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HEALTH AND SAFETY COMMISSION

Migrant Workers: a progress report

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Issue

1. To report on progress with the programme of work approved by the Commission at its meeting of 08/06/2004 (**HSC 04/61**), and to bring the Commission up to date with the wider political developments on illegal working.

Timing

2. Routine

Recommendation

3. That the Commission take note of the work done to date and endorse next steps, especially on research, so as to make an authoritatively evidence-based decision by mid-2006 on the scale of the problem and proportionate responses.
4. That the Commission also take note of increasing Government interest in the broader issue of illegal, migrant and vulnerable workers, the very active role HSE is taking and of the need for readiness on HSE's part to respond to pressure for more urgent collaborative action.

Background

5. The HSC considered a scoping paper (HSC04/61) at its meeting of 8 June. It endorsed a programme comprising five workstreams designed to gather hard evidence on whether there is a distinct link between migrant worker status and increased vulnerability; to monitor the progress and impact of current or planned HSE activity; to elicit what is happening in the LA sector; and to reinforce HSE's engagement in two broader Government initiatives.
6. The broader issues surrounding illegal, migrant and vulnerable workers remain high on the Government's agenda – and appear to be rising. Heightened sensitivity to them can be expected in the run-up to a General Election. The MISC20 Cabinet Committee (on which Jane Kennedy sits) has been given new terms of reference, which cover the social and economic aspects of asylum and immigration issues, including co-ordination of the Government's response to the problems of gangmasters and illegal migrant working. In November 2004, HSE participated a No 10 summit for frontline regulators on illegal working. DTI has been asked to consider its outcomes alongside employment rights aspects of the 'Warwick Commitments'. Again, Jane Kennedy and HSE officials are participating in this work.
7. These developments may lead to new challenges for HSE, but chime with the emphasis the Commission has laid on a strongly 'joined-up' approach at Ministerial level as well as

further down the line. Indeed, HSE has been very active in promoting such an approach, for example in Operation Gangmaster and the planned joint enforcement pilot.

Argument

8. Overall, good progress is being made on each of the five workstreams within the migrant workers programme. In brief:
- **Workstream 1 (research and analysis).** Existing external sources of data on numbers of migrants employed in the UK have been found wanting. In response we have, in communication with the Home Office and OGDs, developed two research projects, which should yield definitive data on the health and safety profile of migrants by early 2006.
 - **Workstream 2 (pursuing existing HSE programmes of action).** The impact of activities within FOD sectors identified in HSC/04/61 is being assessed. Most activities are concentrated within the agriculture and construction sectors. Good progress is being made there, and work is in hand to glean evidence of any relevant activities and their impact from other sectors.
 - **Workstream 3 (multi-agency joint enforcement pilot.)** Planning is well advanced, although we would have preferred a less extended timetable. A three-year pilot should begin in early 2005. It will be based in the West Midlands, and be run by a team of twenty drawn from interested departments, agencies and the police: HSE has agreed to contribute a Band 3 inspector.
 - **Workstream 4 (Local Authorities).** Information has been sought from LAs by several routes, but the response rate has so far been low. Further efforts are being made through networks other than the usual health and safety ones – for example LA housing services.
 - **Workstream 5 (Gangmasters (Licensing) Act).** A substantial element of the workstream has been achieved by the passing of Jim Sheridan's Private Member's Bill in July. HSE is involved in the development of the regulations which will establish the details of the licensing regime and which should be ready by autumn 2005

Full details on each of the five workstreams can be found at Annex A. Details of the research project and of the Intelligence review are available on request.

9. Our approach (which was summarised in our response to the EFRA Select Committee inquiry on HSE) has so far met with a favourable response from our stakeholders. We have been open in explaining how our work programme is deliberately focussed on the occupational health and safety of migrant workers, as distinct from other aspects, which probably drive most political and media interest. We have also emphasized the centrality of evidence-gathering to our work: we are deliberately not launching major new interventions targeted at migrant workers until we have the evidence to justify them.

