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HEALTH AND SAFETY COMMISSION

Future HSC/E work on the protection of migrant workers' health and safety

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Issue

1. To seek approval for future HSC/E work designed to ensure the protection of migrant workers' health and safety and prevent their exploitation.

Timing

2. Routine

Recommendation

3. The Commission is invited to discuss HSC/E's strategic positioning on the wider agenda in this area of work and to approve an outline work programme to improve protection for migrant workers. The proposed central elements of this reinforce our current work on communication with workers and employers needing advice, and targeted inspection/enforcement against 'rogue' employers; as well as building on effective cross-Government working on the Joint Workplace Enforcement Pilot (JWEP) and the developing vulnerable workers agenda.

Background

4. The Commission has previously noted (HSC/05/77) progress with the 5 workstreams (research; existing HSE programmes of action; the multi-agency Joint Workplace Enforcement Pilot; Local Authority work; and Gangmaster Licensing) described in HSC/04/61 to protect migrant workers' health and safety. Since then, good overall progress has been made. Annex 1 provides a further update on the workstreams. The findings of workstream 1 (research) and developing stakeholder initiatives and strategies make it important to now assess the future shape of work in this area.

Argument

The research

5. Workstream 1 of the strategy outlined in HSC/04/61 described research to explore the nature and geographical/sectoral spread of migrant workers, and assess whether they are at greater risk than indigenous workers. The completed research indicates that a significant proportion of the UK's estimated 500,000+ migrant worker population is at risk of exploitation due to factors such as language barriers and employment in sectors where compliance with health and safety requirements has historically been poor, such as food/agriculture and construction, though not as a result of their migrant status *per se*. The risks may be greater where workers are undocumented (that is, with no legal right to work in the UK). The findings are set out in more detail in Annex 1, and recommendations arising from the research are reproduced at Annex 2. HSE intends to publish the report in the Contract Research Report series in the autumn, when it will also make clear its broad response to the research and wider developments.
6. The **recommendations** can be divided into two broad categories:
 - (i) those calling for more HSE/LA inspection, enforcement and supporting activity; and
 - (ii) those calling for greater and better provision of targeted advice and support, particularly to migrant workers, though the research also highlighted employer needs.

Existing and proposed action

7. On **inspection, enforcement and supporting activity**, the recommendations have been discussed in outline within HSE, and with LACORS, and are consistent with planned work already being undertaken in the food/agriculture sector. Other Government initiatives in the inspection/enforcement area impact on what HSE already does in relation to migrant workers, or have the potential to do so. One of these is the Joint Workplace Enforcement Pilot (JWEP), progress with which is reviewed in Annex 1. This is an important Hampton-related strand of the Government's joined-up working agenda. It is employer-focused, and concerned with detecting and deterring illegal employment. There are also links to the Hampton agenda targeting 'rogue' employers, particularly through inspection activity, and the 2006/07 FOD sector project is devoting significant resource to this. **If the Commission wishes, and resource can be found from other areas of work, HSE could explore the possibilities for enhancing this existing resource to deliver inspection and enforcement against 'rogue' and other employers in sectors other than food/agriculture. Any extra resource would, however, be at the expense of other operational priorities for both HSE and LAs.** This work would probably require the development of some supporting guidance for HSE/LA staff in what is still a relatively unfamiliar area of work for many.
8. Taking forward the recommendations on targeted **advice and support** will need innovative approaches to communication. We already do a significant amount in this area: for example, HSE makes available a number of publications in languages used by a range of migrant worker communities. However, the evidence suggests that few migrant workers access HSE information directly from us. Trusted sources are friends and family, co-workers of the same nationality, and local advice services such as Citizens Advice Bureaux, churches and community groups. Though HSE's existing

diversity strategy recognises the need to go through intermediaries to communicate with diverse and hard-to-reach groups, migrant workers' unfamiliarity with the UK 'system', combined with their highly informal networks for receiving information and advice, also presents new and distinct challenges. **We therefore propose to explore the possibilities for augmenting existing work by the investigation, in collaboration with COI, of new methods of targeted information provision. This would be for delivery from 2007/08 onwards.**

9. These ways of working will help us participate more effectively in approaches and initiatives already being carried forward by **other Government departments and stakeholders**. HSE is involved in the Government's 'Success at work' strategy, which is aimed at vulnerable workers, including migrant workers. This initiative, which is at an early stage, proposes a **small number of pilot multi-agency projects** through which vulnerable workers will be able to access information about entitlements and the protection the law gives them. We are considering how to link this to HSE's regulatory simplification project proposal reviewing the way we make available the basic health and safety information, currently provided through display in workplaces of the 'Health and safety law: what you should know' poster. There may be scope for joint delivery of messages here, as well as for strengthening links to existing TU and voluntary sector initiatives.

