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## HEALTH AND SAFETY COMMISSION

### Vulnerable (including migrant) workers: an update

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#### Issue

1. Update on issues relating to migrant workers and other sorts of vulnerable workers.

#### Timing

2. Routine.

#### Recommendation

3. That the Commission:
  - (a) Notes progress with HSE's activities to protect migrant workers;
  - (b) Notes developments at the Department for Business, Enterprise and Regulatory Reform's (BERR) Vulnerable Workers Enforcement Forum; and
  - (c) Comments on what further information it would find helpful before the 9 October seminar on diversity.

#### Background

4. The Commission last considered its strategic position on the health and safety of migrant workers in July 2006 (HSC/06/36). The paper reported the results of research which suggested that if migrants were at greater risk of injury, this was only because they tended to work in more hazardous occupations, and not because of their migrant status *per se*. The Commission reaffirmed its view that all workers in Great Britain, whatever their immigration status, should be afforded the protection of health and safety law. It was agreed that HSE activity would be concentrated into:
  - Developing better channels of communication with workers;
  - Developing advice for employers;
  - Targeted inspection and enforcement activity; and
  - Working more closely with other government departments.
5. This paper reports progress with these activities and updates the Commission on related activities, particularly across government. The scope of this paper is wider than just migrant workers because of recent developments in government discussed below.

## Argument

6. The **annex** provides a detailed **update on activities** undertaken recently and those ongoing, though this refers only to action in HSE and not (in general) local authorities nor work that is being done by certain industry sectors themselves. **Key points** are:
  - **Inspection** activity has been focused in the construction, agriculture and food sectors and since April 2007, has been expanded to include the cleaning sector.
  - **Communications with migrant workers** directly: we have published widely a pocket card for workers in the agriculture and food sector. Web pages are under development.
  - **Communications with employers**: a companion to the workers' pocket guide aimed at employers is in preparation. Web pages are under development. We are working with local authorities (e.g. Kerrier in Cornwall) to produce further guidance in specific areas.
  - **Communications with HSE staff**: we have produced an intranet briefing for staff. Articles for the in-house magazine 'Express' and a topic inspection pack for inspectors are being prepared. The latter will encourage inspectors to identify at all workplaces whether there are migrant worker issues that need to be addressed, give guidance on intervention strategies and help ensure consistency.
  - **Joint working** with other government departments. We continue to make valuable contributions to and gather useful intelligence from the Home Office's Joint Workplace Enforcement Pilot in the West Midlands, which aims to detect and deter illegal working. We work closely with the Gangmasters Licensing Authority (GLA) and we are working with HM Revenue and Customs (HMRC) and other departments to develop a virtual intelligence-sharing network. This replaces the Department for Work and Pensions (DWP)-led 'Operation Gangmaster'.
7. BERR set up in June a '**Vulnerable Workers Enforcement Forum**', chaired by the Minister for Employment Relations. Members are drawn from the TUC, Unite, UCATT, GMB; Citizens Advice; the CBI; HMRC, the GLA, the Employment Agency Standards Inspectorate within BERR and HSE. It intends to complete its work by spring 2008. Its terms of reference are to:
  - Consider evidence about the problems faced by vulnerable workers, including migrant workers, to establish the nature and extent of abuse of workplace rights and legislation.
  - Consider whether these workplace abuses can be tackled effectively through existing enforcement and support mechanisms or whether improvements to existing mechanisms, or new approaches, are needed.
  - Identify options for improving the effectiveness of the enforcement regime, and raising overall levels of compliance in ways which do not increase burdens for good employers.
8. The government's strategy paper 'Success at Work' defines a vulnerable worker as someone working in an environment where the risk of being denied employment rights is high and who does not have the capacity or means to protect themselves from that abuse. Both factors need to be present. A worker may be susceptible to vulnerability, but that is only significant if an employer exploits that vulnerability. Clearly migrant workers can be vulnerable, but so too may indigenous people working on a casual or

temporary basis, such as perhaps agency workers, homeworkers or people in low skill jobs.