Consultation

10. We have worked closely with concerned HSE Directorates: FOD, Policy Group, and CoSAS, the Communications Directorate and PEFD have all contributed to this paper. LACORS have also been involved as the leader of one of the programme workstreams. We have also been in touch with DTI, DWP, ODPM, Home Office and the Trade Unions on aspects of the programme.

Presentation

11. As noted in paper HSC/04/61, HSE and LAs should continue to push the message that all workers, irrespective of status, are covered by HSWA and that there is no place for employers or labour providers who take advantage of the flexible economy and exploit vulnerable workers by denying them the required protection.

12. We should be prepared to defend the timescale for our evidence-gathering and demonstrate that we are not being inactive in the meantime. If we undertake new activity as an input to more pressing cross-Government initiatives, we shall need to be able to show how it coheres with the Commission programme. Even if the evidence on migrant workers turns out to show that there is no unique health and safety problem, it may well be the case that we still need to address a broader problem of vulnerable workers in the flexible economy. We should be in a position to argue that our level of interim activity was sensible, given uncertainty about the link.

Costs and Benefits

13. Benefits of the work proposed should be increased confidence of migrant workers in the health and safety system and a reduction in their vulnerability. In parallel, however, there may be costs arising from the need to respond to hitherto hidden issues.

Financial/Resource Implications for HSE

14. The best estimate, necessarily subject to some uncertainty, of overall capital expenditure (over and above the planned work that will continue to be met from existing resources) is roughly £240,000 – £255,000 and 3 person (at Band 3 level) years. Capital expenditure other than that already catered for (i.e. from within existing resources) is for the research projects and the secondment of a Band 3 Inspector to the proposed Multi Agency Joint Enforcement Pilot. This expenditure will occur over the next three years, i.e. 2005/2006, 2006/2007 and 2007/2008. There is also a possible need for more resource depending on future developments – for example cross Governmental projects plus the need to review our approach in light of the results of the research project.

Other Implications

15. None additional to those for SMEs identified in HSC/04/61.

Action

16. The Commission is invited to endorse the recommendations at paragraph 3. If the Commission is content, we propose to make proposals, based on an analysis of the research findings and other evidence, by mid-2006. In the meantime, however, we shall offer an update in 6 months time on the wider political developments and seek the Commission's views on any significant new initiatives proposed.

ANNEX A

In Depth Workstream Progress Report, including feedback on sector activities and LA contacts.

Workstream 1 (research and analysis). Existing external sources of data on numbers of migrants employed in the UK have been found wanting. We have, however, developed two research projects, which should yield definitive data on the health and safety profile of migrants by early 2006.

Additionally, we have found that there is a dearth of information and evidence regarding the number of migrant workers employed in the UK, and the nature of that employment. Whilst information pertaining to foreign workers within the labour market is not difficult to access, currently within the UK there is no register of migrant workers and schemes designed to collate information regarding the characteristics of the UK labour force, such as the Labour Force Survey, do not differentiate between migrant workers and foreign workers per se. At best, we can draw inferences from trends in general migration (and not that specifically work-related), from the Work Permits and National Insurance number schemes, and from information regarding foreign worker population stocks and flows. Any estimates currently achievable are likely to be gross underestimates of actual numbers as there is no consideration given to the illegal economy in official estimates. A copy of this intelligence review is available on request.

Workstream 2 (pursuing existing HSE programmes of action). The impact of activities within FOD sectors identified in HSC/04/61 is being assessed. Most activities are concentrated within the agriculture and construction sectors. Good progress is being made there, but more still needs to be done in other sectors.

Agriculture:

There are approximately 180,000 people (excluding farmers, their partners and farm managers) employed in agriculture and horticulture in the UK of which 64,000 (34%) are seasonal or casual (temporary) labour.

The demand for temporary workers within agriculture and horticulture is greatest in the fresh produce and packhouse sectors which require a flexible labour force to undertake unskilled manual tasks such as planting and picking throughout the year. Concentrations of temporary workers are known to be employed in the Fens, the Vales of York and Evesham, Kent and the South West of England. Shellfish harvesting on tidal estuaries in England and Wales has taken on major significance following the tragic deaths of 21 Chinese illegal immigrants in Morecambe Bay in February 2004.