The wider context

10. In deciding priorities, the Commission will want to consider the broader picture. Although we are working well with the Home Office on JWEP, there is not an easy 'fit' between the wider Government focus on removal of illegal migrants and HSC's stated policy that all workers, documented or not, are entitled to health and safety protection at work. In addition, we will need to take account of:
- (a) demographic changes, especially EU enlargement, leading to further legal migration from new 'accession states', and undocumented migration from states beyond;
 - (b) the proposed Home Office 'points system' for immigration. As 'legal' routes for low-skilled labour entry to the UK, such as sector schemes/the Seasonal Agricultural Workers Scheme (SAWS), disappear under the proposed system, the effects on undocumented migrant worker numbers remain uncertain; and
 - (c) the Better Regulation agenda.
11. Third-sector stakeholders working in this area are lobbying hard for changes. These include an amnesty for undocumented migrant workers already in the UK, and removal of the threat of deportation in cases where employers have reported undocumented migrants perceived as 'troublemakers'. All these factors bear on the question: where does HSC wish to position itself as a 'trusted' standard-bearer for the protection of migrant workers, given that migrant workers are an increasingly important subset of the wider category of 'vulnerable workers' which are a high priority for Government? In considering future strategy, it is important to bear in mind the considerable potential for reputational risk to HSE in this area of work, whether from doing too little, doing the wrong things, or failing to distinguish adequately our agenda of migrant worker protection from other agendas.

Summary of proposed work programme

12. These considerations point towards the need for a clear programme of work if we want all parties to have continued confidence in HSE's role in protecting migrant workers from exploitation, albeit one that seeks to maximise results from existing, planned work and limit 'new' initiatives. We propose that:
- (a) HSC/E **reaffirm strongly their commitment** to ensuring that all workers get the protection of health and safety legislation, whatever their immigration status;
 - (b) The Central Office of Information (COI) be invited to work with HSE and Local Authorities to investigate the **development of better channels for communicating** information and advice to migrant workers. (Not yet resourced);
 - (c) **Advice** be developed for employers and HSE/LA staff on securing better migrant worker protection. (Already resourced);
 - (d) HSE and LAs continue with **enforcement and inspection** described above, and where necessary actively enforce against 'rogue' employers in priority sectors (food/agriculture; construction; cleaning; healthcare; and catering/hospitality). (Resourced for 2006/07 only);
 - (e) HSE further develop **effective joint working** with other Government departments, in particular DTI on vulnerable workers and the Home Office and immigration authorities on JWEP. Significant development of these projects may enhance their suitability as main vehicles for our work programme in due course. (Resourced)

Consultation

13. Within HSE and with CBI, TUC, DTI, DWP, Home Office and LACORS.

Presentation

14. The research contributes useful evidence to help shape future activities, as well as reinforcing existing efforts to protect migrant workers. HSE and LAs accept the broad thrust of the recommendations. However, any publicity for a decision to further improve protection for migrant worker interests will need careful handling to avoid fuelling prejudices. It will need to explain why wider political considerations distinguish this issue as worthy of focus separately from related concerns such as 'rogue' employers and communicating with vulnerable workers more generally. It will also be necessary to steer carefully in relation to wider Government agendas on immigration, joined-up working and illegal employment, including Gangmaster Licensing. It may be appropriate for senior officials to use the publication of the research in the autumn as an opportunity for a speech to examine these issues and set out HSC/E's proposals for the future.

Costs and Benefits

15. Benefits 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. The main cost is that outcomes elsewhere may be affected by a shift in resourcing.

