workers may be unfamiliar. Key health and safety issues for contract cleaning staff are dermatitis, musculoskeletal disorders arising out of manual handling,

slips and trips, falls from height, hand arm vibration syndrome and repetitive strain disorder.

99 The laundering and dry cleaning industry employs around 39,000 people. There is a significant local authority enforced sector in the launderette industry and in "on-premises laundries" (e.g. hotels) and in dry-cleaning units in retail stores. In Scotland there is currently an arrangement for all dry cleaning shops to be inspected by local authorities. The main causes of injuries in the laundering sector include manual handling and musculoskeletal injuries (the largest number), slips and trips, being hit by moving or falling objects and contact with machinery. Health issues include work related upper limb disorders from repetitive sorting and packing work, noise induced hearing loss, respiratory irritation and dermatitis.

100 Around 160,000 people are employed in the waste industry. It is estimated that a further 45,000 extra jobs may be created by 2010. The industry reports around 4000 accidents a year. The largest employers are a small number of integrated waste management companies but the industry overall is composed mainly of small and medium sized enterprises. Health concerns include manual handling and exposure to bio-aerosols. The accident incidence rate in the waste industry is four times the all industry average. The main causes of accidents include manual handling injuries (including cuts from sharp objects), slips and trips and being struck by objects (such as during refuse collection).

## **Health and social care**

101 The health and social care services sectors employ approximately 3.25 million people in Great Britain. Both sectors are rapidly growing with forecasts of an additional 1 million workers needed in the social care sector alone by 2025.

102 The health care sector is dominated by the NHS employing around 1.4 million workers.<sup>2</sup> The NHS and private healthcare organisations employ migrant workers, directly or through agencies, in a diverse range of occupations including nursing and auxiliaries, ancillary and facilities staff and a proportion of highly skilled, highly paid medical practitioners such as dentists, surgeons and other doctors.

103 The social care services sector includes public, private, partnership and voluntary organisations and is dominated by micro and small employers providing domiciliary care, residential and nursing care homes. The majority of the workforce are employed in community and domiciliary care services<sup>3</sup>

104 The health and social care sectors have faced staffing shortages resulting from factors such rapid growth in demand for services and an ageing workforce and reduction in employment retention rates. Recruitment from overseas has been a key strategy in the NHS and in recent years overseas sources have contributed about 45 per cent of the new entrants registered with the Nursing and Midwifery Council.

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<sup>2</sup> NHS staff census 2008, NHS information centre: [www.ic.nhs.uk](http://www.ic.nhs.uk)

<sup>3</sup> [http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH\\_098481](http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_098481)

105 As part of the ongoing assessment around skill shortages in the UK, the Home Office Migration Advisory Committee (MAC) undertake a review of the shortage occupation list every six months. If a job is on the shortage occupation list, it means there are not enough resident workers to fill the available jobs in that particular sector. The 2009 list includes specific specialities within medical and social work occupations<sup>4</sup>

106 Migrants working as nursing, ancillary and domestic staff are potentially at greater risk of exploitation and risks to their own health and safety when working for smaller or less-strictly regulated employers; such as those working in some residential or domiciliary care services. Little is known about the numbers of migrants employed as domestic staff and home carers and many may be working directly for those service users who receive Direct Payments<sup>5</sup> from their local authorities, but many of the issues faced by contract cleaners are likely to be relevant.

107 An estimated 5.1 million days were lost to work-related ill health or injury within the health and social care services sectors in 2007/08. The main causes of injury and ill health are work related stress, manual handling and musculoskeletal disorders, slips and trips, dermatitis and violence.

108 In addition to the duty to ensure that risks to migrant workers are being managed, health and social care providers must also take steps to ensure that the safety of patients and service users is protected; for example by ensuring competence in new and unfamiliar equipment and procedures; that work instructions and different clinical practices are understood; and that there is effective communication between staff and patients/service users.

## **Manufacturing**

109 Because of the practical difficulties of accessing migrant working populations, the research shed little light on the extent of migrant working in those industries covered by the Manufacturing Sector, other than food processing and packaging, which is discussed under the heading 'Agriculture and agricultural produce processing' (paras. 61-67 refer).

110 Anecdotal information indicates that issues with migrant workers are mainly around language and communication. Occasionally there are issues around work culture especially where they have come from less strict health and safety regimes, ie they are more likely to have lower standards and have a greater acceptability of risk. This is more particularly where the migrants have established their own businesses, employing workers from their own country. However, overall it's probably accurate to say, that migrant workers are not much of an issue, because:

- there is greater workforce stability in manufacturing than in agriculture or construction (i.e. it is less affected by the seasons and there is less scope for casual employment).
- as manufacturing operates from fixed premises, migrant workers tend to be employed with the same rights and under the same conditions etc as for other

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<sup>4</sup> <http://www.ukba.homeoffice.gov.uk>;

<sup>5</sup> [http://www.dh.gov.uk/en/SocialCare/Socialcarereform/Personalisation/Directpayments/DH\\_076522](http://www.dh.gov.uk/en/SocialCare/Socialcarereform/Personalisation/Directpayments/DH_076522)

workers in the same premises. The issue is more about the quality of the site management overall rather than the fact they have migrant workers.

- the large downturn in manufacturing has resulted in many companies shedding the newer (often migrant) employees.

111 Notwithstanding, there is anecdotal evidence from HSE's Manufacturing Sector and FOD Divisions to suggest that the employment of migrant workers (often in small numbers) is ubiquitous.

112 Manufacturing Sector is currently working with stakeholders to consider the extent and nature of migrant working in the industries and the implications for health and safety. Further information will be included in future revisions of the Topic Pack.

## INTELLIGENCE SHARING / MEMORANDA OF UNDERSTANDING

113 Increasing involvement in temporary and migrant employment issues in recent years has required HSE to work more closely with other enforcement agencies, departments, public authorities and non-governmental bodies. In doing so questions have arisen about our and others' ability to share and exchange information or intelligence to facilitate joined up working and promote better regulation. The pressure to work more closely and in partnership is unlikely to diminish in the foreseeable future.

114 Whereas HSE tends to receive and act upon *information* supplied by third parties, many/most other agencies/departments (including the police) act upon *intelligence* i.e. information which has been assessed/evaluated against specified criteria. The most commonly used criteria are those originally devised by the National Criminal Intelligence Service (NCIS) and generally referred to as 5x5x5. The 5x5x5 format provides a basis for ensuring the quality and reliability of intelligence and amongst other things allows for evaluation as to how widely it should be disseminated amongst other regulators and prosecuting agencies. As a result it is often the case that what HSE has to offer will be of little value to others because it has not been assessed/evaluated, whilst what they have to offer to HSE may be of little relevance or interest.

### Joint Workplace Protocol

115 This section advises about a new awareness guide for visiting staff (see Annex 1), intended to stimulate the flow of information between enforcement agencies where illegal employment of migrant workers is suspected. The Protocol was drawn up by the UK Border Agency (UKBA) as part of its Immigration Enforcement Strategy.

116 It aims to detect, disrupt and deter the illegal employment of migrant workers; each contributing agency (UKBA, the Employment Agency Standards (EAS) inspectorate, DWP, HMRC, the Gangmasters Licensing Authority and HSE/LAs) has provided key indicators suggestive of non-compliance in workplaces covered by its remit; HSE's suggested indicators were agreed after fairly wide consultation across FOD operationally.

117 All visiting staff should note the Protocol's existence, and be aware of its potential contribution to improving compliance and 'joined-up working' in relevant premises. The Protocol is only intended to cover illegal employment of migrant workers, so not likely to be 'activated' at vast majority of workplaces.

118 It is not intended to be used other than 'passively' – that is, visiting staff should only note matters of concern to other enforcement agencies that they observe as a by-product of what they are in the workplace to do for HSE's own, statutorily limited, purposes.

119 Indicators of concern to other enforcement agencies should *only* be passed on via the FOD Single Point of Contact (SPoC) (David Coackley, Nottingham office), not directly to other enforcement agencies.

120 In gathering information that could identify individuals to UKBA, staff should bear in mind the requirements of the Data Protection Act (set out below). If indicators of concern (to UKBA) pointing to illegal employment emerge only after HSE has acquired personal data (eg IP/witness name/address), visiting staff should be aware that UKBA involvement may result in rapid deportation of an IP/potential witness.

121 It is unlikely that other departments' indicators will be 'life or death' issues, but it will nonetheless be important to pass on legitimate concerns as part of effective joined-up enforcement, targeting employers whose activities may expose vulnerable workers to exploitation.

### **Health and Safety at Work etc. Act 1974: Section 28**

122 There are a number of ways in which HSE inspectors can disclose information obtained in the exercise of their powers under the Health and Safety at Work etc. Act 1974 (HSWA).

123 Basically, subject to s28(2) HSWA, an inspector can disclose any material providing he/she has obtained the consent of the person who supplied it and the consent of everyone whose personal data is contained in that material. In many instances, particularly in the context of sharing information for regulatory purposes, this scenario will be unlikely.

124 More generally, Section 28(3) HSWA allows an inspector to disclose "relevant information" as defined in ss(1) to (amongst others), a government department, any enforcing authority, local authority officers and constables who are authorised to receive it, without the consent of the person who supplied it, subject to the following conditions:

- If the material contains any sensitive personal data (as defined) i.e. if it identifies any person, then under the Data Protection Act 1998 (DPA), it must be anonymised e.g. by scoring out any information which might identify that person, unless the disclosure of that personal data "is necessary for the administration of justice".
- If the material concerns the commission (or alleged commission) of a criminal offence by an identifiable person, under the DPA it must be anonymised unless disclosure of that sensitive personal data "is necessary for the administration of justice ... [or] ... the purpose of, or in connection with, any legal proceedings (including prospective legal proceedings)".

125 Sensitive personal information is defined in Section 2 of the DPA and includes data consisting of information as to a subject's commission or alleged commission of an offence or any proceedings for any offence committed or alleged to have been committed by him (which is relevant here). In these circumstances, you will need to consider the following factors:

- The DPA applies to personal data and requires that it be processed fairly and lawfully. Processing will be fair and lawful if it is done under any enactment; including s28 HSWA.

