

Health and Safety Executive Board		Paper No: HSE/08/79	
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<b>Vulnerable (including migrant) workers: an update</b>			

### Purpose of the paper

1. This paper sets out how HSE is contributing to the Government's developing vulnerable worker agenda, and includes a further update on progress in ensuring that dutyholders properly address migrant worker health and safety. It invites the Board to note and agree the future direction of HSE's work on this topic.

### Background

2. HSE's programme of work to protect migrant workers was originally set out in HSC/04/61. Regular updates since then (most recently in September 2007) were provided to HSC. This paper describes progress in the last 12 months.

3. HSE has also been working to implement the Government's vulnerable worker agenda. This stems from the 'Fairness at Work' elements of the 2005 Warwick Agreement, and is intended to ensure a commitment to protect people at risk of having their workplace entitlements denied. For HSE, the agenda has increasingly focused on workers in high risk occupations, and those new to job/workplace who may lack the means or capacity to secure their workplace entitlements including health and safety. Within this focus are migrant and agency/temporary workers and, particularly in construction, work experience pupils and younger/older workers. The two strands of vulnerable and migrant workers are therefore closely linked.

### Argument

4. Over the last year, we have concentrated on addressing the migrant worker priorities identified in HSC's last discussion (of HSC/07/63). We have also sought to integrate migrant worker strands into the wider cross-Government vulnerable worker agenda. Full details of recent work are set out in Annex 1. It has included in particular:

- a) **Work with the BERR Vulnerable Workers Enforcement Forum** and the work of CONIAC's Vulnerable Workers Working Group. The Forum's report was published in August 2008. It recommended: the development of a single telephone helpline for vulnerable workers and their employers; a marketing campaign to ensure greater awareness of employment rights; and continued oversight of this and other work on improving vulnerable worker protection through the Fair Employment Enforcement Board (FEED), on which HSE will continue to be represented.
- b) **research** to assess whether migrant workers are at greater risk of accident or ill-health than other workers. A 2008 review of primary and secondary UK sources for HSE found no substantive new data to suggest a clear elevated risk of accidents to migrant workers, adding that new data capture using existing methodologies is problematic. The researchers therefore recommended a small, intensive study to try and calibrate existing estimates, instead of any new

large-scale research. We recommend holding an expert seminar to explore the possible value of this, confined to a specific employing sector or geographical area. An internal HSE study of fatal and major accidents in construction suggests a number of factors, both personal (such as lack of site/work experience and communications) and situational (such as poor site management and work planning) that can affect the vulnerability of workers including, but not limited to, migrant workers.

- c) **working with Local Authorities** to develop and add value to their work in this area. We have persuaded BERR that LACoRS should be invited to represent Local Authorities at FEEB, and sought to influence the inclusion of vulnerable/migrant worker strands in Local Area Agreements.
- d) **inspection and enforcement activity** (in HSE- and LA-enforced premises), including investigations of accidents to migrant and agency/temporary workers. During 2008/09, under the Fine Tuning Review work, we have run local projects both across HSE and in Local Authorities in priority sectors. Some have been in liaison with other enforcing authorities such as the Employment Agency Standards (EAS) inspectorate and the Gangmasters Licensing Authority (GLA). We have also shared good practice among inspectors, with successful FOD and EHO seminars, articles in HSE's staff magazine and a recent summary of pertinent factors to consider when investigating accidents.
- e) **improving information to workers and employers.** The migrant worker webpages were launched in March 2008, and contain information for both employers and workers (including in translation). We have also taken the opportunity to make HSE's guidance on managing agency worker health and safety more prominent on the website, and are working to develop a risk assessment tool.

5. It is clear from the previous paragraph (and the more detailed information in Annex 1) that the work previously focused on migrant workers is now moving much closer to HSE's mainstream strategy and agenda. The links include addressing common risk factors that link a diverse but vulnerable workforce, and continuing to tackle concerns about particular sectors, where other aspects of vulnerability are also in play (especially construction, and – though not a focus in the work at the moment - agriculture).