Financial/Resource Implications for HSE

16. Existing inspection activity (paras 6 and 7) is resourced from 2006/07 plans. Assuming the work will continue to be led from within Policy Group, the estimated costs of strategy development and delivery are £50k in 2006/07 (already resourced by use of 0.8 × B3 existing Policy Group staff member). New migrant worker communications activity proposed for 2007/08 will need to compete for funds with other priorities, and is estimated to require about £150k. Broadening inspection/enforcement against rogue employers to sectors other than food/agriculture is not yet resourced, and is likely to be resource-intensive – an estimated additional 3 × B3 FOD staff year (£180k) – and which would have to be diverted from other operational activities.

Action

17. The Commission is invited expressly to take a view on HSE's positioning on the wider agenda in relation to migrant workers, to note the conclusions of the research and other existing HSE/LA activity in this area, and to endorse the programme of work at paragraph 12.

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Migrant workers: report on progress with the five workstreams

Workstream 1 Research

The research project 'Health and safety and migrant workers in England and Wales' reported in draft to HSE in February 2006, and has since been refined in discussion between Crosscutting Interventions Division (Policy Group)/CoSAS and the researchers (the Working Lives Research Institute at London Metropolitan University). The researchers conducted fieldwork interviews with some 200 migrants working in six sectors across five geographical regions to obtain an insight into health and safety issues at work. These were supplemented by interviews with employers, other intermediary bodies and HSE inspectors. The research noted that migrant workers are at risk of exploitation due to factors such as language barriers and employment in sectors where compliance with health and safety requirements has historically been poor, such as food/agriculture and construction. The risks may be greater where workers are undocumented (that is, with no legal right to work in the UK), because such workers have no incentive to engage with authority where working conditions are poor. The research acknowledged that RIDDOR produced little useful data to establish a picture either way. It did note a range of health and safety concerns, as well as concerns about long hours and shift work, though these concerns were balanced in some cases by a desire on the part of migrant workers to maximise earnings and therefore hours.

The researchers have produced a series of recommendations to address these issues. These have been discussed between members of its 'virtual' project team, which comprises representatives of Policy Group on migrant working and Gangmaster Licensing issues, and a LACORS representative.

Workstream 2 HSE operational activity

In the context of the research report findings, it is important to note that work is already in hand to improve advice and guidance. The recently revised edition of 'Essentials of health and safety' contains new guidance on managing language issues where migrant workers are employed. Significant numbers of migrant workers are employed through agencies, and new guidance on this topic in 'Essentials' reminds agencies and user businesses of their responsibilities in this area, as does guidance shortly to be published by CACTUS on managing the health and safety of refuse collection workers.

The Food and Agriculture Sector will focus particular effort (7 staff years during 2006/07) on a range of activities in relation to migrant working. These include the sharing and exchange of intelligence, and support to joint exercises on workplace enforcement and illegal working; proactive inspection; and reactive investigation, again partly in collaboration with other agencies. The expected outcomes from this work are better intelligence on the extent of migrant working and the nature and extent of risks; better engagement and joined-up working with other stakeholders; the development of key messages and information (advice and guidance); and novel methods for delivery of these.

Workstream 3 The Joint Workplace Enforcement Pilot (JWEP)

HSE has seconded a FOD operational inspector part-time (0.6 FTE) to this 3-year project, which is running in the West Midlands region. Its objectives are to detect and deter illegal employment of undocumented migrants. It has drawn together a team comprising those Government departments that have an interest in this area, whether because of benefit fraud or evasion on the part of the employer (DWP, HM Revenue & Customs) or worker exploitation (including DTI/DTI Employment Agency Standards Inspectorate, National Minimum Wage Inspectorate and HSE). It is co-ordinated by Home Office/Immigration and Nationality Directorate, who have targets, outside those set for the JWEP, in relation to the removal of undocumented migrants. The team works by sharing intelligence and conducting operational activities in response to that intelligence. An initial review after six months' operation to March 2006 suggests that there are benefits to HSE participation in the pilot, especially in terms of improved intelligence availability. It may also be the case that work of this kind has predictive value in terms of resource allocation, in that non-compliance in relation to one area of law (eg non-compliance on payment of the National Minimum Wage) is a frequent indicator of non-compliance in another (eg health and safety). The project continues, and will be further evaluated in autumn 2006.