- However, processing must also comply with one of the conditions in Schedule 2, which states, *inter alia*, that personal data may be processed *where it is necessary for the administration of justice*.

126 Section 28(7) deals with information obtained by HSE using its powers under Sections 14(4)(a) or 20.

127 Thus if HSE wants to share information with other enforcing authorities, government departments or the police, it may do so, provided that where personal data is concerned, it is necessary for the administration of justice. Where for example, HSE is concerned that illegal activities may be underway at certain premises and wants to discuss such activities and possibly propose joint inspection activities with the other departments/regulators, this, in Legal Adviser's Office's view, would be processing necessary for the administration of justice. HSE would not need to have evidence of such activities; but simply to suspect such activities are ongoing and to use discussion and any inspection with the other departments/regulators as part of a requisite investigation. Conversely, if the discussion/inspection were essentially a "fishing" exercise and HSE had no real grounds for suspecting criminal activity, it would be difficult to argue that disclosure to the other departments/regulators would be necessary for the administration of justice. In these circumstances whilst it would be possible to talk to them in general terms about tactics, what evidence you should be looking for, etc. it would not be appropriate to disclose personal information, such as names.

128 In circumstances where HSE is considering an inspection/investigation of a dutyholder's premises or a "blitz" on a number of dutyholders, it would suggest it has reason to suspect illegal activities in which case discussion with other departments/regulators in advance (including revealing personal data) may be for the administration of justice.

129 Self-evidently, any disclosure must be consistent with any HSE investigation; and not prejudicial to it.

130 In summary, provided either HSE or the other departments/regulators are carrying out an investigation (including an investigation at preliminary stages), into potential illegal activities, it will be possible to disclose/share personal information (including sensitive personal information) as it will be necessary for the administration of justice and/or for the purposes of, or in connection with, any legal proceedings.

### **Statutory gateways to disclosure**

131 The purpose for which disclosure may be made under HSWA, where it is proportionate to do so, have been further widened/defined by statute, specifically, Section 17 of the Anti-terrorism, Crime and Security Act 2001 and Section 19 of the Gangmasters (Licensing) Act 2004.

#### **(a) Anti-terrorism, Crime and Security Act 2001**

132 Section 17 and Schedule 4 of the Act permit disclosure, where it is proportionate to do so. What is proportionate, needs to be determined on a case-by-case basis. The

provisions apply in circumstances where the police are carrying out an investigation and would allow HSE to disclose information in connection with that investigation. Generally however, it is unlikely HSE would need to rely on these provisions because disclosure would, in the majority of cases, be permissible under s28 HSWA/DPA; in which case it would not be necessary to carry out the "proportionality" test. Inspectors are advised to consult with LAO if they believe they need/want to disclose information under the Act.

133 The information the police could pass to HSE, is not covered by Section 17 and Schedule 4. They will only be able to disclose information they have the *vires* to disclose, subject to the provisions of the DPA. Note that, on working time issues, there are at present restrictions on exchange of information between HSE and the GLA (as there are between HSE and other enforcement agencies). This is an issue which the Department for Business and Skills (BIS) is currently seeking to resolve via changes to the Working Time Regulations themselves.

#### **(b) The Gangmasters (Licensing) Act 2004**

134 Section 19 provides for the disclosure of information between departments (including HSE) and Gangmasters Licensing Authority (GLA) for the purposes of the Act i.e. to disrupt and prevent the exploitation of labour by gangmasters (defined in Section 4) in agriculture, shellfish harvesting, food processing etc.

135 Any disclosure under the Act does so notwithstanding any restriction on the disclosure of information imposed by any other enactment, including the DPA. Any related disclosure to the police or another regulator would be subject to the limits on disclosure discussed above.

#### **Memoranda of Understanding**

136 A Memorandum of Understanding (MoU) is an arrangement freely entered into by HSE with other government departments, non-departmental public bodies or external agencies. It is used to formalise new or existing working arrangements when it is not necessary or desirable to provide legal authority for the acts of, or create legal obligations to, such bodies or agencies.

137 MoUs are widely used to set out demarcation arrangements between HSE and another body or agency in circumstances where health and safety legislation overlaps with other, more specific, legislation enforced by other authorities. They may also be used to record arrangements for co-operation with an government department or agency body.

138 With respect to sharing and exchanging information an MoU has been agreed with the Gangmasters Licensing Authority (GLA). This sets out agreed arrangements and procedures for sharing information and intelligence and should be followed by staff working with the GLA intelligence officers/SPoC ([intelligence@gla.gsi.gov.uk](mailto:intelligence@gla.gsi.gov.uk)) and HSE SPoC using the GLA template.

139 An OC on information sharing is currently being drafted.

## **MANAGING HEALTH AND SAFETY: KEY ISSUES**

### **Introduction**

140 This Section provides advice and guidance on the legislation and enforcement in connection with the health and safety of and the provision of welfare, personal protective equipment and accommodation for migrant workers.

141 Similar issues and considerations apply to the employment of the indigenous workforce employed under casual and temporary contracts of employment but additionally, the employment of migrants may raise issues of language, cultural differences and accommodation.

142 Levels of knowledge about health and safety law and rights and responsibilities amongst migrant workers are generally low. Without access to information there is evidence of a fairly widespread view amongst migrant working communities that responsibility for health and safety lies with the workers themselves and that accidents and other incidents at work are their own fault. This perception means that workers often do not understand that their employers, employment agencies or businesses and other labour providers e.g. gangmasters have responsibilities for their health and safety.

143 Similarly, many employers seem confused about the allocation of duties and responsibilities under health and safety legislation; particularly where workers are supplied by a labour provider to work in a labour user's premises under some form of temporary contract.

### **Responsibility for health and safety**

144 There is no simple answer to the question "Who is responsible for the health and safety of temporary and migrant workers? When a business uses workers supplied by a labour provider, both parties have a shared responsibility to protect the health and safety of those temporary workers and responsibilities to each other under the Management of Health and Safety at Work Regulations 1999 (MHSWR) which impose specific duties on amongst other things:

- the conduct of risk assessments,
- the provision of health and safety arrangements,
- the provision of information, instruction and training etc. and
- cooperation and coordination between employers, not least in terms of providing workers with comprehensible information on:
  - Any special qualifications or skills required to carry out the work safely
  - Risks to their health and safety; and
  - Health surveillance.

145 The employment status of the workers is important in determining where and upon whom the employer's duties under the legislation apply. In practice, it will depend on the facts of each case i.e. on the nature of the relationship between the labour provider and user and the circumstances under which the work is being carried out. In many cases the *de-facto* employer is likely to be the labour user rather than the labour provider; particularly where the former controls and directs the activity. However, it will not always be the case.

146 To avoid misunderstanding and confusion, labour providers and users should clarify and agree their relationship and respective responsibilities for health and safety and the practical arrangements for day-to-day management and supervision, direction and control of the workers. This agreement should be formalised in writing by way of a contract, Service Level or other form of agreement. See also HSE's guidance 'agency worker health and safety' on the Businesslink website at [www.businesslink.gov.uk/agencyworkers](http://www.businesslink.gov.uk/agencyworkers).

147 In coming to common understanding and agreement, both parties need to consider:

- Whether the migrant workers are to be employed directly or if the workforce (or part of it) is to be supplied by an employment agency, employment business, gangmaster or other form of labour provider.
- Which of the parties is best placed to exercise direction and control over the work on a day-to-day basis.
- Whether the labour provider is based in the UK or abroad. Unless a labour provider based abroad has a UK based representative, the labour user will have to take on board full responsibility for the health and safety of any labour supplied.
- That employment agencies and employment businesses have specific legal responsibilities under the Conduct of Employment Agencies and Employment Businesses Regulations 2003 to provide information to businesses, which use their workers. This may affect the allocation of responsibilities for health and safety. Further guidance can be obtained from the Department for Business, Innovation and Skills (BIS) formerly Department for Business, Enterprise and Regulatory Reform (BERR).
- That both parties need to:
  - Check before the workers start at the workplace whether any special vocational qualifications or skills are needed for the job and if so; make sure that any worker supplied has those qualifications or skills.
  - Check the language skills of workers before they start work – and in particular check their understanding of spoken and written English.

- Check, based on the outcome of a risk assessment, what information, instruction and training will need to be provided at the workplace – and in particular think about how best to provide it, and what steps will need to be taken to ensure it has been understood.

## **Risk assessment**

148 In assessing the risk to migrant workers, both parties need to ensure that arrangements are in place to make sure that: Risk assessments should address the particular needs of migrant workers. Good communication, comprehensible information, instruction and training and access to supervisors with whom they can communicate are especially important. The duty on employers duties to provide information in a form that workers can understand (regardless of their background) is made clear in the guidance to the Management of Health and Safety Regulations (see also guidance in 'Essentials of health and safety at work, page 81).

149 HSE has published guidance for small and medium enterprises on controlling risks to migrant workers at

<http://www.hse.gov.uk/migrantworkers/employer/protecting.pdf>

As a minimum duty holders should ensure the following:

- Before they start working, the risks to which migrant workers are likely to be exposed have been assessed and that any necessary control measures have been identified.
- The control measures have been implemented and that arrangements are in place to maintain them. These measures will almost certainly include the provision of necessary information, instruction, training and supervision and may include matters such as the provision of safe plant, equipment, substances for use at work, personal protective equipment, emergency procedures etc.
- The needs of non-UK nationals have been taken into account; and in particular consideration has been given to:
  - Language issues. Not all migrants speak English and the ability of those who do varies widely. Some who speak English cannot read it.
  - Basic competencies including literacy, numeracy, physical attributes, general health, relevant work experience etc. and
  - The compatibility or equivalence of vocational qualifications e.g. lift truck driving certificates obtained abroad with those required in the UK. In general, vocational qualifications obtained abroad are not recognized in the UK. If in doubt, seek advice from trade associations, training and awarding bodies or the Health and Safety Executive.
  - The influence that cultural attitudes may have on management of health and safety where migrant workers are employed. These can include such things as attitudes towards risks, expectations about blame for accidents and assumptions about workers' level of understanding following training and instructions.