6. Work with BERR will continue to be a significant aspect of vulnerable worker activity. The focus of both the helpline and the awareness campaign will be working time (though not exclusively), rather than HSE's 'mainstream' business. This in itself will present a challenge in terms of proportionate use of resources, but may give HSE leverage to communicate its other 'vulnerability' messages, such as the agency workers guidance and risk assessment tool for employers of migrant workers, and the need to focus on language issues and good information/instruction/training.

7. For migrant workers in particular, the main activity is moving from policy development to operational work. The links to wider cross-Government work have encouraged shared learning with the vulnerable worker agenda - as some of the FOD inspection/investigation examples in Annex 1 show. There is evidence that a

maturing migrant worker strand is becoming part of the mindset of Divisions, and that we can rely on mainstream work to give it appropriate attention.

8. We can reinforce this by ensuring we continue to develop good intelligence on dutyholder compliance with respect to vulnerable workers at local level. This would involve seeking to work more closely with LAs, but perhaps also forging new partnerships, for example with Regional Strategic Migration Partnerships.

### **Presentation**

9. Given the absence of conclusive evidence of increased risk to migrant workers in the UK, we propose to continue to condemn and tackle individual reports of exploitation as they arise, in line with our general strategy. Broadening the scope of our work to vulnerable workers, including the inspection, investigation and enforcement aspects, should help demonstrate our commitment to ensuring dutyholders manage common factors that may increase risk for any group of workers.

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

10. Current annualised staff costs devoted to vulnerable workers are estimated to be £400 000, met from existing resources. Additional resources already earmarked are £55 000 for the research just completed, £50 000 for development of the risk assessment tool and £150 000 for possible further outreach worker pilots (Annex, para 14). The cost of possible further small-scale research is estimated at £50 000.

### **Action**

11. The Board notes this paper, and agrees the future direction of work on this topic: in particular that no further large-scale research on migrant workers be carried out at present, but that we explore in an expert seminar the usefulness of some limited, small-scale research focused on a sector or geographical area.

### **Paper clearance**

12. This paper was produced by Jeremy Bevan and was cleared by the Senior Management Team on 4 November 2008.

**Progress with work strands – vulnerable (including migrant) workers***Wider vulnerable worker agenda*

1. BERR's Vulnerable Worker Enforcement Forum, which included HSE representation throughout, reported in July 2008. The Government's responded to issues raised in the Forum with a series of proposals aimed at: raising awareness of employment rights; streamlining vulnerable worker access to the enforcement bodies represented at the Forum; closer working between the enforcement bodies; and improved advice and guidance for business. Key elements will include:

- a single helpline for both employers and workers: this will not replicate Infoline, as its main focus (as far as HSE's remit is concerned) will be working time.
- an awareness-raising campaign; and
- removing some legislative barriers to greater joined-up working between enforcement agencies, including one that currently prevents information-sharing between HSE on working time issues and the HMRC's National Minimum Wage inspectorate.

2. HSE has continued to develop its arrangements for sharing information and intelligence with other enforcement agencies seeking to protect vulnerable workers, through a series of networks of operational Single Points of Contact (SPoCs). The aim of these is to help ensure a more cohesive and coherent overall approach. Arrangements with the Home Office/UK Borders Agency are supported by a Joint Working Protocol which encourages visiting staff to report matters of readily observable concern through the SPoC network. In HSE, the operation of the SPoC networks will shortly be supported by an Operational Circular giving guidance to visiting staff.

3. HSE continues to have membership of the Gangmasters Licensing Authority Board, and regular liaison on policy issues affecting vulnerable workers supplied by labour providers in the agriculture and related food processing sectors (notably the provision of personal protective equipment (PPE) – an issue which featured clearly as a matter of concern in the report of the TUC's Commission on Vulnerable Employment, published in May 2008.

4. Liaison continues with the Employment Agency Standards (EAS) inspectorate, notably on serious accident investigations where the injured person was supplied by an agency, and on policy matters of mutual interest.