Workstream 4 Local Authority activity

Some informal research has been conducted, at the request of HSE, through contact with housing officers via both the Local Government Association and the Convention of Scottish Local Authorities. The picture provided by this work has to a significant extent been confirmed by the work undertaken under workstream 1. South Holland District Council has also undertaken a research project which sought to assess how well migrant workers' health and safety was being managed. The research project is due to report shortly, and will be an important means of calibrating, at a very local level, the recommendations of workstream 1.

Workstream 5 Gangmaster Licensing

The Gangmaster (Licensing) Act 2004 received Royal Assent on 8 July 2004. On 1 April 2005 the Act established the Gangmaster Licensing Authority (GLA) to set up and operate a licensing scheme for labour providers operating in the agriculture, shellfish gathering and associated processing and packaging sectors. The GLA began to issue licences in the agriculture and associated processing and packaging sectors from 6 April 2006. Because of different employment practices, separate arrangements are required in the shellfish gathering sector. These will come into force on 1 October 2006. Once the licensing arrangements are in place, the Act will prohibit anyone from acting as a gangmaster in these areas without a license. It will also make it an offence to enter into an arrangement with an unlicensed gangmaster.

In addition to the principal Act and legislation establishing the Authority itself, the following elements of the gangmasters licensing legislative framework are now in place:

- The Gangmaster Licensing (Exclusions) Regulations 2006. These regulations limit the scope of the principal Act by excluding certain work activities and by specifying circumstances in which a licence is not required.

- The Gangmaster (Licensing Conditions) Rules 2006 made by the Gangmaster Licensing Authority, set out the procedures applicants must follow and the conditions that they must comply with to obtain (or retain) a licence.

The following elements of the legislative framework are still in preparation:

- The Gangmaster (Appeals) Regulations 200-. These regulations will provide an appeal mechanism for gangmasters whose application for a licence is rejected.
- The Gangmaster (Reasonable Steps) Regulations 200- will define what constitutes the defence of “reasonable steps” which a labour user should take to satisfy him/herself that a gangmaster was acting under the authority of a valid licence.

The primary objective of the legislation is to tackle illegal activity and exploitation by gangmasters. The GLA will seek to identify and tackle the abuse of workers through inspection and compliance activity. It is anticipated that licensing will directly benefit workers and legitimate labour providers by establishing a properly regulated labour supply market and by eliminating unfair competition from those who currently operate illegally.

It is anticipated that the ability of government departments to share and exchange information and intelligence on the activities of gangmasters in the food supply chain will be enhanced by the operation of the Act. The Act enables the GLA to collaborate closely with other Government departments and to share and exchange information and intelligence by establishing suitable legal gateways for doing this. This should enable other departments and agencies to develop and implement intelligence-led strategies for tackling abuse and illegal activity within their respective statutory remits.

Recommendations from the HSE research report 'Health and safety and migrant workers in England and Wales' [detail of wording on some recommendations not yet finalised – as indicated by square brackets]

Recommendations

The recommendations listed below are largely directed at the HSE, but also relate to other key actors including central and regional government, employers, recruitment agencies and labour providers, training providers, and trade unions. In addition, a short section outlines directions for future research.

Recommendations addressed directly to the HSE

1. The HSE should adapt the RIDDOR information system for recording accidents and major incidents, to include country of birth and year of arrival of the worker(s) involved. This would allow for systematic identification of migrant workers and help to focus resulting investigations.
2. The HSE should develop more practical guidance for employers on health and safety issues to consider when engaging migrant labour. In particular, guidance and toolkits for conducting risk assessments should include consideration of the following in relation to migrant workers:
 - language and literacy skills with regard to their ability to communicate and understand information (written and oral);
 - training needs and methods tailored to different groups of workers, in particular use of non-verbal methods (for example, picture guides, demonstrations);
 - prior work experience and the extent to which it is relevant in relation to health and safety practices in current employment;
 - perception of risk and extent to which this may differ due to experience of another country's health and safety workplace culture;
 - pregnancy and risk assessments, to take account of the fact that women's investment in migration for work might persuade them to continue working, even at risk to their or their baby's health.
3. The HSE should produce a short publication on health and safety rights for migrant workers in different languages. This document should build upon the joint HSE/TUC guide *Your Health, Your Safety* by emphasising that health and safety is independent of immigration status and clarifying the responsibilities of employers and agencies.
4. While it is recognised that the HSE [and Local Authorities] have to operate under certain staffing constraints, it should consider targeting programmes of inspection and advice at areas and parts of industry sectors where migrant workers are found to be prevalent. In particular, the HSE [and LAs] should target more proactive intervention at employers and agencies that disproportionately rely on temporary or casual migrant workers. The 2006/07 programme on casual, temporary and migrant working should be evaluated and expanded if it proves to be successful.