- The need to regularly review assessments to ensure they keep pace with any changes to processes or working practices.
- Gender issues.

150 For further information on gender issues in risk assessment see annex 4 and the European agency website [Factsheet 43 - Including gender issues in risk assessment](#)

### **Information, instruction, training and supervision**

151 It is believed that more than a third of migrant workers do not receive any training in health and safety and that for the remainder, training is generally limited to a short session at induction.

152 Any new workers, whether directly or indirectly employed and irrespective of whether they are migrants or UK citizens should be provided with the information, instruction and training they need to work safely.

153 Migrant workers should be provided with necessary induction, work-related, health, and safety training in a comprehensible form and employers need to ensure that they have understood and are acting upon it.

Employers need to:

- Make sure that essential induction training is provided.
- Make sure that any necessary job related / vocational training is provided.
- Make sure that relevant information as to the risks to which they may be exposed and the precautions that they will need to take to avoid those risks is provided.
- Consider the needs of workers who may not speak English well, if at all. It may be necessary to provide information and instruction using visual, non-verbal methods such as pictures or signs or learning materials such as videos/DVDs/CD-Roms, which can be provided or supported in multiple languages.
- Consider the need for translation services. It may be acceptable to use the services of existing bilingual or multilingual employees to translate simple, non-technical information, instruction or training materials. For more complex and technical training requirements, it is advisable to use the services of accredited translators.
- Make sure that the migrant workers have received and understood the information, instruction and training they need to work safely.
- Consider what steps you need to take to ensure it has been understood and is acted upon.

- Make sure the workers are adequately supervised and that they can they communicate with their supervisors (and vice versa) and
- Make sure the workers know how and with whom they can raise any concerns about their health and safety.
- See also the HSE Information Sheet 'Protecting Migrant Workers' at <http://www.hse.gov.uk/migrantworkers/employer/protecting.pdf>

## ENFORCEMENT GUIDANCE

154 HSE's Enforcement Management Model (EMM) provides a framework to assist inspectors to make enforcement decisions in line with the Health and Safety Commission's Enforcement Policy Statement. Inspectors are expected to apply the EMM in all their regulatory actions but it is not intended to fetter the exercise of discretion.

155 Most, if not all of the risks to which migrant workers are likely to be exposed are the same as those to which indigenous the workforce, working alongside them is also exposed. They include risks from machinery, exposure to hazardous substances, workplace transport, falls from height, slips trips and falls, contact with moving objects, lifting and carrying, noise, asthmagens and dusts etc. Guidance on these generic risks and on related enforcement under the Enforcement Management Model (EMM) is available in relevant Inspection (Topic) Packs, which can be found at: <http://intranet/operational/fod-inspection/inspection-packs/>

156 Issues which are particularly relevant to migrant workers include:

- Accommodation
- Transport to and from the place of work
- Provision of personal protective equipment
- Provision of welfare facilities
- Provision of information, instruction and training and supervision

### Accommodation

157 Accommodation made available or supplied to migrants by labour providers or users is subject:

- in England and Wales to the Housing Acts 1985 and 2004 and associated secondary legislation<sup>6</sup> which introduced a mandatory national system of licensing for Houses in Multiple Occupation<sup>7</sup> (HMOs); and
- in Scotland, where appropriate, to registration or licensing in accordance with the Antisocial Behaviour etc. (Scotland) Act 2004 (part 8: Registration of Landlords) or the Civic Government (Scotland) Act 1982 (Licensing of Houses in Multiple Occupation) Order 2000.

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<sup>6</sup> The Housing Act 2004 also introduced the Housing Health and Safety Rating Scheme (HHSRS), which is used to assess and control physical conditions in HMOs.

<sup>7</sup> Further Statutory Instruments relating to the implementation of HMO Licensing came into force on 1 October 2007.

158 Charges for accommodation are subject to limits set by national and agricultural minimum wage regulations.

159 The Housing Acts apply to fixed accommodation provided to migrant workers and this legislation is enforced by local authorities.

160 Residential accommodation in caravans is subject to the Caravan Sites and Control of Development Act 1960, which is enforced by local authorities.

161 OC124/11 (Allocation under the Enforcing Authority Regulations) makes it clear that permanent or temporary caravan sites fall to HSE enforcement where operated by an HSE enforced occupier on their own premises where it is not a separate business but a minor activity e.g. a farmer and that temporary fixed or mobile accommodation provided for casual workers where the accommodation is not a separate business but a minor activity also falls to HSE to enforce. HSE, unlike local authorities, has no powers to deal with overcrowding of accommodation.

162 If it is claimed that accommodation is being used in part or entirely to meet the requirements to provide adequate welfare for work purposes then the accommodation becomes a place of work and the Workplace (Health, Safety and Welfare) Regulations apply. If the accommodation is poor but used solely for sleeping, then HSE only has powers to ensure gas safety and enforce the requirements for separate adequate welfare facilities.

163 HSE is responsible for gas safety matters. The current legislation controlling the installation and use of gas is the Gas Safety (Installation and Use) Regulations 1998 which aims to prevent injury to consumers, tenants and the public from carbon monoxide (CO) poisoning or fire and explosion. The regulations place duties primarily on installers, landlords and some gas suppliers.

164 In particular, landlords have duties to ensure that the gas appliances and flues they provide for tenants' use are maintained in a safe condition at all times and checked for safety each year by a Gas Safe registered installer, and that a copy of the check record is provided to the tenant(s). Limited research ( Idea case on on work in West Wiltshire (see <http://www.idea.gov.uk/idk/core/page.do?pagelid=8919846>) indicates that standards of gas safety in houses of multiple occupation used by migrant workers are likely to be low.

165 Where the GLA has an interest because of the involvement of a gangmaster the standards applied include those relating to accommodation. The current edition of the GLA's "Licensing Standards" are available in hard copy or from the GLA's website [http://www.gla.gov.uk/embedded\\_object.asp?id=1013491](http://www.gla.gov.uk/embedded_object.asp?id=1013491).

166 Enforcement guidance can be found in Operational Circular series OC 440 and at: <http://www.hse.gov.uk/enforce/index.htm>

## Transport to and from work

167 Vehicles used to transport temporary and migrant workers to and from their place(s) of work on the public highway are subject to road traffic legislation with respect to registration, licensing, roadworthiness and maintenance (including possession where appropriate of a valid MOT certificate) and insurance. Drivers should hold a current, valid licence appropriate to the class of vehicle.

168 Any vehicle with nine or more passenger seats used for hire or reward should be registered as Public Service Vehicles (PSV) and drivers must have a Passenger Carrying Vehicle entitlement on their licence. For further information see:

[http://www.direct.gov.uk/en/Motoring/DriverLicensing/WhatCanYouDriveAndYourObligations/DG\\_4022498](http://www.direct.gov.uk/en/Motoring/DriverLicensing/WhatCanYouDriveAndYourObligations/DG_4022498)

169 Road traffic legislation is enforced by the police and others, including the Highways Authorities, Traffic Commissioners and the Vehicle and Operator Services Agency (VOSA). However where safety cannot be regulated by the enforcement of more specific legislation e.g. the Road Traffic Acts and the Motor Vehicles (Construction and Use) Regulations, there may be a need to use health and safety legislation, particularly in cases of serious management shortcomings. Further guidance on HSE's role in work-related road traffic incidents is set out in Operational Minute OM 2003/103.

## Provision of Personal Protective Equipment

170 Subject to the provisions of the Personal Protective Equipment at Work Regulations 1992 (as amended), personal protective equipment (PPE) should be supplied and used at work wherever there are risks to health and safety that cannot be adequately controlled in other ways. Guidance on the regulations and further information on the supply and use of PPE is available at: <http://www.hse.gov.uk/pubns/ppeindex.htm>

171 The provision and use of wet or cold weather clothing may be particularly important where migrant workers are required to work outdoors in all weather.

172 Advice and guidance on the provision of PPE with respect to the storage, use and disposal of pesticides (plant protection products) can be found in Operational Circular series OC 301 and obtained from the Agriculture and Food Sector.

173 The issue of charging for PPE arises regularly. The HSE position is as follows:

- A temporary worker in an explicit or implied employment relationship with either an agency, a user business, or both, may not be charged for personal protective equipment provided to meet health and safety requirements, whether by the employment business or client hirer. Nor may a refundable deposit be charged against non return of the equipment. However, it will be lawful to make a deduction from final wages if the equipment is not returned on termination of the employment for which it was issued, provided this is made clear in the contract with the worker.

- If employment businesses choose to do this, it will obviously be important to ensure that arrangements for return of the personal protective equipment are suitably synchronised with final wage payment arrangements.

174 Some organisations have cited the the decision and recommendation of the Appointed Person in the case of an appeal in 2007 under the Gangmaster (Appeals) Regulations 2006 by a gangmaster (Miles Recruitment Ltd v GLA) against the licence condition 6.6 (revised as licence condition 6.3 in April 2009) regarding PPE as grounds to charge for such equipment. This decision, which instructed the GLA to alter the licence condition to include the words ‘The Labour Provider may seek a contribution from the worker for the cost of PPE the use of which is not exclusive to the workplace, limited to the cost to the Labour Provider of that PPE’, was made by an Appointed Person drawn from the list of Industrial Tribunal Chairs. It was not a High Court decision, is not binding and does not alter the HSE position stated above. It is extremely doubtful that a ‘contribution’ that equates to the full cost of the PPE could be regarded as such.

175 Enforcement guidance in line with the EMM is set out at Table 1 below. The risk is almost infinitely variable ranging from ‘**serious**’ (possibly fatal) injury where head, eye or respiratory protection is required to ‘**minor**’ in the case of minor cuts or abrasion to the skin. If all necessary control measures identified by a suitable and sufficient risk assessment have been implemented and are being used, the benchmark can be considered to be ‘**nil**’ or ‘**negligible**’ risk. The risk gap will depend on the nature of the risk to which workers are exposed.