5. In the construction sector, the Secretary of State's Construction Forum has shown considerable interest in work originally produced for the CONIAC Vulnerable Workers Working Group on the causes of fatal and selected serious accidents in the industry. This work has resulted in advice and guidance to inspectors (see below). More recently, the Construction Employment Forum convened by HMRC discussed issues surrounding so-called false self-employment in the industry, and sought to examine the links between this and the use of migrant and temporary workers in the sector. At present, outcomes from this Forum remain unclear.

## Research

6. Following its 2006 research report '*The health and safety of migrant workers in England and Wales*', HSE commissioned a further round of research, from Edge Analytics Ltd, to try and discover whether migrant workers were at greater risk of accident than other workers. Essentially a thorough literature review, the research concluded that 'studies have typically not found conclusive evidence of a higher incidence of injury or illness to migrants in the workplace'. It noted however that failure on the part of migrants to report accidents, and limited coverage of some surveys, has affected such studies (Rees and Boden, 2008, vii). It recommends that further, limited-scale research in a discrete sector or geographical area be considered, and we recommend holding an expert seminar later in the year to consider this, coinciding with a presentation by the researchers of their findings.

7. A recent European Agency for Safety and Health at Work study found that studies done in a number of EU Member States showed elevated risk of accident or ill-health for migrant workers, though in some others no excess was found. We await the findings of a Finnish case-control study before deciding whether further exploration of methodologies of the studies quoted in the Agency report would be worthwhile.

8. In the UK, an MSc thesis by HSE inspector Jon Anslow found no evidence of elevated risk for migrant workers in the food sector, but hypothesised (as the Rees/Boden research does) that this may be due to low reporting rates.

9. HSE's autumn 2007 FIT3 survey included for the first time questions to employers about migrant worker health and safety. Only a comparatively small percentage (some 20% across all employment sectors) of those surveyed saw migrant workers as being at greater risk of accident or ill-health than other workers; but among this group, there was virtual unanimity (averaging 89% across sectors) that communication issues were the main predisposing factor. There was considerable variation by organisation size as to what was in place additionally to protect migrant workers.

10. Construction Division's Omnibus survey shows an increasing proportion of workers who have come here from abroad to work – now some 8% of all those surveyed, as opposed to 6% 18 months ago. Some 50% of foreign-born construction workers now hold a Construction Skills Certification Scheme (CSCS) card, which includes a health and safety test, and is available in a range of languages commonly spoken by migrant workers. Just over half of those who said that they had come here from abroad to work had been here for more than 5 years. Almost a quarter said that they were British citizens.

11. The number of migrant workers in the survey is almost certainly an underestimate of the true proportion of migrants because the survey is a household survey (many migrants live in temporary accommodation, often shared), language difficulties and suspicion of authority figures. It is very difficult to reach this group, which may include those at greatest risk.

12. Almost 8% of those surveyed who said that they were British Citizens reported having had an accident at work (no necessarily reportable) in the previous year. In

contrast only 2-3% of the non-British and workers who have come here from abroad said that they had. On the face this suggests that foreign workers are not at greater risk, but the numbers involved were small and there may be different perceptions as to what constitutes an accident.

13. HSE has improved its (COIN) data capture to ensure that better data is available on investigated migrant worker accidents and their causes.

14. Construction Division has planned a research project which will see an outreach worker tasked with seeking to gain access to migrant worker groups in construction in London with general health and safety awareness messages. Depending on the outcome of this, a further pilot or pilots outside construction may be undertaken.

#### *Inspection/investigation*

15. Changes to the FOD planning system allowing greater flexibility at Divisonal level have resulted in a number of recent projects. In ESE Division, a project is underway to assess how well employment agencies and user businesses are together managing the health and safety of agency workers by the agencies with businesses. Elsewhere in ESE Division, another project run in cooperation with the GLA is addressing health and safety management for temporary workers in agriculture, and, with the further cooperation of Local Authorities, assessing the suitability of accommodation provided.

16. Local Authorities have reported projects focusing on health and safety of migrant workers in the hotel and catering sectors and more generally in LA-enforced premises (in Southwark and Westminster, respectively).