Because farmers and growers are finding it increasingly difficult to source indigenous labour they are relying extensively on migrant workers: from both EU and non-EU countries. Many are prepared to work in unpleasant conditions for comparatively poor wages. An unknown proportion are believed to be illegal immigrants.

We do not have reliable data on the number of temporary workers employed in the industry nor on the incidence of accidents and ill health but there is a growing concern across government at the rising level of illegal activity, including the neglect of health and safety responsibilities, amongst both labour providers and labour users in the industry. There is also mounting evidence of the abuse and exploitation of migrant workers on a range of issues

including the payment of low wages, provision of poor housing, excessive working hours and lack of insurance cover.

The Sector's Racial Equality Plan includes a related commitment to obtaining better understanding of the issues that affect the health and safety of ethnic workers in the industry and to improving channels of communication with them.

The Agriculture/Food Sector has developed a three-year programme of work with the aim of reducing the level of risk and resultant injury and ill-health experienced by temporary labour in the agriculture and food industries by:

- **undertaking research and analysis to improve knowledge and understanding of the scope and extent of the problem and to identify the most appropriate content, language, media, format and mechanisms for delivering targeted health, safety and welfare advice to groups identified by related DEFRA research; and.**
- **pursuing programmes of action in agriculture, food, fish farming and the shellfish harvesting i.e. in areas where there is already evidence of overlap between the presence of casual and temporary labour (including migrant workers) and vulnerability to risk.**

The Sector is working closely with COSAS, FOD and industry stakeholders including the Ethical Trading Initiative, major retail groups, Dairy UK and the Northwest Food Alliance etc. in developing and promoting good practice with respect to the provision and use of temporary workers. It is also providing support to Defra on the implementation of the Gangmaster Licensing Act 2004.

Construction

Migrant and other socially/economically disadvantaged workers are known to be employed in the construction industry. Low skills entry thresholds and the casual/informal nature of employment make the industry an obvious destination. Labour shortages, increasing difficulties in attracting and retaining indigenous workers and an extended period of growth in the industry make migrant etc. workers a viable option for the industry. HSE's estimates of 10% migrant penetration of the workforce almost certainly underestimate the proportion in the industry in the greater South East.

Construction Division is approaching the problem from a wider perspective of vulnerable groups, on the grounds that this accords with the more sustainable longer term government agenda and avoids becoming embroiled in issues such as economic migration, asylum seekers etc. A broader approach considers those workers and groups (particularly in the informal economy) with limited literacy, communication skills, understanding of their rights and economic bargaining power that may make them vulnerable to exploitation in the workplace.

The Division is focussing on those who exploit vulnerable groups rather than on the vulnerable workers themselves. Because the opportunity and desire to work in the UK stems in part, from a more liberalised, deregulated market it requires a more joined up approach that addresses the issues that lead to the problem rather than simply trying to deal with the consequences. This approach is consistent with the 'Influence Network' approach of the Construction Program (CP).

Working with and through industry stakeholders including employers' organisations, major employers, the trades unions, local community groups, local Operation Gangmaster fora and

departments such as the DTI, vulnerable groups have been specifically identified in the CP strategy.

The Division's Racial Equality Plan provides some initial support for the strategy but as elsewhere, progress in developing and implementing the plan has been slow due to a lack of intelligence. Information on migrant status, ethnic origin, employment status, etc. is not gathered by RIDDOR. Available information provides some intelligence on the number of construction fatalities involving migrant workers but the Division believes that the number of reportable major injuries to such workers in areas of high concentration e.g. London, are in excess of the norm.

Project plans specifically targeted at migrant and other vulnerable groups have not been developed to date. However, current project plans addressing issues such as high-risk work activities and worker engagement have relevance to these groups. Current workstreams targeted at high-risk activities, carried forward by local sweeps or 'blitzes' are likely to lead HSE to engage with worksites where migrant labour is employed. At the same time, a number of local initiatives, driven by local circumstances, involve outreach into ethnic minority communities.

The CP also includes development of a communications strategy in which vulnerable groups have been identified as a communications target. Inspectors routinely address communication/language issues where they are found to be an issue during field and investigatory work. HSE has contributed to the development of a CITB report that addresses 'second language' communication issues at the workplace and identifies good practice.