**TABLE 1 – ENFORCEMENT GUIDANCE**

<b>Table 1</b>			
<b>Observation</b>	<b>Risk Gap</b>	<b>Standard</b>	<b>Initial Enforcement Expectation / Action</b>
Failure to provide suitable PPE to employee(s) who may be exposed to risks to their health and safety – reg.4(1)	Nominal – Extreme	Defined or Established	Prosecution/Improvement Notice/letter depending on the risk gap
Charging for PPE – s9 HSWA 1974	N/A	Defined	Compliance issue
Incompatibility of PPE – reg.5	Nominal - Extreme	Defined or established	Prosecution/Improvement Notice/letter depending on the risk gap
Failure to assess the suitability of PPE – reg.6	Nominal – Extreme	Established	Improvement notice or letter
Failure to maintain PPE – reg. 7	Nominal – Extreme	Established	Improvement notice or letter
Failure to replace PPE – reg.7	Nominal – Extreme	Defined	Improvement notice or letter

Accommodation for PPE – reg.8	N/A	N/A	Compliance issue
Provision of info. instruction and training – reg.9	Nominal – Extreme	Established	Improvement Notice or letter

## Provision of welfare facilities

176 Standards are laid down in the Workplace (Health, Safety and Welfare) Regulations 1992. Guidance on the application of the regulations is set out in the Approved Code of Practice and further information is available at: <http://www.hse.gov.uk/pubns/indq293.pdf>.

177 The regulations cover a wide range of basic, health, safety and welfare issues and apply to most workplaces with the exception, amongst other things, of construction work on construction sites. The regulations define the term 'workplace' widely as including premises, and premises' are in turn defined at s53 of the HSWA 1974 as meaning any place (including an outdoor place).

178 Employers must 'so far as is reasonably practicable', provide adequate and appropriate welfare facilities for workers whilst they are at work; however short the period 'Welfare facilities' are those that are necessary for the well-being of employees, such as washing, toilet, rest and changing facilities, and somewhere clean to eat and drink during breaks.

179 The provision of basic facilities such as sanitary conveniences, washing facilities and drinking water are particularly important for migrant workers, many of whom are employed in remote, outdoor locations or premises and engaged in low skill, manual activities such as labouring or planting and harvesting agricultural produce.

180 The level of risk will generally be minor except in the case of provision of washing facilities where in certain circumstances e.g. where migrant workers are exposed to chemicals or approved pesticide or plant protection products, the risk to health could be '**significant**' or possibly '**serious**' if suitable and sufficient facilities are not provided

181 Guidance on the application of the regulations to specific industries and sectors in which migrant workers are known to be employed in significant numbers, including agriculture and construction can be found on the industry pages of the HSE website at: <http://www.hse.gov.uk/>

182 Enforcement guidance in line with the EMM is set out at Table 2 below. Welfare facilities come under the compliance and administrative arrangements section of the EMM. These are used to describe legal requirements which are not in themselves risk based. They are however, defined by law or supporting ACoPs.

**TABLE 2 – ENFORCEMENT GUIDANCE**

<b>Table 2</b>			
<b>Observation</b>	<b>Descriptor</b>	<b>Standard</b>	<b>Initial Enforcement Expectation / Action</b>
Failure to provide suitable/sufficient sanitary conveniences - reg.20	Absent/ Inadequate	Defined	Improvement Notice
Failure to provide suitable/sufficient washing facilities - reg.21	Absent/ Inadequate	Defined	Improvement Notice
Failure to provide adequate supply of wholesome drinking water - reg.22	Absent/ Inadequate	Defined	Improvement Notice
Failure to provide accommodation for clothing – reg.23	Absent/ Inadequate	Defined	Improvement Notice
Failure to provide facilities for changing clothing- reg.24	Absent/ Inadequate	Defined	Improvement Notice
Failure to provide facilities for rest and to eat meals (general) - reg.25	Absent/ Inadequate	Defined	Improvement Notice
Facilities for rest and to eat meals (pregnant women) - reg.25	Absent/ Inadequate	Defined	Improvement Notice

183 The EMM allows inspectors to be flexible and to consider other factors such as the dutyholder and strategic factors. Factors not covered within the EMM can still be considered and should be recorded in the management review. The ability to override or adapt the EMM is part of its effectiveness.

**When should the management review box be filled in?**

184 The EMM is a simple two-dimensional linear model designed to aid consistency and so cannot truly capture all the nuances and complexities of discretionary decision-making in all circumstances. It is crucial that inspectors’ discretion is not confined to the boundaries of the Model.

185 The management review process requires inspectors and line managers to consider whether the proposed enforcement action meets HSE's Enforcement Policy Statement, the Code for Crown Prosecutors in England and Wales and the Prosecutors Code in Scotland.

186 The management review box should be completed when:

- the expected enforcement action recorded on the form does not match the planned enforcement action to be taken by the inspector
- where guidance requires it, e.g. no prosecution following a work-related death, and
- when certain duty holder factors or strategic factors are not addressed or require further explanation.

187 Therefore, you are not restricted or bound by the IEE or the indicated enforcement action providing it is justified and recorded.

### **Provision of information, instruction, and training and supervision**

188 These are not risk based but may indirectly affect the control of risk and are referred to in the EMM as compliance and administrative arrangements.

189 There is often a strong relationship between failure to control risk and failure to address compliance and administrative issues. In circumstances in which both apply, enforcement action should be determined principally in relation to the control of risk.

190 The importance of provision of information, instruction and training in a comprehensible form and of the role of supervision, is discussed elsewhere at paras. (143 – 145). The general requirements are laid down in Section 2 of the Health and Safety at Work etc. Act 1974 (HSWA) and specific requirements regarding the provision of information and training are contained in the MHSWR supported by the Approved Code of Practice and Guidance (HSE Booklet L21 refers). Non-compliance can seriously undermine the health and safety of migrant workers.

191 The authority of the benchmark standards although '**defined**' in legislation vary in practice given that the general duties under the HSWA are qualified by the term 'so far as is reasonably practicable' whereas other requirements e.g. to provide comprehensible information (reg.15 MHSR) are absolute.

192 Where the arrangements are '**absent**' or '**inadequate**' (EMM Table 4 refers) the Initial Enforcement Expectations are set out in Table 5.2 of the EMM.

## **LANGUAGE ISSUES**

### **Background**

193 Communicating necessary health and safety information and training where there is no common language presents challenges to employers. Some have responded by developing means of conveying information through non-verbal mediums. Visual aids can overcome many of the limitations stemming from a lack of English or poor English language skills. However, the greater the range of methods used to communicate, the more successful they are likely to be. Any single method used exclusively is unlikely to deliver a comprehensive message, that will be understood by all workers.

194 Research suggests that only half of the migrant workers interviewed have good or fluent English language skills. Many workers assert that their inability to speak English is the reason why they take work below their qualifications or skills. Many workers admit to pretending to understand English for fear of not getting work or of losing their jobs if their lack of English became known but this has serious implications, particularly in relation to health and safety training.

195 Although employers interviewed as part of the research said that knowledge of English was not an essential pre-requisite for work, the lack of English presented them with particular challenges in relation to the supervision of migrant workers. In many cases, employers preferred supervision to be in English, save in those cases where the employer shared a common language with the migrant workers. Interpretation other than during the initial stages of employment was also seen to be a problem, because the employer did not know if instructions were being translated correctly. The use of interpreters was often considered impracticable and inflexible as it was not easy to move workers to different jobs if their translators did not then accompany them.

196 In line with the Government's wider integration agenda, HSE's advice is that employers should consider providing English for Speakers of Other Languages (ESOL) courses for workers who need to improve their English. This can be done in the workplace itself or through local teaching providers, and either within or outside working hours subject to business requirements.

### **Advice/guidance**

197 Employers must make sure all employees, whatever their competence in English, receive health and safety information, instruction and training they can understand.

198 If this means delivering it other than in English, then methods such as video, translation/interpretation by a suitably qualified person, internationally-understood signs or other visual methods can all be used effectively.

199 It is important to check understanding once information, instruction and training have been given, and this can be done by observation and normal workplace supervision methods.

200 Although health and safety law doesn't generally require workers to be able to speak English, learning English reduces communication difficulties and has been shown to lead to higher productivity and retention rates, as well as promoting integration outside work. A range of flexible and work focused ESOL qualifications, with health and safety content included is now available (see [http://www.dfes.gov.uk/readwriteplus/ESOL for Work](http://www.dfes.gov.uk/readwriteplus/ESOL_for_Work)).

201 In practice, it is recognised that effective communication with non-English speaking workers can be a challenge both for employers and for HSE. HSE inspectors have access to interpretation and translation services for field visits and investigations, and callers to our confidential helpline can ask to advice in a number of foreign languages.

202 There will be very few situations where health and safety considerations alone justify not employing migrants with poor or no English. However, situations where workers are required to communicate with third parties to ensure health and safety, such as when using user-worked (typically farm) railway crossings, requires careful assessment and management by employers, and initially at least, probably requires close supervision.

203 Employers' duties to provide information in a form that workers can understand are made clear in guidance to the MHSR. The duty under regulation 10 is to provide "comprehensible and relevant" information for employees. This means information in a form that employees can understand, whether they are English speakers or not. This duty cannot necessarily be discharged simply by giving employees lessons in English, though even employees who do not speak English may need to understand simple key words and phrases relating to health and safety that others around them might use - obvious examples are "Fire!" and "Stop!". In order to comply with regulation 10, employers could ask an employee who speaks better English to act as an interpreter (as long as they can do this to a reasonable standard - not everyone can), or seek outside help.

204 Where employers provide workers with English lessons towards ensuring compliance with the law, the employer can insist that all those employees affected attend - but he/she must bear the costs and it must be provided in his/her, not the workers' time. It is therefore possible, at least in theory, that attendance at language lessons is required - but only if all of the above requirements are met.

205 Some employment agencies have experienced foreign language speakers who can help smooth the transition when agency-supplied migrant workers are first taken on. Employers can club together to use a professional interpreter, e.g. for training sessions. Local citizens' advice bureaux may have contacts with migrant worker communities who could help in a similar fashion. Employers could also provide written information in a relevant language (as long as they know that the employees can read the language - this is not always the case, of course), and they should use a competent translator familiar with the technical terms used. These matters should, of course, be taken into account in the employing business' risk assessments before they take on migrant workers.

