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HEALTH AND SAFETY COMMISSION

Migrant Workers: a report on further progress

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Issue

1. To further update the HSC on progress with workstreams aimed at tackling the vulnerabilities of migrant workers, and wider political developments (HSC/05/04 refers).

Timing

2. Routine

Recommendation

3. That the Commission note the progress made and the next steps HSE will be taking.

Background

4. Migrant workers comprise at least 10% of the UK's workforce. Whilst they are perceived to be more vulnerable to health and safety risks, there is insufficient evidence to enable HSE to act effectively. The HSC therefore endorsed a programme of five workstreams on 8 June 2004 (HSC/04/61) intended to clarify the evidence, and take forward work with others where evidence is already available. HSC received a progress report (HSC/05/04) on 11 January 2005.

Argument

5. Substantial progress has been made on all workstreams, though some significant obstacles to further progress still need to be overcome:
 - **Workstream 1 (research and analysis).** The researchers have started to collect background information from FOD officials and from a number of short questionnaires despatched to employers and trade union officers. The main stage of the research will begin in July with a large number (c.300) of qualitative interviews with employers and migrant workers.

- **Workstream 2 (pursuing existing HSE programmes of action).** Considerable work is now being carried out in the Agriculture and Construction sectors. Progress in other sectors has been varied and the workstream owners are seeking to ensure commitment to this issue. This is evident especially in the health care sector, where it remains unclear whether our partners enforcing in this sector are taking action and the Public Services Programme (within FIT3) is to raise the issue by letter.
- **Workstream 3 (multi-agency joint enforcement pilot.)** Despite HSE's full, active support, the Home Office-led Joint Workplace Enforcement Pilot project (JWEP) which started in April, as intended, was temporarily stood down after the first fortnight. There are significant issues of co-operation and co-ordination to be resolved, but a new start date is expected to be announced soon
- **Workstream 4 (Local Authorities).** LA housing officers have provided some further useful anecdotal evidence to augment our understanding of the migrant employment situation in LA-enforced sectors. Further information may be available from LA officers responsible for the education of the children of refugees and asylum seekers, and we are pursuing this. The Commercial and Consumer Services, Transportation and Utilities Sector (CACTUS), whose work has strong links with some local authority enforced sectors, awaits the emergence of a stronger evidence base before deciding on action needed.
- **Workstream 5 (Gangmasters (Licensing) Act).** The Gangmaster Licensing Authority has been established and key personnel and board members appointed, including an ex-officio member representing HSE. Arrangements are being finalised for the license regime to come into force by August 2006. The Hampton review recommended that the GLA should be incorporated into HSE¹

Full details on each of the workstreams can be found at Annex A

6. Other HSE work. In response to a number of queries from dutyholders on sites visited by migrant drivers, the Workplace Transport Policy team is launching a project which will create a webpage for common site specific signs and instructions, with drop down menus to translate them into different languages. They have also been working with various stakeholder groups to ensure they understand their responsibilities.
7. Stakeholder engagement. Our continuing work has identified that there are many organisations with an interest in aspects of migrant working issues. We have already been able to influence some stakeholders, such as the Engineering Construction Industry Association, to provide improved health and safety information in guidance they produce. Some organisations have their own programmes that HSE could seek to influence, with the potential benefit to HSE that improved information exchange could help refine and target our policy and any resulting operational priorities. We intend therefore to prepare a stakeholder plan to identify and prioritise engagement with a wide variety of stakeholders, including some we have not previously been engaged with.
8. Wider Political Developments. Government interest in the broad issues surrounding illegal and migrant working remains and is likely to continue to be high, though recent developments have no direct implications for HSE's presentational line or timescales for evidence-based action.
9. The JWEP's lack of momentum may well generate increased pressure for joined-up working. DWP officials are known to be preparing for a meeting on employment agencies

• ¹ – more detail of which is in paper HSC/05/51

posing as employers offering employment opportunities to immigrants in abuse of the work permit system. Work is beginning on changes to the 1996 Asylum and Immigration Act (as heralded in the Home Office 5 year strategy for asylum and immigration, February 2005). HSE will be represented at a forthcoming meeting on this.

10. A PM-chaired Cabinet Committee, the Asylum and Migration Cabinet Committee, has been set up replacing MISC20, though the extent to which health and safety issues will be at issue here is not yet clear
11. These developments demonstrate the importance of continuing HSE involvement in a joined-up approach within Government, in order to meet the aims of both HSE and other Government Departments involved.
12. The Institute of Employment Rights is launching a report on labour migration and migrant working at the TUC Conference in September and we are seeking to influence the health and safety recommendations the report is likely to contain.
13. Next steps. In the next 6 months the following developments are expected:
 - Receipt of initial findings of the research, for analysis and feeding into the relevant sectors and local authorities.
 - Re-establishment of the JWEP, and the start of its intelligence-sharing and operational work
 - Receipt of further responses from housing officers, and requests for further information via LA discussions forums and, potentially, LA heads of education
 - Preparation of stakeholder plan and improved stakeholder engagement

Consultation

14. Workstream owners in Policy group, LACORS and CoSAS have been consulted on this paper. In carrying out this programme we regularly involve and keep in touch with FOD and with a wide number of government departments and agencies including Home Office, DWP, DEFRA, DTI and the Cabinet Office.