CP activity can support a broader HSE outreach to such 'at risk' workers.

Other Sectors:

Healthcare Services

The Sector's previous Health Services Priority Programme (HSPP) designed to address the major causes of accidents and ill health across the sector e.g. MSD did not identify migrant workers as a specific target group. In addressing the main risks within the industry, the Sector believed that the main risks to which migrant workers were likely to be exposed would be addressed.

Whilst it is widely known that the NHS is heavily reliant on foreign healthcare workers, these include highly skilled groups e.g. doctors/nurses etc. who are neither disadvantaged nor exploited. An area of greater concern is that of support staff in care homes. Again intelligence on how many of these are migrants and the extent to which they face greater risks than other care home workers is unclear. In comparison with other sectors such as agriculture and construction however, this is a highly regulated sector. The Commission for Social Care Inspection (CSCI) inspects all homes at least annually and the Local Authorities inspect approximately (20,000+) of the "residential" homes that fall within their jurisdiction under the Enforcing Authority Regulations. By comparison, HSE inspects approximately 300 "nursing homes" every year of the 4000 or so that fall within its jurisdiction.

As part of its stakeholder engagement strategy, the Sector is working with the CSCI to agree a Memorandum of Understanding between the two organisations and to discuss matters of mutual concern. Amongst other things, the Sector proposes to raise with the CSCI the nature and extent of the problems which migrant workers might face in the care home sector and explore what actions might be appropriate and necessary.

Other migrant workers in the NHS and elsewhere in the public sector e.g. cleaning personnel, are provided by agencies. The Sector will consider how best to approach these employers to assess how they impart health and safety information to migrant workers.

Manufacturing, Utilities, Services and Transportation

The Sectors comprising the former MUST Programme have a number of projects in train which will impact peripherally on migrant workers i.e. whilst they are not designed specifically to address the health and safety of migrant workers, they are (or will be) undertaken in industries with a significant migrant worker population. Current projects include:

- **health and safety awareness in MVR;**
- **health and safety awareness in Woodworking; and**
- **health and safety performance in Food.**

A major project on health and safety performance of the Waste and Recycling Industry will also be undertaken from 2005 onwards.

Provided agreement can be reached with existing Programme Managers, work is also proposed on:

- **health and safety performance in Deliveries and Collection;**
- **health and safety performance in Storage and Warehousing;**
- **health and safety performance in cleaning activities; and**
- **research into health and safety and contractorisation.**

Many of the industries covered by the Sectors (e.g. food, textiles, plastics) are known to employ migrant workers. However, intelligence on the numbers involved and any enhanced risks faced is sparse. Pending the outcome of workstream 1, the Sectors have no specific projects planned for these industries, other than ongoing engagement with key industry stakeholders.

Other initiatives

HSE also has been closely engaged in other cross-Government activity. We sit on the Home Office-led Illegal Workers Stakeholder Group. As well as putting resources into implementation of the Gangmasters (Licensing) Act and into the Multi-Agency Joint Enforcement Pilot, we continue to support the regional 'Operation Gangmaster' fora.

HSE is also continuing with other strands of work targeted towards migrant and other vulnerable workers. For example, HSE has developed with the TUC a health and safety guide for workers, detailing their rights and responsibilities that will be translated into 19 languages such as Bengali, Romanian, Arabic and Pashto. This guide was formally launched at the TUC event marking the 30th anniversary of the HSC by Jane Kennedy on 8 November. The HSE Infoline real-time translation service is also proving successful. Although the overall number of calls to the service are currently low, the volume is rising, with a majority of calls in Eastern European languages.

There have also been opportunities to publicise HSE's work on these issues to a wider audience, for example, the Chair's speech to the North West Food Association in September,

the DG's speech to Work Congress 6 in December, and as part of the discussions at the Irish Forum in November.

We have also continued various communication initiatives to help migrant and other workers for whom English is not a first language understand their rights and responsibilities under health and safety legislation. We recently launched a guidance note in various languages, which had been developed with the TUC. The Infoline translation service continues to attract positive feedback.