206 We have no evidence that lack of English skills is a direct contributory factor leading to injury and ill-health among non English-speaking workers. However, for some workers a lack of English language skills may mean that they are at increased risk, and employers need to make provision to ensure they have clear information and training.

207 Increasingly, HSE has produced guidance, including on rights and responsibilities, manual handling, dangers from noise at work and HAVS in a number of European languages. For further information, see <http://www.hse.gov.uk/languages/index.htm> .

## **OTHER ISSUES**

### **Employers' Liability Insurance**

208 Employers' Liability (Compulsory Insurance) legislation (ELCI) obliges employers to insure against their liability for personal injury to employees. It is required by law and is intended to protect your workers if they are injured or made ill whilst at work.

209 The duty to provide ELCI is on the employer. Determining the employer depends on the circumstances of the work and the relationship between the parties. Generally a worker is likely to be your employee if:

- you make deductions for national insurance and income tax from the money you pay them
- you direct and control where, when and how they work
- you supply most of the materials and equipment they use at work; and
- they cannot supply a substitute when they are unable to work

210 In a typical farming or pack house operation where the labour provider's workers are working under the direction and control of the labour user, the labour user's policy will generally provide cover. In other circumstances e.g. where a labour provider controls harvest work on agricultural premises, the labour provider may have to arrange insurance.

211 Labour providers should check with the labour users with whom they have a contract to ensure that current and valid ELCI is in place that provides cover for any workers supplied whilst working for the labour user.

### **Consultation**

212 Trades union membership amongst migrant working communities is low although a number of unions, including Unite (pka the Transport & General Workers Union) and the GMB have begun to establish networks of dedicated migrant worker and nationality based e.g. Polish branches.

213 The Safety Representatives and Safety Committees Regulations 1977 and the Health and Safety (Consultation with Employees) Regulations 1996 provide members of independent recognised trades unions and non-unionised, unrepresented employees with rights to representation and joint consultation. Further information and guidance is contained in the Topic Pack: Worker Consultation and Involvement (July 2007) which can be found at:

<http://intranet/operational/fod-inspection/inspection-packs/workerinvolvement/workerinvolve.pdf>

## FURTHER INFORMATION

### HSE contacts

- Jeremy Bevan (Birmingham): Policy lead on Migrant Workers, Worker Involvement and Inclusion team, SID;
- Phil Smith (Bootle): Policy adviser on Migrant Workers, Worker Involvement and Inclusion team, SID;
- David Coackley: Agriculture and Food Sector lead on Migrant Workers and the Gangmaster Licensing Authority (GLA)
- Gordon Crick: Construction Sector lead on Migrant Workers

### HSE research reports

- RR502 Migrant workers in England and Wales: An assessment of migrant worker health and safety risks - <http://www.hse.gov.uk/research/rrhtm/rr502.htm>
- RR691 – Improving the reliability of estimates of migrant worker numbers and their relative risk of workplace injury and illness – <http://www.hse.gov.uk/research/rrhtm/rr691.htm>

### Other reports

- European Agency for Safety and Health at Work – Literature Study on Migrant Workers – [http://osha.europa.eu/priority\\_groups/migrant\\_workers/migrantworkers.pdf](http://osha.europa.eu/priority_groups/migrant_workers/migrantworkers.pdf)
- Migrant Workers – Safety on site – Loughborough University for the Institution of Civil Engineers – <http://www.ice.org.uk/downloads//HSW%20migrant%20workers%20report%20final%20261107.pdf>
- The Role of Migrant Workers in the Food and Drink Manufacturing Industry – Improve Food and Drink Sector Skills Council - <http://www.improve-skills.co.uk/downloads/campaigns/Migrant-Workers-Summary.pdf>
- Migrant Worker Availability in the East of England – An Economic Risk Assessment – The Institute for Public Policy Research <http://www.ippr.org.uk/publicationsandreports/publication.asp?id=656>
- Joseph Rowntree Foundation – Migrants’ Lives Beyond the Workplace – <http://jrf.org.uk/knowledge/findings/socialpolicy/2068.asp>
- Improvement and Development Agency – New European Migration – Good Practice Guide for Local Authorities – <http://www.idea.gov.uk/idk/aio/6949811>
- East Riding of Yorkshire – International Economic Migrants – [http://www.eastriding.gov.uk/corp-docs/researchgroup/Reports/Migration\\_workers\\_report.pdf](http://www.eastriding.gov.uk/corp-docs/researchgroup/Reports/Migration_workers_report.pdf)
- Audit Commission: Responding to the local challenges of migrant workers – <http://www.audit-commission.gov.uk/reports/>
- Commission for Rural Communities: A8 migrant workers in rural areas <http://www.ruralcommunities.gov.uk/publications/migrantworkersinruralareas>
- Cornwall Strategic Partnership – Migrant workers task group - <http://www.cornwallstrategicpartnership.gov.uk/index.cfm?articleid=10653>
- East Midland Development Agency (EMDA) and Lincolnshire Enterprise - [http://www.migrantworker.co.uk/docs/The%20Dynamics%20of%20Migrant%20Labour%20in%20South%20Lincolnshire%20\(2\).pdf](http://www.migrantworker.co.uk/docs/The%20Dynamics%20of%20Migrant%20Labour%20in%20South%20Lincolnshire%20(2).pdf)

- Gloucestershire County Council - Migrant workers in Gloucestershire - [http://www.gloucestershire.gov.uk/Environment/Glin/Documents%5CThe\\_Researcher%5CThe%20Researcher%2091.pdf](http://www.gloucestershire.gov.uk/Environment/Glin/Documents%5CThe_Researcher%5CThe%20Researcher%2091.pdf)
- Somerset County Council – Migrant workers in Somerset - [http://somerset.gov.uk/media/3C2/6D/Migrant\\_Workers\\_Report.pdf](http://somerset.gov.uk/media/3C2/6D/Migrant_Workers_Report.pdf)
- TUC - Overworked, underpaid and over here. Migrant workers in Britain - <http://www.tuc.org.uk/international/tuc-6878-f0.cfm>

### Useful information

- Construction Skills – Advice on skills, safety, recruitment and training of migrant workers in construction <http://www.constructionmigrantworkers.co.uk>
- Direct.gov – An introduction to working in the UK - [http://www.direct.gov.uk/en/Employment/Employees/StartingANewJob/DG\\_10027923](http://www.direct.gov.uk/en/Employment/Employees/StartingANewJob/DG_10027923)
- UK Border Agency – Employing Migrant Workers – <http://www.bia.homeoffice.gov.uk/employingmigrants/>
- HSE
  - Intranet webpage - <http://intranet/workerinvolvement/migrant.htm>
  - Migrant workers website – <http://www.hse.gov.uk/migrantworkers/index.htm>
  - SIM 01/2007/04 - [http://intranet/operational/sims/ag\\_food/010704.htm](http://intranet/operational/sims/ag_food/010704.htm)
- TUC – Migrant workers:
  - Web pages - [http://www.tuc.org.uk/h\\_and\\_s/index.cfm?mins=403](http://www.tuc.org.uk/h_and_s/index.cfm?mins=403)
  - Safety and Migrant Workers – a practical guide for safety representatives – <http://www.tuc.org.uk/extras/safetymw.pdf>
- Worksmart – Rights for migrant workers <http://www.worksmart.org.uk/rights/viewsubsection.php?sun=82>
- Department for Business, Innovation and Skills (BIS) – Employment agencies & businesses - <http://www.berr.gov.uk/employment/employment-agencies/index.html>
- National Centre for Languages – advice on regional access to interpretation and translation facilities, cultural awareness training ([www.cilt.org.uk](http://www.cilt.org.uk))
- Integration Lincolnshire (<http://integrationlincolnshire.org.uk/>)
- Migrant Gateway (website for migrant workers, (<http://www.migrantgateway.eu/>))
- Migrant Workers North West (TUC-affiliated migrant workers' workplace rights project) (<http://www.migrantworkersnorthwest.org/>)

## Cross-Government Co-operation on the Workplace **Joint Working Protocol**

### **Introduction**

The Government wishes to support legitimate businesses in complying with their legal obligations, to ensure decent working conditions for all workers in the United Kingdom, and to take effective action against rogue groups and individuals who seek unfair profit and advantage by evading their responsibilities under the law. The Government has introduced a radical programme of reform to strengthen our border controls and put in place a new partnership with employers to regulate the process for recruiting skilled workers into the country from outside the European Economic Area and to crack down on the trade in illegal migrant workers. The Government believes that the burden of regulation on business should be no greater than necessary and that enforcement activity by departments and agencies should be properly targeted on the basis of risk and intelligence.

A number of different Government departments and agencies are responsible for administering and enforcing separate rules and legislation in the workplace. Officials in each department or agency have their own distinct legal powers and their own focus and objectives when requesting or considering information from a business or visiting premises in the normal course of their duties. This specialisation enables departments and agencies to maximise their professional effectiveness and deliver for the public.

However, there is strong anecdotal evidence, including from the Joint Workplace Enforcement Pilot in the West Midlands established under a Home Office lead in September 2005, that groups and individuals who fail to comply with one type of workplace regulation are likely to be in breach of other workplace regulations. The use of illegal migrant workers can be part of a pattern of illegality for the purpose of avoiding other workplace duties and regulations, such as national insurance and the national minimum wage, to secure financial gain or unfair competitive advantage.

Although the focus of this protocol is on co-operation in dealing with employers rather than employees, all partners need to be able to recognise the potential indicators of human trafficking. Such cases will be at the extreme end of worker exploitation, may or may not involve illegal immigration and are likely to occur in conjunction with other work place violations. All parties to this protocol are expected to receive over the next 6-9 months awareness raising training to support their ability to identify trafficking victims but should

be ready to alert the police and the UK Human Trafficking Centre when they encounter cases of suspected trafficking.

The Government believes it is essential that the different departments and agencies responsible for visiting premises and enforcing workplace regulations should, where the law permits it, share intelligence when officials encounter serious issues that could be of concern to their counterparts in other departments. Departments should also collaborate in planning or sequencing targeted enforcement activity when a business is detected having engaged in serious illegal behaviour of interest to more than one department.