Presentation

15. As indicated in HSC/05/04

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

16. As indicated in paper HSC/05/04

Action

17. To note the contents of this paper

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

Workstream 1 (research and analysis). The research contractors (London Metropolitan University) have now chosen the five regions within which to conduct the research: the South West, London, East Anglia, the North East, and Wales. Within each region the researchers are liaising with FOD officials to collect background information and have also analysed their reports to assess where possible the incidence and nature of concerns in relation to migrant working.

The research itself has also started with the despatch of a number of short questionnaires to employers and trade union officers, asking about employment of migrants. The researchers are also conducting a review of existing literature and local press articles for further contextual information on the patterns of migrant labour in the regions. An interim report on this first stage of work will be received in August 2005.

The main stage of the research will begin in July with a large number (c.300) of qualitative interviews with both employers and migrant workers themselves. This work is intended to provide a full and detailed picture of migrant employment and the associated health and safety issues. It is hoped they will provide an in-depth description of the key health and safety issues for migrant workers.

Depending on how quickly the work proceeds, findings from the main research could emerge from the end of 2005.

Workstream 2 (pursuing existing HSE programmes of action).

Agriculture & Food Sector/Policy Branch

A three-year 'Casual, Temporary and Migrant Working' project has been developed by the Ag/Food Sector and embedded in FOD's Plan of Work for 2005/06. This involves:

- Interdepartmental cooperation on illegal working and workplace enforcement, including providing HSE's input to the Joint Workplace Enforcement Pilot (see workstream 3) and the Gangmaster Licensing Authority (see workstream 5), and involvement in regional Operation Gangmaster forums where appropriate. Enforcement action has been taken after intelligence obtained from one of these forums led to inspection of an unlicensed food processing factory.
- Developing and promoting best practice with industry stakeholders and through the supply chain to protect the health and safety at work of vulnerable groups.
- Proactive enquiries during all visits and inspections into the use of casual labour and health and safety controls for it;
- Activities arising out of collaboration with local sea fisheries committees and other bodies relating to cockle fishing, such as monitoring the opening of the Pembroke river mudflats.
- Investigation of all reports of accidents, incidents and complaints involving casual, temporary and migrant workers.

Additionally an intelligence-gathering exercise is underway in FOD Midlands Division targeting the health of farmer/growers and packhouses with a view to a possible seminar for labour providers/users later in the year.

Proposals for research into delivering essential health, safety and welfare information to ethnic minority workers in agriculture and related industries have been finalised with a contractor under the Framework Agreement and submitted to RSU for immediate commissioning.

Following the closure of Morecambe Bay to cockle pickers on conservation grounds, we are working in partnership with the police and OGDs to develop a strategy for ensuring the safety of cockle pickers in the Pembroke River and Dee estuaries where cockling is likely to be permitted/licensed with effect from July 2005. Simultaneously the networks established during investigation of the Morecambe Bay incident in 2004 are being maintained and used to share intelligence on illegal cockle harvesting.

Health Care Sector

HSE has not yet been able to formally raise the issue of migrant working in the residential/nursing/domiciliary care sectors with the Commission for Social Care Inspection (CSCI). The Public Services Programme (within FIT3) is to raise the issue by letter, seeking qualitative and quantitative information on the extent of migrant working in the sector.

Construction Division

Construction Division routinely carries out inspections and investigations involving non-English speaking workers, particularly in London and the South East, using the range of translation and interpretation services that HSE offers. Additionally, the following activities illustrate the work taken forward by Construction Division in the last six months.

Construction Division participated in a workshop organised by CITB in May, on the theme of Integrating the Migrant Workforce, in which the Home Office also participated. This workshop highlighted the work being done to promote English Language training by many intermediaries and major Contractors in the construction industry.

The 2005 Construction Survey, covering England Wales and Scotland, shows that of a sample of construction workers interviewed in London, approximately 25% were foreign and of those interviewed elsewhere in the South East approximately 3% were foreign workers. The only other region with a significant number of foreign workers was the Midlands, at 5-6%.

The London Construction groups have continued to organise seminars with the aim of communicating basic principles of construction health and safety; targeting Polish and Turkish workers respectively in West and North London.