5. The HSE [in partnership with LAs] should formulate guidance for HSE/[LA] inspectors on key issues and lines of investigation to take account of where migrant workers are found. This approach should be applied across the FOD teams for the different regions and sectors and the information gathered should be incorporated into the COIN [and LA equivalent] system. Specific guidance should include how inspectors check with employers about:

- whether health and safety information is provided in languages other than English and if so how it is translated;
- what induction and on-going training is delivered and how it is tailored to migrant workers to ensure understanding;
- what personal protective equipment is provided and how it is ensured that migrant workers use it appropriately;
- how migrant workers are informed of their rights in relation to health and safety;
- what systems there are for ensuring that migrant workers are able to report accidents or raise concerns;
- how responsibilities for health and safety are fulfilled where temporary agency and/or casual migrant labour is being engaged;
- where accommodation is being provided by employers on site and if so if it is being maintained in good state.

6. The HSE workstream on stress and ill-health should consider developing programmes to address the linkages between race, gender and other forms of discrimination, and migrant workers. The research has found evidence for indicating that women migrant workers and Black migrants face the worst discrimination and consequently describe themselves as suffering work-related stress and ill-health.

7. The HSE [in partnership with LAs] should produce *guidance that is targeted* to those migrant communities, for example Chinese workers, known to be present in work conditions and sectors of high risk. This guidance would need to be produced in the main languages of the Chinese migrant community and disseminated through joint working with community organisations.

8. The HSE should actively promote its confidential line for [reporting issues of concern] by workers on health and safety concerns through community organisations and any other contacts with migrant workers (for example, ESOL providers). This should emphasise that the line can be accessed in different languages and that concerns are followed up in a way to ensure that the individual workers do not face any negative repercussions.

9. The HSE [and LAs] should consider ways of working or liaising with trade unions, specifically on the issue of health and safety for migrant workers.

10. The HSE should [continue to explore ways of working together more effectively with] local authorities (LAs) on migrant workers. At a regional and local level, the [LA Strategic] Partnership managers should be [utilised to] develop regular information sharing with local authorities' regulatory services in their area, on patterns of migrant working. Systems through which local authorities' housing departments can report to HSE, on links between migrant worker accommodation and employment relationships, should also be developed [making use of the new LACORS co-ordinating function on this topic]. At a national level, HELA (the HSE/LA Enforcement Liaison Committee) should have a regular standing item to review migrant worker trends and consider developing new initiatives focused on them.

The HSE should also harmonise guidance with LACORS (the Local Authorities Coordinators of Regulatory Services) on checking on migrant worker activity as part of employer inspection and enforcement work.

Recommendations addressed to HSE in conjunction with national or regional government departments

11. The research found evidence that undocumented migrant workers in particular can face greater health and safety risks and receive less protection due to their vulnerable situation. The HSE is encouraged to work with other government departments to develop legal methods, allowing it to investigate cases without undocumented workers facing the prospect of deportation, dismissal or victimisation.

12. The research found evidence that a stable workforce is a positive influence on health and safety and overall business performance. Some employers attributed their improved health and safety record to the presence of a consistent migrant labour force. This points to the need for wider government policies encouraging stability of employment as a contribution to improving safety cultures.

13. The research found evidence to suggest that migrant workers are more likely to be employed in working patterns and/or conditions that can contribute to health and safety risks, such as anti-social shifts and long hours leading to fatigue and stress and repetitive tasks leading to musculoskeletal problems. It is recognised that some migrant workers are willing to undertake whatever hours and tasks they can, in order to maximise earnings, however this may also allow some employers and agencies to take advantage of them. Wider government policies together with HSE work are recommended to improve work patterns and conditions and to ensure that migrant workers are not trapped in situations that oblige them to work long and unsocial hours that could place their health and safety at risk.

