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HEALTH AND SAFETY COMMISSION

Response to Home Office consultation on the proposed Immigration, Asylum and Nationality Bill

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Cleared by Elizabeth Hodkinson on 16th September, Giles Denham on 21st September
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Issue

1. To respond to the Home Office (HO) consultation on the proposed five tier system for managed migration, which may have effects on the health and safety of migrant workers.

Timing

2. Routine (consultation closes on 7th November).

Recommendation

3. That the Commission notes the content of the letter for the Chair to sign, attached at Annex A, in response to the HO consultation.

Background

4. The Government published its five-year strategy for asylum and immigration on 7 February 2005. Among the proposals were a series of changes to the controls on economic migration to the UK, designed to 'maximise the economic benefit of migration to the UK'¹. In July, HO launched a consultation on the changes, which it proposes to implement, if agreed, by means of the Immigration, Asylum and Nationality Bill currently passing through Parliament.

¹ Home Office (2005) *Selective Admission: Making Migration Work for Britain: A Consultation Document*, 1

Argument

5. The proposed system will comprise five tiers – for highly skilled, skilled, low skilled, student and other worker categories respectively. Proposals for highly-skilled and skilled workers (tiers 1 and 2) appear uncontroversial for HSC/E. However, aspects of the proposals for low-skilled (tier 3) workers may have an impact on patterns of migrant employment in the UK, and therefore potentially on the health and safety of migrant workers, including those working illegally.
6. HO does not propose any permanent new schemes for low-skilled workers. The seasonal agricultural workers scheme (SAWS) and the one remaining sector-based scheme, for food processing, (SBS) are under review as part of this consultation exercise. HO, reflecting the Prime Minister's summer 2004 stocktake on migration issues, is not convinced that there is a need for schemes for non-EEA nationals (as these are), and points out that over 176,000 accession-state (A8) nationals have registered for work in the UK since 1 May 2004 under the Worker Registration Scheme (WRS). HO proposes a mechanism for identifying the need for *temporary*, quota-based schemes for low-skill migration in given sectors.
7. It is not clear whether HO is justified in its view of the capacity of the WRS to continue to provide a low-skill workforce (though the percentage of A8 nationals in some sectors is very high), especially in view of the successful London Olympic bid. DTI anecdotal evidence suggests that A8 workers frequently 'trade up' to less physically demanding work, leaving a gap that the removal of permanent schemes would make it harder for employers to fill quickly. This could mean that they resort to illegal sources of labour to fill posts, with potential knock-on effects on health and safety. It will therefore be important to ensure that the arrangements adopted minimise the potential for this. However, it should be noted that evidence for a link between illegal migrant status and increased *risk* is at present only anecdotal – HSC/05/04 and HSC/05/77 described research underway to test out this hypothesis.
8. DTI and HSE share the view that the proposed sponsorship arrangements, including checks during employment, (for all tiers other than tier 1) would need to be enforced proportionately, to ensure that it was not just employers with the capacity to police them who were targeted. The proposals could provide data which would assist HSC/E in better understanding the shifting 'map' of migrant worker activity (HSC/05/04 and HSC/05/77 refer to research currently underway to help with this), so continuing development of good arrangements for data-sharing (that are not burdensome to HSE) will be important.
9. The CD asks whether there should be an English language requirement for tier 3 workers. HSE legislation contains no requirement for competence in English - guidance to the Management of Health and Safety at Work Regulations requires information for employees and workers only to be 'comprehensible'. Though an English requirement for low-skilled workers might increase comprehension and therefore decrease exposure to risk, there is no guarantee of this, and the requirement could lead to a false sense of security on the part of employers who rely on it unduly. Employers in any case have a duty to manage risk regardless of the English capacity of the individual, if necessary by making suitable arrangements for translation or interpretation of information, instructions

and training material.

Consultation

10. Workstream owners in Policy group, Sectors, FOD, Construction Sector and OPSDLAU have been consulted on this paper. The views of DTI have also been sought and are reflected here. DEFRA is known to be concerned about the potentially increased inflexibility of the low-skilled labour market, and it is proposed that this response be copied to officials there in due course.

Presentation

11. Response to HO on this consultation should stress the importance of ensuring that the benefits of managed migration for a flexible economy are not secured by the implementation of policies that lead to more illegal working, with the possible increased vulnerability to risk that this would represent for migrant workers.

Costs and Benefits, Financial/Resource and other Implications for HSE

12. No costs directly. Indirectly, potential for increased levels of risk and injury/illness among migrant workers if inflexible labour market leads to shortages, with possible attendant need to direct resources to deal with this.

Action

13. To note the contents of this paper, and the proposed response as attached, for the Chair to sign in due course (Annex A).

Proposed text of letter in response to Home Office consultation

To: Home Office (Managed Migration consultation team)

Dear [Salutation]

Consultation Document ‘Selective Admission: Making Migration Work for Britain’

Thank you for the opportunity to comment on the proposals for managed migration as set out in this Consultation Document. HSC/E recognises the importance of ensuring that the UK secures the benefits that managed migration can bring for the UK economy, while also endorsing the need for departments to continue to work together to tackle abuses, including health and safety abuses.

Questions 15 & 16

We are concerned that the proposals should not lead to more illegal working, with the possible increased vulnerability to health and safety risk that this would represent for migrant workers. In particular, we are concerned that arrangements for tier 3 should be both consistent with the principles of the Hampton report, and as responsive as possible to changing demands, such as may arise from, for example, London’s successful Olympic bid. The arrangements should ensure that critical low-skill shortages do not create pressure for posts to be filled by workers who may be in the UK illegally: illegal employment is by nature harder for departments and agencies to detect and deter than is the case for regularised employment, and the potential for abuse correspondingly higher.

We believe that the proposed sponsorship arrangements, including checks during employment, should be enforced proportionately and transparently, to ensure that it is not just employers with the capacity to police them who are targeted. The proposals on sponsorship could provide significant data which would assist departments and agencies in better understanding the shifting ‘map’ of migrant worker activity, and continuing development of good arrangements for data-sharing between departments, as currently being explored by the Joint Workplace Enforcement Pilot, will be important.

Question 18

UK health and safety legislation contains no requirement for competence in English - guidance on the Management of Health and Safety at Work Regulations 1999 requires information for employees and workers only to be ‘comprehensible’. Though an English requirement for low-skilled workers might increase comprehension and therefore decrease exposure to risk, there is no guarantee of this, and the requirement could lead to a false sense of security on the part of employers who rely on it unduly, in the absence of course content specifically designed to deliver competence in English for the workplace. Employers in any case have a duty to manage risk regardless of the English-speaking capacity of the individual, if necessary by making suitable arrangements for translation or interpretation of information, instructions and training material.

[Salutation/Bill Callaghan, Chair, Health and Safety Commission]