9. It is becoming clear that one important focus of the Forum will be on improving the **interfaces between enforcement agencies**. Issues such as sharing of data and a single contact point for workplace enforcement agencies have been raised and will be discussed at future meetings. It is also becoming clear that enforcement of the **Working Time Regulations 1998** is a significant concern. HSE enforces these regulations only reactively under an agreement with BERR. We receive about 50 complaints annually, which are dealt with by specialist staff employed for the purpose. We are considering whether we could improve the linkages between HSE's working time complaint investigation and HMRC's work on the national minimum wage. We will aim to improve collaboration with other agencies as far as possible, whilst ensuring our priorities remain focused on high risk areas, with particular attention to construction, food and agriculture and cleaning.
10. Unions attending the Forum have continued to press the case for the remit of the GLA to be extended to cover construction. There has also been Parliamentary interest in this matter. There is no specific evidence of the extent to which gangmasters are moving into unregulated sectors such as construction. However, there is clear evidence that some gangmasters supply into several sectors. The GLA has commissioned work to measure the impact of the licensing arrangements, including displacement.
11. To extend the scope of licensing would require primary legislation to amend the Gangmasters (Licensing) Act 2004. The government's position is that it does not intend to bring forward legislation for this purpose without a clearer evidence base but that there are issues around illegal activity in the construction industry that require further consideration.

#### *Improving the evidence base*

12. We need to be able to give a more definite answer to the questions 'are migrant workers at greater risk than others, and if so, by how much?' The results of the research from London Metropolitan University that we reported to the Commission last year (paragraph 4) do not give a sufficiently detailed answer to allow us to be confident we are tackling the problem areas. Preliminary analyses of other data sources, such as the Labour Force Survey and an omnibus survey carried out in the construction sector suggest that **migrant workers are not at measurably greater risk** of injury than other people doing the same job. However, surveys of migrants are almost always likely to provide incomplete data, for example because they tend to be in households not covered by the survey (such as temporary accommodation or houses in multiple occupation), and they are less likely to answer.
13. HSE is therefore currently considering how best to improve information sources about migrant workers. An initial step will be the collection of relevant data on the **victims of fatal accidents**. It is not yet routine practice to record the deceased's place of origin and if not from the UK, how long they have been here. Such information would help HSE compile fatal accident statistics on migrants more easily. We are discussing internally how best to collect this data and we will wish to engage local authorities shortly. However, we are also proposing:
  - to add questions to the next **Fit3 surveys** about migrant workers;

- to add questions to an **omnibus survey** to determine whether migrant workers are at greater risk of injury in a sector other than construction (where such an exercise has already been completed); and
- an exercise to ask **Industry Advisory Committees and trade associations** for any data on migrant worker risks in their spheres of activity.

We would expect to complete this additional data collection by the end of the financial year. We are conscious that this work concentrates largely on risk of injury and of the need to extend it to cover risks to health.

14. We need to understand better the effectiveness of our communication efforts. To date, we have adopted a product-based approach, producing guidance to meet perceived demands. Construction Division plans to undertake some communications research to enable better targeting of advice and guidance. We intend to hold internal discussions this autumn to develop proposals for evaluating our activities more widely and if necessary refocusing our efforts.

### **Consultation**

15. Internally and with LACoRS.

### **Presentation**

16. Presenting our work and responding to media concerns is usually a matter of responding to reports of exploitation, which (where supported by evidence), we can condemn and undertake to tackle in accordance with our normal procedures. Nevertheless, as discussed at paragraph 12, we see a strong need to find more convincing evidence of the sorts of risks specifically faced by migrant workers and the magnitude of those risks, and to explain what action we are taking to mitigate them.

### **Costs and Benefits**

17. Benefits to business will be better health and safety outcomes among this economically significant group in the sectors targeted, and a clearer understanding of the scale of the risk to enable efficient targeting. Costs to employers may include better provision of information, instruction and training to migrant workers. However, since we have no detailed picture of the distribution of migrant workers within the economy, the risks they face (see paragraph 12) nor the current state of compliance, it is not possible to estimate these costs or benefits.

### **Financial/Resource Implications for HSE**

18. Current activity is being accommodated (and delivered) within the resources allocated for work on migrant and agency workers. This amounts to approximately £430,000 in 2007/08 based on full economic staff costs. In addition, £45,000 has been allocated to investigate the risk and communication issues discussed above. Demands for significant resource to be deployed on new work, such as joint enforcement initiatives, will have to be considered alongside competing priorities. If additional demands are sought to be placed on HSE, we would expect the requesting department to find the resources necessary.

### **Environmental and Other Implications**

19. None.

**Action**

20. The Commission is invited to:

- (a) Note progress with HSE's activities to protect migrant workers;
- (b) Note developments at BERR's Vulnerable Workers Enforcement Forum; and
- (c) Comment on what further information it would find helpful before the 9 October seminar on diversity.