14. The research found evidence that processes of sub-contracting and forms of self-employment complicate employment relationships in some sectors and can compromise the extent of health and safety information and training. The HSE, in conjunction with other government departments, should develop methods with businesses to ensure that the full costs of effective health and safety measures are incorporated into contracts.

15. The DTI Employment Agency Standards Inspectorate and the Gangmasters Licensing Authority should develop consistent measures for auditing recruitment agencies and labour providers, in relation to their arrangements for ensuring the health and safety of the migrant workers they supply to clients.

16. Regional Learning Skills Councils, training providers and other education stakeholders should aim to develop programmes of ESOL classes targeted to encourage migrant worker participation, including their timing and course content. The HSE should develop materials with the LSC on health and safety for non-English speakers that could be incorporated into courses delivered by ESOL and training providers.

Recommendations addressed to employers and recruitment agencies

17. Employers should carry out adapted risk assessments specific to the presence of migrant labour (and in line with updated HSE guidance if issued as per recommendation 2). Employers should also communicate the outcome of this assessment to migrant workers collectively, to union representatives where they are present, and to health and safety committees or information and consultation bodies where these exist.

18. Employers should assess migrant workers' knowledge of English and literacy in order to develop appropriate training tools, including non-verbal methods, to communicate health and safety information and training. Where bilingual workers are used to translate, they should be trained on how to communicate the information fully.

19. Employers should evaluate their procedures for workers to report accidents and raise concerns about health and safety, to ensure that migrant workers are able to access them equally. Measures should be taken to ensure the representation of migrant workers within processes for consultation on health and safety.

20. Employers should ensure that migrant workers receive regular occupational health checks and know how to access first aid or health services when in need.

21. The award of an English language kite mark should be considered to encourage employers and recruitment agencies that facilitate the learning of English.

22. Where temporary migrant workers are supplied through a recruitment agency or labour provider, the employers (i.e. client businesses) and agencies should formally agree measures for taking responsibility for their health and safety.

23. Recruitment agencies and labour providers should regularly assess the health and safety of clients and withdraw their workers and inform HSE [or the relevant Local Authority] in case of any concern.

24. Recruitment agencies and labour providers should carry out assessments to ensure that the cumulative working patterns or conditions (e.g. shifts and long hours, repetitive tasks) for temporary migrant workers across one or more sites or clients do not compromise their health and safety.

25. Recruitment agencies and labour providers should provide basic information to all workers on their health and safety rights and on the responsibilities of the agency and the client(s).

Recommendations addressed to trade unions

26. Trade unions should monitor levels of migrant worker membership, in companies where they have recognition, and consider what measures they would need to introduce, to ensure that migrant workers are directly represented within their structures.

27. Trade unions should be encouraged to consider developing access courses for migrant workers who would take on the role of health and safety representation but who lack key skills, including language skills.

28. Trade unions should also consider *specialised training* for health and safety in workplaces where the migrant workforce is more than ten per cent of the whole workforce.

Directions for future research

29. The research has collected a large amount of data that could usefully be analysed along a number of different themes, for example, looking more closely at different national groups; analysing the interview data by status; and, in particular, analysing all of the data by employment relationships and on terms and conditions

30. The research points to the need for more research on the position of undocumented workers in the labour market. Collecting more information on documented v/s undocumented workers and whether the health and safety of the latter is more at risk would be an important element of such research.

31. There is grounds for more specific research that distinguishes between types of employment relationship and identifies factors leading to more generalised exploitation.

32. Research that looks at routes of entry into the UK and the extent to which this determines the nature of the jobs that migrants do and the extent to which it affects their health and safety could assist in targeting effective health and safety programmes.

33. The research points to how processes of informalisation and flexibilisation of work may be contributing to the growth of more temporary, casual, self-employed and part-time jobs in some sectors of the UK economy. Linked to this change, the prevalence of poor working conditions and patterns, such as anti-social shifts, long hours and/or repetitive tasks, and the predominance of migrant workers and/or other marginalised groups in carrying out this work needs to be further assessed.