Development of guidance for agency workers continues. A draft statement describing the roles and responsibilities of those involved, and the complexities surrounding employment status is now being converted into web-based guidance aimed at three target audiences: employment businesses, employers hiring labour, and agency workers. When this preparatory work is complete, there will be an opportunity for external and internal stakeholders to comment and propose amendments before any web pages go live. The aim is to publish this on the HSE website and also on the Businesslink website, the Government's preferred site for messages aimed at small business.

In parallel, communications research is being commissioned with the three target audiences to determine their understanding of their health and safety responsibilities, and the most effective communications channels for communicating their responsibilities to them.

Workstream 3 (multi-agency joint enforcement pilot.) Planning is well advanced. A three-year pilot should begin in early 2005. It will be based in the West Midlands, and be run by a team of twenty drawn from interested departments, agencies and the police: HSE has agreed to contribute a Band 3 inspector together with necessary IT and legal support. Details of the team's operational methods, in particular matters such as the legal gateways to information sharing and analysis, joint enforcement protocols, health and safety and liaison with home departments are currently under discussion.

Workstream 4 (Local Authorities). Information has been sought from LA's health and safety inspectors by several routes, but the response rate has so far been low, possibly because LA health and safety enforcement officers are likely only to become aware of issues relating to migrant workers only by chance and will not be seeking it actively. Further efforts are being made through networks other than the usual health and safety ones, for example LA housing services.

To produce a more complete picture, it will be important to draw on information from other LA services and areas other than the workplace in which migrant workers interact with LA's. One possibility might be to explore how LA housing services could provide information on migrant workers. The next stage could be to look at the possibilities for doing this with the local authority associations (LGA for England, COSLA for Scotland and WLGA for Wales).

Workstream 1 (research and analysis) will drill down into LA-enforced sectors as well as HSE-enforced sectors in order to build up a true picture of issues surrounding migrant workers across all sectors in Great Britain

Workstream 5 (Gangmasters (Licensing) Act). The key development has been that Jim Sheridan's Private Member's Bill received Royal Assent in July. It establishes:

- **a Gangmaster Licensing Authority to operate a licensing scheme, set licensing conditions and maintain a register of licensed gangmasters;**

- **new offences, including operating without a licence, engaging the services of an unlicensed gangmaster and using false documentation; and**
- **a maximum penalty of ten years in prison.**

It applies to labour providers operating in the UK in the agriculture, shellfish gathering and associated processing and packaging sectors. It will be enforced mainly by Enforcement Officers employed by Defra.

HSE is participating in Defra-led, cross-Whitehall work on three sets of supporting regulations:

- **the Gangmaster (Licensing Authority) Regulations;**
- **the Gangmaster (Exclusions) Regulations; and**
- **the Gangmaster (Appeals) Regulations.**

Defra has consulted on the Gangmaster (Licensing Authority) Regulations. The Authority will be based in Nottingham and is expected to employ around forty staff. Key posts have already been advertised and the Authority is expected to start work in April 2005. It will employ Compliance Officers whose role will be to check the performance of licensed gangmasters against the licence conditions through regular audits. In the meantime, the Ethical Trading Initiative's Temporary Labour Working Group¹ is urging labour providers to anticipate the new licensing regime by voluntarily registering their businesses, and by arranging an independent audit against its Code of Practice. (HSE was instrumental in developing the health and safety aspects of the code and its supporting health and safety toolkit). This will help to raise standards among legitimate businesses and to isolate those seeking to operate illegally, undercutting the legitimate businesses and exploiting vulnerable workers.

A fourth set of regulations, the "Authority's Rules" Regulations, will be prepared by the Gangmaster Licensing Authority itself and will complete the regulatory framework when laid before Parliament towards the end of 2005. These "Rules" will include conditions attached to licences. We have already offered to assist in training the Authority's Compliance Officers to identify health and safety risks (presuming that health and safety will be among the subjects covered by the licence conditions). We anticipate that Defra will continue to seek our support through its Whitehall and Devolved Administrations Coordination Group and its Sub Groups.

¹ [A consortium of retailers, food producers, growers and suppliers and trade unions](#)