## **Implementation of the work programme on migrant worker health and safety outlined in HSC/06/36**

### **Introduction**

Since the substantive discussion on priorities for migrant worker protection at the early July 2006 Commission meeting, HSE has been taking forward the priorities agreed by the Commission (outlined in HSC/06/36 taken at the meeting). What follows is an outline description of the work HSE has done and is doing on migrant worker health and safety. HSE's overarching objective on migrant workers is to ensure that they receive the same, high level of protection as other workers in Great Britain, whatever their immigration status. We intend to achieve this through a programme of focused enforcement activity, communications and research and by working closely with colleagues across Government.

The work falls into six main areas: the first five of these, reproduced below, are the strategic priority areas set out in the Commission paper itself and the last is new research needs. Only significant items are listed here, based on an estimate of the amount of time that has been/is being invested, whether the work is likely to be significant in itself in furthering the priorities, and the potential implications for HSE.

External communications activities are being drawn together into an overarching communications plan for migrant worker-related activities.

### **Strategic priority 1: inspection/enforcement activity**

**The aim of work under this topic is to continue to prioritise higher-risk sectors with significant concentrations of migrant workers, with enforcement action against poor performers**

#### **Key achievements to date**

- Continuing work to inspect in the food/agriculture and construction sectors – primarily enquiring about arrangements for managing the health and safety of migrant and temporary workers.
- Successful piloting of co-operative work – 'Operation Fuchsia' – with other agencies (local authorities, fire authorities, police authorities and the GLA) based around inspection of daffodil and broccoli growers in West Cornwall (Kerrier and Penwith), which also took in food processing and hotels. (FOD South West Division)

#### **Key tasks for 2007/08**

- A sustained focus in food/agriculture and construction sectors: discussion underway in Midlands Division about a multi-agency operation similar to Operation Fuchsia.
- Internal discussions about the future direction and focus of current work on casual, temporary and migrant working for 2008/09 and beyond.
- New work in the cleaning sector (primarily asking about understanding of training, information, and instruction to prevent slips, trips and falls. Responses should give a good indication of how well training, information and instruction are being delivered to those who do not communicate using English as a first language.
- Participation in focused work in the building services (London) and catering/hospitality (Birmingham) sectors through 'vulnerable workers' pilots (see 5 below for more detail).

## **Strategic priority 2: communications with migrant workers**

**The aim of work under this topic is to use existing channels, and explore and develop better ones, for communicating key information to migrant workers**

### **Key achievements to date**

- Publication of a pocket card for workers in agriculture/food, delivered through tripartite Agriculture Industry Advisory Committee (AIAC).
- Successful establishment of links with trade unions (Hugh Robertson and, for Unite, Susan Murray) to find out best ways to communicate with migrant workers through them, both nationally and regionally. Separately, FOD London External Relations Manager is working with trade unions to encourage trade union recruitment of migrants, currently under-represented in British trade unions.
- Expanded provision of the basic worker leaflet 'Your health, your safety', now available in over 25 languages from the HSE website.

### **Key tasks for 2007/08**

- Development of HSE internet pages to provide information to migrant workers. Will include links to/from sites of key intermediaries – agreement already secured from the Migrants' Integrated Gateway, a national 'one-stop' information portal developed for East of England Development Agency.
- Hosting of a joint HSE/STUC workshop by Scotland External Relations, giving basic information for trade union representatives in sectors where migrant workers are prevalent.
- Development of contacts with the Roman Catholic Church about possible mechanisms for contacting significant sectors of the migrant community through it.
- Development of contacts with external contractor for a proposed Qualifications and Curriculum Authority (QCA) syllabus for health and safety aspects of 'work-tailored' English for speakers of other languages courses and 'HSE placement' in learning materials. Proposed further exploration of this with QCA directly.