This quick-reference document aims to provide workplace enforcement and inspection staff with a brief overview of the workplace responsibilities of various government agencies. It also seeks to help those agencies recognise key issues of potential concern to other government departments in relation to workplace abuses, such as the use and exploitation of migrants who may be working illegally in the UK, and encourages the sharing of this information, where legislation allows.

The production of this document is one of a range of steps which government agencies are taking towards sharing intelligence, improving collaborative working, and the creation of immigration crime partnerships across the United Kingdom. This document provides a foundation for the development of closer collaboration, including local working level partnerships. It will be reviewed as models for co-operative working develop and progress, and to reflect outcomes from the government's Vulnerable Worker Enforcement Forum which will report later this year with proposals for raising levels of compliance with employment rights and related legislation.

## **The roles of workplace enforcement agencies**

The following is a brief overview of the workplace enforcement responsibilities of various government agencies.

### *UK Border Agency (UKBA)*

- To detect and remove immigration offenders.
- To take action against supported asylum applicants who are defrauding the national asylum support arrangements.
- To enforce the law on the prevention of illegal migrant working, the work permit arrangements and the accession state workers registration scheme.
- To operate the Points Based Scheme and ensure that sponsoring employers and education providers comply with the immigration rules.

### *Department for Work and Pensions (DWP)*

- To ensure accurate and timely payment of benefits.
- To minimise benefit fraud, official and customer error to stop those who are not entitled, or those who are working illegally whilst claiming, from receiving benefits.

### *Employment Agency Standards Inspectorate (EAS) - Part of the Department for Business Innovation and Skills (BIS)*

- To enforce legislation regulating the conduct of the employment agencies. The regulations include requirements to ensure that workers are paid in full and on time, and to establish the identity and suitability of workers before supplying them to hiring companies. Agencies are also not allowed to charge fees for providing work-finding services (except agencies in the modelling and entertainment industries).

### *Health & Safety Executive (HSE)*

- To secure the health, safety and welfare of all persons at work.
- To enforce working time regulations protecting workers from working more than 48 hours a week on average without their written agreement.
- To protect the health and safety of others (including members of the public) against risks to their health and safety arising out of or in connection with work activities.
- These responsibilities are shared with local authorities. The HSE has responsibility for high risk sectors of the economy including: factories, construction, agriculture, healthcare, government activities and major hazard industries such as chemical manufacture & storage, offshore oil & gas extraction (for local authorities' areas of responsibility please see below).

### *Gangmasters Licensing Authority (GLA)*

- To safeguard the welfare and interests of workers, by regulating those labour providers who supply labour or use workers to provide services in agriculture, forestry, horticulture, shellfish gathering and food processing.
- To support enforcement of the law, by or in conjunction with the Enforcement Authorities of other Government Departments, and others as appropriate, through shared information and joint working, covering the areas set out in the GLA's licensing standards.

### *Local Authorities (LAs)*

- To enforce health and safety at work, and working time, legislation on the same basis as the Health and Safety Executive. Local authorities have responsibility for sectors of the economy including: offices, shops, retail and wholesale distribution, hotel and catering establishments, petrol filling stations, residential care homes and the leisure industry (for HSE's areas of responsibility please see above).
- To enforce a range of legislation in relation to the private rented sector, including tackling unsatisfactory housing conditions, overcrowding, implementing licensing for certain Houses in Multiple Occupation (HMOs) and responding to complaints about harassment and illegal eviction.
- To enforce a range of regulatory legislation which may indirectly bring inspectors in Environmental Health and Trading Standards divisions into contact with businesses employing migrant labour (e.g. Licensing, trading standards, animal health and welfare, feed and food hygiene requirements on farms).

### *United Kingdom Human Trafficking Centre (UKHTC)\**

- To prevent human trafficking by building knowledge and understanding of the harm it causes and to use that knowledge and understanding to direct and prioritise the UK law enforcement response.
- To improve and co-ordinate the law enforcement response to human trafficking by raising awareness of the key issues and developing and delivering relevant training
- To develop and promote a victim centred, human rights based approach to dealing with trafficking victims, working together with other agencies, stakeholder organisations and NGOs.

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\*The United Kingdom Human Trafficking Centre, HM Revenue and Customs, National Minimum Wage and Agricultural Minimum Wage are participating in this Joint Working Protocol as potential recipients of intelligence only.

*HM Revenue and Customs\* (HMRC)*

- To establish that tax and NI has been properly applied to business profits or income from employment or self-employment.
- To disrupt VAT fraud and penalise serious offenders.

*National Minimum Wage\* (NMW) - enforced by HM Revenue and Customs\**

- To enforce the minimum wage legislation, so that workers are not paid wages below the statutory minimum level.

*Agricultural Minimum Wage in England & Wales<sup>§§</sup> (AMW) - enforced by the Department for Environment, Food and Rural Affairs*

- To ensure compliance with the Agricultural Wages Order and to enforce the Agricultural Minimum Wage.

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<sup>§§</sup>The United Kingdom Human Trafficking Centre, HM Revenue and Customs, National Minimum Wage and Agricultural Minimum Wage are participating in this Joint Working Protocol as potential recipients of intelligence only.

## **INFORMATION SHARING PRINCIPLES**

### **The role of individual officers**

It is recognised that officials in each department or agency have their own distinct legal powers and their own focus and objectives when requesting or considering information from a business or visiting places of work. Officials should not be distracted from their primary statutory function and therefore will not necessarily be expected to encounter any or all of potential indicators of non-compliance. Rather it is expected that if, during their normal course of duty, an officer encounters information that may be of interest to another agency, s/he should consider whether that information could be usefully and lawfully passed on.

### **When to share information**

The intention of this document is not to overload departments with reports of suspicions which do not have an objective basis. Officers should therefore exercise judgement, and only share information about a specific business with other agencies when multiple issues of concern are observed, or if they consider that the level of non-compliance is sufficient to give another agency serious cause for concern (unless the use of false names or identities is encountered, in which case the UK Border Agency should be informed via the SPoC even if no other issue of concern is observed).

Officers should be aware that BIS's Companies Investigation Branch (CIB), which is part of the Insolvency Service executive agency, has powers under the Companies Act to investigate companies suspected of abusing limited liability, engaging in financial fraud and operating scams against businesses and consumers. CIB has no regulatory responsibilities or enforcement role regarding employment legislation but can seek to wind up companies in the public interest, prosecute and disqualify unfit directors as a result of its investigations. There may be a small number of cases where a referral to CIB may be useful. These should be discussed on a case-by-case basis with its Vetting Section. Officers encountering such cases should in the first instance contact the relevant BIS contact via the SPoC.

### **Sharing information lawfully**

Officials must not exceed their legal powers or act unlawfully. The emphasis is on the proper exchange of intelligence where permitted under the law to support targeted enforcement activity and investigations and to prevent abuse, harm or injury to workers in vulnerable conditions, including migrant workers subject to immigration control.

Before sharing information, officers must ensure that they are legally entitled to do so and comply with the Human Rights Act (1998), the Data Protection Act (1998), and additional legislation governing the exchange of information between government agencies. There are criminal sanctions for wrongfully disclosing information in some circumstances. Officers should seek advice from experts in their parent department where necessary to ensure they do not act unlawfully.

**In addition, officers should ensure that they comply with their parent department's policy and procedures on exchanging information with other government departments before contacting another agency.**

### **Joint action-planning**

In many cases sanctions and penalties against a business may be better pursued separately given the different timescales likely to be involved. However, where an employer poses a substantial compliance risk to more than one department or agency, there will be a case for departments to collaborate beyond the initial exchange of intelligence to discuss the most effective way of tackling the offender, and where appropriate plan for either contemporaneous or properly sequenced enforcement activity.

At the extreme end, where the organised facilitation of illegal labour or human trafficking is involved, it will be important for all Departments to refer the case to the Serious Organised Crime Agency and the UK Human Trafficking Centre and provide those agencies with any assistance necessary.

### **Issues of potential interest**

The table below sets out a number of readily observable characteristics of a workplace, which have been identified by enforcement bodies as potential indicators of non-compliance with one or more aspects of workplace legislation. When seen in combination, they can build up a picture of behaviours by a business that may be of concern or interest to key contacts in other agencies.

Before contacting any agency to pass on information, officers should refer to the section on 'roles of workplace enforcement agencies' above to ensure that the issue of concern relates to that agency's area of responsibility. For example, officers should only pass information to GLA if the issue of concern relates to one of GLA's regulated sectors, which are agriculture, forestry, horticulture, shellfish gathering and food processing. For health and safety issues, officers should check whether the issue of concern relates to the HSE's or relevant local authority's area of responsibility.