Construction Division has offered advice and encouragement to the Engineering Construction Industry Association, (ECIA) who are drafting guidelines on the management of non- or poor English speakers employed on UK sites. The ECIA represents contractors involved in major engineering work, predominantly in petro-chemical and power generation facilities. The guidance includes advice to foreign employers to assist in complying with the Construction Design and Management Regulations 1996.

Manufacturing, Utilities, Services and Transport (MUST)

The Sector is running a project to develop best practice guidance on health and safety in the waste industry which links to a number of programmes within the FIT3 strategic programme. Targeting low skill (often illiterate) casual, temporary and contract labour employed in the industry, the project encompasses both indigenous and migrant workers but does not focus specifically on the latter.

Workstream 3 (multi-agency joint enforcement pilot)

Before the project started, it became apparent that, despite detailed discussions, some departments/agencies were reluctant to participate. They cited concerns over the legal issues connected with the proposed arrangements for intelligence- and information-sharing, and the lack of obvious contribution of JWEP to their own targets, as reasons for this. HSE remained committed to its agreed contribution, however, and seconded an experienced B3 inspector in good time for the start, initially for 3 days/week.

The pilot started on time, but was temporarily stood down after a fortnight. The Home Office did not provide any of the staff previously promised. HO committed to re-launch the pilot in when it had appointed a team leader. The failure is in no way attributable to lack of commitment or support from HSE.

Workstream 4 (Local Authorities).

LACORS sought information from housing officers via the Local Government Authorities (for England and Wales) and the Convention of Scottish Local Authorities (COSLA)'s communication channels on the H&S of migrants working locally and possibly housed in their area. Questions focused on where migrants were living, countries of origin, areas of employment, and information about working patterns. LACORS also used the opportunity to give housing officers links to HSE's multi-lingual information pages providing information on H&S issues for migrant workers officers may come into contact with.

A number of responses have been received to date from geographically disparate LAs, giving a useful understanding of the situation. More responses are expected

The main areas of employment mentioned were food processing, cleaning, construction, care homes and agriculture (fruit/veg/flower harvesting/planting). Many workers were taken to places of work in organised transport; some lived on site. The main countries of origin were Lithuania, Latvia, Poland, Portugal, and the Czech Republic. Responses suggested that high worker mobility may lead to unmanageable demand for agencies' support for migrants (particularly for language skills and gaining employment).

South Holland DC is undertaking a research project looking at, among other things the dynamics of migrant labour, and including similar questions to those asked in the LACORS survey data will be available in Sept/Oct, and will be shared with HSE.

Additionally CACTUS confirmed no current work is being carried out on migrant working in areas where there may be an HSE/LA crossover of interest. There is little or no hard intelligence available, despite extensive anecdotal information to suggest significant levels of migrant working in the private transport (taxi), office cleaning, hospitality, hotel and catering sectors. In the absence of better intelligence, migrant working is unlikely to be a priority issue for CACTUS, since prioritisation as elsewhere in HSE is evidence-led. It is hoped that the

research (workstream 1) will provide information which can be used in local authority and CACTUS enforced sectors.

Workstream 5 (Gangmasters (Licensing) Act.

With the Gangmaster Licensing Act in place, the Department for Environment, Food and Rural Affairs (Defra) is pressing ahead with the supporting regulatory framework. New regulations have established the Gangmaster Licensing Authority (GLA) which commenced work on 1 April. Key personnel have been appointed including a Chairman, Chief Executive and a Board of 29 Members (the Chairman, 19 industry stakeholder nominees and 9 ex-officio Members appointed by Government Departments including HSE).

The GLA is responsible for establishing the licensing regime and is currently in dialogue with Members and Government Departments about procedures including the arrangements for vetting licence applicants. This has included dialogue with ourselves about the nature of possible health and safety licence conditions. There will be a public register of licence holders. It is anticipated that labour providers will be encouraged to apply for licences in the new year with the enforcement provisions under the Act being activated with effect from August 2006, at which time it will be an offence for a labour provider (gangmaster as defined) to provide labour into the agriculture and related defined sectors (including shellfish harvesting) without a licence.

The Government's acceptance of recommendations contained in the Hampton Review² will result in the incorporation of the GLA into an expanded HSE. The timing and nature of this merger will need careful handling so as not to distract the GLA from meeting its statutory objectives. Understandably, some stakeholders, , have voiced concerns about this restructuring coming so soon after the GLA's establishment. HSE has already met with the GLA's Chief Executive, DEFRA officials and the Cabinet Office's Better Regulation Executive to clarify understanding, objectives, timescales etc. This information was recently included in a progress report requested by the EFRA Select Committee, which originally inquired into gangmaster issues in 2003 and 2004.

² Philip Hampton's final report 'Reducing administrative burdens: effective inspection and enforcement' published on 16 March as part of the Budget 2005 package. Further details are contained in HSC/05/51.