### **Strategic priority 3: communications with employers of migrant workers**

**The aim of work under this topic is to develop tailored advice and guidance for employers/intermediaries on securing better protection for migrant worker health and safety**

#### **Key achievements to date**

- New advice given in key HSE publication 'Essentials of health and safety at work' on managing language and comprehension issues, expanded in a major feature (January 2007) for 'Safety management' magazine.
- Major HSE contribution to external guidance produced by the North West Food Alliance. The Construction Confederation has produced something similar for the construction sector with HSE advice.
- 'Key points' advice on migrant worker health and safety prepared for the Home Office's 'Employing Migrant Workers Toolkit'.
- Contributions to seminar (November 2006) targeted at employers and employment agencies in Wales employing migrant workers, advising on language risk assessment and training issues.
- Briefing to employers' representatives at the Sector-convened Cleaning Industry Liaison Forum in December 2006, giving advice on reasonably practicable standards for e.g. risk assessment, instruction and training in relation to migrant workers.
- Funded translation of a British Potato Council DVD on safe use of potato harvesters into main languages used by migrants in potato harvesting.
- Development of internet pages providing a cultural/training skills package for construction employers and workers, aimed at ensuring migrant workers applying for the Construction Skills Certification Scheme are both competent and safe.
- Worked with EEF to help develop their internet-based guidance leaflets.

#### **Key tasks for 2007/08**

- Preparation of guidance for employers by AIAC for small and medium employers. This will complement the pocket card developed for workers (see above).
- Development of HSE internet pages to provide information to those employing migrant workers (see 2 above), and links to/from sites of key intermediaries – agreement already secured with EEF and New Roots Scotland.
- Hosting of high-level migrant worker summit/events or workshops to raise the importance among employers/labour providers/gangmasters of migrant worker health and safety, and to disseminate good practice. Some in partnership – e.g. with EEF (FOD Yorkshire and North East), trade unions and Sector Skills Council (Construction Division).
- Development jointly with other agencies of 'responsible employer' guides in relevant areas/sectors – primarily Kerrier (Cornwall) and Wiltshire at present. (FOD South West Division)
- Hosting a workshop with Citizens' Advice Scotland, training counsellors in basic health and safety to support vulnerable workers; together with development of a

checklist (including health and safety questions) for agencies dealing with these workers. (Scotland External Relations Team)

- Participation in HMRC Open Days to engage new employers of migrant workers. (FOD London)

#### **Strategic priority 4: communications with HSE staff**

**The aim of work under this topic is to give tailored advice and guidance to HSE staff on securing appropriate and consistent protection for migrant worker health and safety.**

##### **Key achievements to date**

- Development of comprehensive briefing on migrant worker issues, to be made available (summer 2007) on the intranet.
- Development of guidance in the form of a 'topic pack' for inspectors.
- Development of network with FOD External Relations teams for dissemination and receipt of information about migrant worker issues likely to assist with HSE engagement with stakeholders.

##### **Key tasks for 2007/08**

- One-day, national internal seminar on migrant workers to be held September 2007 to share experiences and develop ideas for better coordination.
- Development of intranet pages paralleling the internet pages under development.
- Sustained development of network of FOD contacts to others in FOD/other Divisions to enhance management of the strategic aims.
- Publication of articles in both Express (two articles in consecutive issues) and the HSC newsletter.

#### **Strategic priority 5: effective joint working with other government departments (including the GLA)**

**The aim of work under this topic is to further develop effective joint working with other agencies where these enhance delivery of our strategy**

##### **Key achievements to date**

- Effective representation of HSE on the GLA's Board.
- Effective participation in the Joint Workplace Enforcement Pilot (JWEP) and contribution to the Key Indicators of Criminality (KIOC) guide (see key tasks below).
- Effective support to BERR pilot projects in London and Birmingham aimed at providing better and more joined-up (cross-Government) information for vulnerable workers and their employers, including migrant workers.

##### **Key tasks for 2007/08**

- Input to, and monitoring implications of, decision on future of JWEP. It is expected that the Pilot will be replaced by regional virtual networks that *may* have some operational partnership (and therefore resourcing) expectations placed upon them: the driver for this is the Border and Immigration Agency's (BIA) Enforcement Strategy.

- Possible dissemination, following discussion with FOD Regional Directors, of the KIOC guide. The BIA aims to publish this to all enforcement agencies, with the intention that visiting staff notify 'indicators' observed to the relevant other agency.
- Liaison with HMRC and other departments on the development of the virtual intelligence-sharing network.
- Liaison with other government departments on possible joint messaging improvements to the health and safety law poster, for example on the National Minimum Wage (also relevant to strategy aim 2).
- Appropriate engagement with new BERR-led Vulnerable Workers Enforcement Forum, which will consider evidence from unions and others, about the problems faced by vulnerable – including migrant – workers, and how best to tackle them (support mechanisms, enforcement etc).

**Additional priority (supports other 5 indirectly)**

**Key tasks for 2007/08**

- Development of research proposal for (limited) investigation of whether accident rates among migrant workers are higher than for indigenous workers.