Issues of concern	Key contacts for sharing information							
	UKBA	HMRC & NMW	HSE or LA	EAS	GLA	AMW	DWP	UKHTC
Contracts / conditions of employment								
<b>Employers providing apprenticeships or training (those who offer a training day but do not pay the worker for it, those who pretend a worker is an apprentice, and those who fail to pay National Minimum Wage to apprentices at the appropriate time).</b>	X	X			X	X		
<b>Bonus payments or large cash sums used to supplement pay (unconsolidated bonuses counting towards pay).</b>	X	X			X	X		
<b>Employers providing accommodation, food, transport, or other benefits in kind such as uniforms to low paid workers.</b>		X			X	X		
<b>Trade where an intermediary such as a labour provider is involved in the engagement of the workers (particular concern around seasonal work, migrants and where there is a high turnover of staff).</b>	X	X			X	X		
A level of charges to hirers which suggest that the Agricultural and National Minimum Wage might not be paid and/or other statutory requirements are not being met.	X			X	X	X		
Workplaces where workers are not given a written statement of employment particulars or a written contract.				X	X	X		
Agencies providing other services (e.g. accommodation, transport etc) to the worker, for which the worker is being charged large sums.	X			X	X			
<b>Accommodation is provided by the employer and is grossly overcrowded, subject to change at short notice, or not subject to a formal tenancy agreement.</b>					X			
<b>Staff being allowed time off every two weeks (possibly to sign on).</b>							X	
Staff paid cash in hand at all times.	X					X		
Staff work especially unusual or long hours.	X		X			X		

This document is intended to supplement official departmental guidance. Any issues requiring technical advice or escalation should be referred through normal departmental channels. 53

Issues of concern	Key contacts for sharing information							
	UKBA	HMRC & NMW	HSE or LA	EAS	GLA	AMW	DWP	UKHTC
Employer's records								
Use of false names and identities. ( <b>NB</b> – agencies should notify the UK Border Agency whenever the use of false names or identities is encountered, even when no other issue of concern is observed).	X						X	
<b>Employer records are poor/ incomplete particularly if there are no records of hours worked, or general evidence of poor record keeping.</b>	X	X		X	X	X		
Incorrect or false national insurance numbers used for employment purposes.	X	X						
Incorrect or false national insurance numbers, used in connection with claims to benefit.	X						X	
Any evidence suggesting staff in receipt of benefits to which they are not entitled.	X						X	
Absence of wage slips (or other evidence that employees are paid cash in hand at all times).	X				X			
Original travel or identity documents being kept by employer.	X				X			
Workplace conditions								
Poor/inadequate provision of health and safety information (as evidenced by absence/severe lack of information displayed or available to workers in premises) – reinforced by the workforce's poor English language skills AND wholesale employer failure to make or attempt effective alternative arrangements to communicate H&S procedures to the workforce.			X		X			
Poor management of vehicle movement, general absence of safety signage and markings (e.g. lack of signs or signs leading you from a car park to reception <u>via</u> 'Goods inwards', sightings of dangerously moving vehicles or people not wearing appropriate high-visibility clothing when 'in amongst' moving vehicles).			X		X			

This document is intended to supplement official departmental guidance. Any issues requiring technical advice or escalation should be referred through normal departmental channels. 54

Issues of concern	Key contacts for sharing information							
	UKBA	HMRC & NMW	HSE or LA	EAS	GLA	AMW	DWP	UKHTC
Welfare facilities either absent or poor, e.g. excessive heat/cold with no means of getting warm, toilets and washing facilities dirty etc.			X		X			
Premises and equipment poorly maintained (e.g. trailing cables, open fire doors, rusty electrical equipment, leaking pipe work, significant damage to building fabric and absence of health and safety notices).			X	X	X			
Failure to provide and maintain arrangements to ensure safe work where maintenance work is being carried out (e.g. work at height should include scaffold, edge protection (guardrails), safety nets or suitable work platforms).			X		X			
Correspondence/business address differs from place of work (e.g. business or correspondence address is a PO Box number).	X							
Workplace facilities not suitable for stated purpose (e.g. insufficient classroom or work space for number of registered students or employees).	X							
Workplace characteristics								
Workforce predominantly comprising migrant workers (when combined with other factors listed in this table).	X				X			
Employer's reaction to visit								
Employer nervous or reluctant to allow officials to approach or interview workers.	X				X			
Employer refuses to provide documents relating to workers.	X				X			
Previous non-compliance								

This document is intended to supplement official departmental guidance. Any issues requiring technical advice or escalation should be referred through normal departmental channels. 55

Issues of concern	Key contacts for sharing information							
	UKBA	HMRC & NMW	HSE or LA	EAS	GLA	AMW	DWP	UKHTC
Business/employer/place of work has previously failed to comply with workplace regulations.		X			X			
<b>Human Trafficking (This is not an exhaustive list of potential indicators of trafficking. For more detailed information, please visit <a href="http://www.ukhtc.org">www.ukhtc.org</a>)</b>								
Threats or actual physical harm to workers.					X			X
Restriction of movement or confinement, to the workplace or to a limited area.					X			X
Debt bondage: where a worker works to pay off a debt or loan, and is not paid for his or her services. The employer may provide food or accommodation at such inflated prices that the worker can not escape the debt.					X			X
Withholding wages or excessive wage reductions, that violate previously made agreements.					X			X
Threat of denunciation to the authorities where the worker is in an irregular immigration status.	X				X			X

## TEMPORARY & MIGRANT WORKERS: BASIC QUESTIONS TO ASK

Basic questions to ask at inspection visits to clients who are known to employ or suspected of employing migrant workers:

1. Does the business employ temporary and/or migrant workers?
2. Does it employ them directly or are they supplied by an employment agency or other labour supplier?
3. If supplied by an agency or labour provider, is it based in the UK or abroad?
4. If supplied by an agency or labour supplier, is the labour provider licensed with the Gangmaster Licensing Authority (GLA)?  
N.B. If not, advise it needs to be and that the GLA will be informed.
5. Who is responsible for the migrant workers' health and safety? The employing business i.e. the labour user or the labour provider?
6. Has a suitable and sufficient assessment of the risks to which the workers are exposed been carried out?
7. Does it take account of the particular needs of non-UK nationals; in particular does it take account of language issues?
8. If relevant, does it address the issues of compatibility/equivalence of vocational qualifications e.g. lift truck driving qualifications obtained abroad?
9. Have the workers been provided with necessary and relevant information as to risks, instruction, induction and other health and safety training?
10. Has it been provided in a comprehensible format?
11. What steps have been taken to ensure that it has been understood and is acted upon?
12. Are the workers adequately supervised and can they communicate with their supervisors?
13. How and to whom can they raise any concerns about their health and safety?
14. If relevant, has necessary and suitable PPE been provided without cost to the workers?
15. Has suitable provision for toilet and washing facilities been made?
16. Has provision been made to ensure that Employers' Liability Insurance is in place that covers the workers on the labour user's premises?
17. If relevant, have appropriate and suitable arrangements been made to transport workers to and from their place of work? Are the drivers suitably qualified and are the vehicles suitable and properly maintained?
18. Where domestic accommodation is provided for the workers, if appropriate and required, are copies of current gas safety certificates made available?
19. Are accurate records of the hours being worked kept and available for inspection? Do the terms and conditions under which they are employed comply with the Working Time Regulations 1998?
20. Are suitable arrangements in place for recording and reporting accidents and cases of ill health?
21. Are suitable systems in place for first aid (including hospital) treatment, and any necessary health surveillance?

## **The Vulnerable Worker Single Enforcement Helpline – liaison with FOD on complaint investigation and recording**

### **Introduction**

1. HSE has been involved in the setting up a single helpline for vulnerable workers<sup>9</sup>, as part of the Governments efforts to improve the protection of this group of workers. The Pay and Work Rights Helpline provides a unified point of contact for both employers and workers. It has been developed in co-operation with employers, trade unions and different enforcement agencies across government.

2. The helpline will cover:

- Working time
- Licensing standards enforced by the Gangmasters Licensing Authority
- Employment agency standards, enforced by the Employment Agency Standards inspectorate (an agency within BIS)
- National Minimum Wage and Agricultural Wages Board issues

### **'Multi-issue' complaints**

3. It is anticipated that some calls to the helpline will give rise to complaints needing investigation, either by one of the agencies alone, or by a number of them in a coordinated way – the latter being a so-called 'multi-issue' complaint. The working time elements of complaints will be passed by the helpline's call handlers to the appropriate Working Time Officer in the FOD WTO team, overseen by Kevin Francis, FOD HQ.

4. Although the helpline has been deliberately set up to focus, so far as HSE's remit is concerned, on working time issues, a small number of complaints may have a health and safety element to them, whether or not associated with working time issues. It is **vital** in such cases that there is good liaison between:

- FOD complaints handlers/investigators;
- the other enforcement agencies involved; and
- WTOs where relevant (using existing WTO/Band 6 Complaints Officer liaison arrangements and taking account of the recording protocol in para 6 below).

### **Procedure for liaison on multi-issue complaints that have a health and safety component but raise no working time issues**

5. The helpline's call handlers will have instructions to route 'stand-alone' health and safety concerns through Infoline, who will forward them to FOD's complaints handling system. The complaint details will be recorded in the usual way (see Annex for details),

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<sup>9</sup> Workers at risk of having their workplace rights denied, and who lack the capacity or means to enforce them (BIS).

and Infoline should state clearly where there is the need for liaison with one or more of the other enforcement bodies.

7. To minimise confusion and duplication and to ensure a consistent approach, investigating staff are asked not to liaise directly with the other agencies involved in the first instance *except* where the information received indicates an overriding HSE operational need to do so. Rather, **all liaison should be directed through David Coackley, B2 in Nottingham office** ([david.coackley@hse.gsi.gov.uk](mailto:david.coackley@hse.gsi.gov.uk); VPN 513 2922) as HSE's designated single operational point of contact for other agencies on vulnerable/migrant worker health and safety issues. Where there has been direct liaison due to operational need, this should be indicated to David at the earliest subsequent opportunity.

8. The following points should be borne in mind by FOD investigating staff:

- Participating agencies will agree between themselves which one will take the lead on a particular multi-issue complaint. It is envisaged that working time issues will rarely if ever be serious enough to merit a HSE WTO being the 'lead' investigator, so FOD liaison on 'stand-alone' health and safety complaints will in almost all cases be with external bodies rather than a WTO; David Coackley will act as the HSE liaison in this process.
- There is an expectation on agencies involved in a multi-issue investigation that the complainant will be contacted within 7 working days of the complaint being logged;
- However, health and safety aspects of the complaint will be *outside* the scope of this performance standard – FOD's existing standards and procedures for such contact will continue to apply instead;
- Investigating staff will need to be aware that participating agencies will have their own timescales for investigation, **but should in no way be influenced by these. The priority given to investigation of health and safety issues raised in a 'multi-issue' complaint remains a matter for HSE alone.**

9. Participating agency staff should not initiate contact with FOD investigating staff directly, and will not be supplied with their contact details. If this happens, please inform David Coackley as soon as possible. Once initial liaison has been established through her, it will be for line managers to decide on a case-by-case basis whether operational effectiveness would be enhanced by direct liaison with other investigating agencies or not.

### **COIN recording**

10. It is important that HSE accurately records the time spent on investigating complaints that originate from the helpline, as a check on the amount of resource expended. See annex 3(1) for details of draft proposed instructions, which will be included in OG instructions shortly.