17. In the South West, an initiative has been designed to investigate compliance with health and safety standards in workplaces that operate outside of normal business hours, and to gather intelligence & improve knowledge of the working conditions (particularly on FIT3 topics) of vulnerable and migrant workers. It arises out of a regional regulators' workshop for vulnerable and migrant workers held in March 2007/8. The project utilises FOD & LA EHO resources for a targeted campaign of inspection across the SW; in Devon/Cornwall it will focus on joint inspections with the Migrant Worker Action Group (which includes a range of other agencies including the police, fire brigades and the local authorities). The main areas of interest include warehousing, transport hubs, food manufacturing, maintenance work and cleaning companies.

18. Relevant enforcement activity has included the joint police/HSE manslaughter and health and safety offence investigation and prosecution of Sharaz Butt and Alcon Ltd., following the death of a Chinese construction worker (who was also an undocumented migrant, not entitled to work in the UK). Mr Butt was imprisoned for 12 months on conviction.

19. Future work will include an LA-run safety and health awareness day (SHAD) in Dorset, and an employer event in Scotland.

20. To encourage consistency across HSE, a seminar for FOD inspectors on sharing best practice was held in September 2007. Since then, detailed guidance for

inspectors on inspection/investigation in relation to migrant workers has been prepared. This is now being supplemented by guidance on factors to be considered when investigating accidents to those vulnerable workers who, for reasons related to language, unfamiliarity with the workplace, or lack of work experience in general, may be at greater risk of accident or ill-health.

21. To encourage this work further and share best practice, HSE has promoted vulnerable and migrant worker health and safety with LAs by a number of means, including:

- an event 'Interventions with migrant and vulnerable workers' which brought together over a hundred regulators (primarily EHOs) across the South West to share the expertise and experience which had established the South West at the forefront of good practice (see also para 17 above);
- presentation to a Continuing Professional Development (CPD) event run by the London regional branch of CIEH;
- a series of presentations to Regional Strategic Planning seminars in November 2007 on addressing health and safety priority topics in Local Area Agreements (followed up with a letter from the Chief Executive to Heads of Service in LAs); and
- an article in the Local Authority Unit (LAU) Newsletter.

#### *Information to workers/employers*

22. HSE's webpages for migrant workers, those who employ them, and intermediaries, were launched in March 2008, and are available in a range of languages. Since then, Slough Borough Council has also produced its own migrant worker webpages (including health and safety information) with some input from HSE, focusing particularly on the town's Polish community.

23. In the SW, a 'Growers Group' with broad stakeholder representation across the fruit and vegetable growing sector has been investigating potential improvements in health, safety and welfare standards for field workers and is producing a 'Good Practice Guide'.

24. Events organised by HSE, either alone or together with Local Authorities, for migrant workers have generally (but with exceptions) been sparsely attended, and indicate that success by this route requires a combination of careful planning and precisely-targeted marketing.

25. Research carried out in March/April 2008 offered detailed analysis of how to ensure communication with migrant workers succeeds, and indicated that the migrant worker pocketcard is well-designed to meet the basic information needs of this group.

26. Senior-level bilateral talks with the Polish National Labour Inspectorate (NLI) resulted in production of an amended generic version of HSE's migrant worker pocketcard for distribution in Poland to intending migrant workers. This has also led to information being hosted on the Polish Embassy's website here in the UK, an initiative the Director FOD London is keen to pursue with embassies of other migrant-sending countries.

27. HSE contributed basic information on contacting HSE and how we work to BERR's latest 'Know before you go' leaflet (Romanian) for distribution to migrant workers intending to come to the UK. It also updated information in the revised version of BERR's Polish-language version. HSE additionally provided a general article, targeted at migrant workers, in the UK Romanian-language newspaper 'Roman in UK'.

28. Speaker events for employers have included presentations to the NE regional group of EEF, the IOSH health and safety in food manufacture conference, and to the LA cleaning supervisors forum. Information on risk assessment in relation to migrant workers has also been supplied to Divisional Partnership Managers for the 2008 European Week risk assessment roadshow.