### **Notes**

1. We have no indication of likely call volumes at this stage. However, in 2007 a total of 60 or so working time complaints were received across HSE, only a few of

which alleged health and safety non-compliance.

2. All working time complaints other than those that are clearly LA-enforced (retail and office main activities) will be referred to HSE in the first instance. If a Local Authority is the enforcing authority, the relevant WTO will refer as appropriate. This will be kept under review as call volumes to the new helpline become clearer.

Jeremy Bevan and David Coackley

January 2010

### **Notifiers Concern forms – recoding of information received from PAWR via Infoline**

On receipt, the Band 6 CO should annotate the complaint form to indicate that the complaint has come from the Pay and Work Rights Helpline:

- On existing forms, this will be in the 'Status of Notifier' section, identifying the originator of the concern e.g. employee **and** stating 'via PAWR';
- on the new form, record under the 'Status of Notifier' heading in the 'Notifier's Contact Details' section, giving the original caller's status **and** again using the acronym 'via PAWR'.

The need for liaison (with relevant agencies as indicated by the helpline's call handlers through Infoline) should be stated in the 'comments' section (existing form) or 'Notifier's expectations of HSE' (new form).

### **Recording of complaint investigations - COIN**

If the complaint is selected for follow up or investigation, the acronym 'PAWR' should be used in the 'complaint summary' section of the complaint screen to allow case management reports to be generated.

[New risk-based system only] If the complaint is not selected for investigation (i.e. it is a Matter of Concern or a green complaint), the entry on the Divisional TRIM spreadsheet should use the acronym 'PAWR' to allow identification of those complaints that have come via the helpline.

## GENDER ISSUES IN RISK ASSESSMENT

Continuous efforts are needed to improve the working conditions of both women and men. However, taking a 'gender neutral' approach to risk assessments and prevention can result in risks to female workers being underestimated or even ignored altogether.

When we think of hazards at work, we are more likely to think of men working in high accident risk areas such as a building site or fishing vessel than of women working in health and social care or in call centres.

A careful examination of real work circumstances shows that both women and men can face significant risks at work. In addition, making jobs easier for women will make them easier for men too. So it is important to include gender issues in workplace risk assessments, and 'mainstreaming' gender issues into risk prevention is now an objective of the European Community.

The European Agency for Safety and Health at Work have identified some areas of hazards and risks, which can be found in female dominated work areas.

Work area	Risk factors and health problems include:			
Healthcare	Biological	Physical	Chemical	Psychosocial
	Infectious diseases, e.g. blood borne, respiratory	Manual handling and strenuous postures; ionising radiation	Cleaning, sterilising and disinfecting agents; drugs; anaesthetic gases	Emotionally demanding work; shift and night work; violence from clients and the public
Nursery Workers	Infectious diseases, e.g. particularly respiratory	Manual handling, strenuous postures		Emotional work
Food production	Infectious diseases, e.g. animal borne and from mould, spores, organic dusts	Repetitive movements, e.g. in packing jobs or slaughterhouses	Pesticide residues; sterilising spices and additives	Stress associated with the repetitive assembly line work

Catering and restaurant work	Dermatitis	Manual handling; repetitive chopping; cuts from knives; burns; slips and falls; heat; cleaning agents	Passive smoking; cleaning agents	
Textiles and clothing	Organic dusts	Noise; repetitive movements and awkward postures; needle injuries	Dyes and other chemicals, including formaldehyde in permanent presses and stain removal solvents	Stress associated with repetitive assembly line work
Laundries	Infected linen, e.g. in hospitals	Manual handling and strenuous postures; heat	Dry cleaning solvents	Stress associated with repetitive line work
Agriculture	Infectious diseases, e.g. animal borne and from mould, spores, organic dusts	Manual handling, strenuous postures; unsuitable work equipment and protective clothing; hot; cold and wet conditions	Pesticides	

## USEFUL LINKS TO OTHER WEBSITES

Comments	Link
<u>Advisory, Conciliation and Arbitration Service (ACAS)</u> Provides independent, up to date advice and guidance on employment.	<a href="http://www.acas.org.uk">www.acas.org.uk</a>
<u>UK Border Agency's</u> guidance on the new points system for those from overseas wanting to work in the UK. Includes details of new sponsor's licences for businesses who want to employ skilled (tier 2) migrants, and penalties for employing illegal workers.	<a href="http://www.bia.homeoffice.gov.uk/employers/points/">http://www.bia.homeoffice.gov.uk/employers/points/</a>
<u>Business link</u> website for additional information and guidance on agency worker's health and safety.	<a href="http://www.businesslink.gov.uk/agencyworkers">www.businesslink.gov.uk/agencyworkers</a> .
<u>Citizens Advice Bureau.</u> Links to guide for initiatives to support migrant workers in rural areas.	<a href="http://www.citizensadvice.org.uk/index/publications/assisting_migrant_workers.htm">http://www.citizensadvice.org.uk/index/publications/assisting_migrant_workers.htm</a>
<u>Department for Business, Innovation and Skills (BIS)</u> Provides guidance for employers and employees on a wide range of employment matters, including working time and annual leave entitlement. The Employment Agency Standards Inspectorate is also part of BIS.	<a href="http://www.berr.gov.uk/employment/employment-agencies/index.html">http://www.berr.gov.uk/employment/employment-agencies/index.html</a>
<u>Directgov</u> - Access to and information from a wide range of government departments.	<a href="http://www.direct.gov.uk/Employment/Employees/fs/en">www.direct.gov.uk/Employment/Employees/fs/en</a>
<u>The Gangmasters Licensing Authority (GLA).</u> The authority was set up to curb the exploitation of workers in the agriculture, horticulture, shellfish gathering and associated processing and packaging industries. The GLA is required to establish a UK wide Licensing Scheme and create a Register for Gangmasters.	<a href="http://www.gla.gov.uk/">http://www.gla.gov.uk/</a>
<u>Local authorities (councils)</u> A directory of local councils in the UK	<a href="http://www.direct.gov.uk/DI1/Directories/LocalCouncils/fs/en">www.direct.gov.uk/DI1/Directories/LocalCouncils/fs/en</a>
<u>UK Income Tax Advice.</u> Link to multi-lingual information sheet on UK taxes	<a href="http://www.hmrc.gov.uk/cnr/helpsheet_downloaded_page.htm">http://www.hmrc.gov.uk/cnr/helpsheet_downloaded_page.htm</a>
<u>National Farmers' Union (NFU)</u> Provides professional representation and services including advice and guidance on health and safety to its farmer and grower members.	<a href="http://www.nfuonline.com/">http://www.nfuonline.com/</a>
<u>The Trade Union Congress.</u> Represents people working in Britain. The TUC have published a new safety leaflet, ['Your health, your safety: A guide for workers'] provides information about safety rights at work which is translated into 19 different languages. The TUC have also produced a leaflet for people coming to work in the UK from the eight new member countries of the European Union. The leaflet, [Working in the UK: Your Rights], gives information about your legal rights while you work here.	<a href="http://www.tuc.org.uk/">http://www.tuc.org.uk/</a> <a href="http://www.tuc.org.uk/international/index.cfm?mins=288">http://www.tuc.org.uk/international/index.cfm?mins=288</a>

<u>Department for Education and Skills (DfES)</u> for information on funds available for employers to draw on for ESOL provision (where workers are earning less than £15K a year)	<a href="http://www.dfes.gov.uk/">http://www.dfes.gov.uk/</a>
<u>Workers Registration Scheme (SAWS)</u> . From May 1 2004, most nationals of the new member states (except Cyprus and Malta) who wish to work for more than one month for an employer in the UK need to register under the Worker Registration Scheme.	<a href="http://www.workingintheuk.gov.uk/working_in_the_uk/en/homepage/schemes_and_programmes/worker_registration.html">http://www.workingintheuk.gov.uk/working_in_the_uk/en/homepage/schemes_and_programmes/worker_registration.html</a>
<u>North West Food Alliance</u> . The existing food and drink bodies, Northwest Food Alliance and Northwest Fantastic Foods Partnership have been combined with the aim of making it easier for businesses in the sector to know who to contact for advice and business support.	<a href="http://www.nwfoodalliance.co.uk/">http://www.nwfoodalliance.co.uk/</a>
<u>Cornwall Strategic Partnership's Migrant Worker Task Group</u> . This task group was pulled together to investigate the issues and opportunities connected with migrant workers.	<a href="http://www.cornwallstrategicpartnership.gov.uk/index.cfm?articleid=10653">http://www.cornwallstrategicpartnership.gov.uk/index.cfm?articleid=10653</a>
<u>Working in South Lincolnshire</u> . Advice and guidance for migrant workers arriving in the East of England.	<a href="http://www.migrantworker.co.uk/workers.asp">http://www.migrantworker.co.uk/workers.asp</a>
<u>Construction Skills</u> . Supporting the effective integration of migrant workers. Provides details on how CSCS cards might be useful 8	<a href="http://www.constructionmigrantworkers.co.uk/index.asp">http://www.constructionmigrantworkers.co.uk/index.asp</a>
<u>National Centre for Languages</u> – a one-stop shop for advice on language and cultural issues	<a href="http://www.cilt.org.uk/">http://www.cilt.org.uk/</a>
<u>Migrant Gateway</u> . – A large voluntary sector provider of advice and guidance to migrant workers and their employers, including workplace health and safety. Based in East Anglia, but advises nationwide.	<a href="http://migrant-gateway.eu/gateway/index.php?option=com_content&amp;task=category&amp;sectionid=4&amp;id=14&amp;Itemid=26">http://migrant-gateway.eu/gateway/index.php?option=com_content&amp;task=category&amp;sectionid=4&amp;id=14&amp;Itemid=26</a>
<u>International Labour Organization</u> – Forced labour and human trafficking – handbook raising awareness of these issues in the context of labour inspection.	<a href="http://www.ilo.org/global/What_we_do/Publications/ILOBookstore/Orderonline/Books/lang--en/docName--WCMS_104857/index.htm">http://www.ilo.org/global/What_we_do/Publications/ILOBookstore/Orderonline/Books/lang--en/docName--WCMS_104857/index.htm</a>