

TOPIC INSPECTION PACK

MIGRANT WORKING

**Core Activity
2007 / 08**

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Introduction

1 Migration to the UK has a high political profile. There are two main strands of concern. The first is the government's decision to allow workers from the eight eastern European and Baltic member states of the EU that joined in 2004 (the so-called 'A8') to work in the UK, resulting in claims that such workers will work for far lower wages than indigenous workers, thereby undercutting wages generally. It is rare for health and safety to feature in such concerns, although migrant workers' lack of qualifications and experience in the sectors in which they choose to work in the UK are potential factors in accidents. Secondly, there are concerns about the exploitation of migrant workers, particularly of undocumented (illegal) migrant workers. Health and safety sometimes features in media coverage about such workers, but usually as part of a wider picture, involving allegations about low wages, illegal deductions from wages, tax and benefits and poor living conditions, often in respect of tied accommodation.

2 The Health and Safety Commission has consistently affirmed its view that all workers in Great Britain should be afforded the protection of health and safety laws, irrespective of their migration status. It has, in recent years, considered and reviewed its strategic position on migrant workers on a number of occasions, most recently in September 2007. It remains concerned to determine whether or not migrant workers are at greater risk than the indigenous work force and, if so, why.

3 The number of migrant workers, particularly from Eastern European countries and the Baltic States, continues to increase, most recently as a result of Bulgaria and Romania joining the EU in January 2007. As of the beginning of 2007, it is estimated that there were approximately 1.5m migrant workers in the UK economy employed in most commercial and industrial sectors, but in particular in the agriculture and food processing, construction, healthcare, hospitality and catering sectors and the contract cleaning industry. Concerns over health and safety have focused on the comparatively large number of migrants employed in low-skilled, often manual, physically demanding jobs, not on the highly skilled, professional migrants employed, for example, in the National Health Service or the financial services and IT sectors. Although some migrant workers are self-employed, some employed directly and some employed on permanent, full-time contracts, many are supplied on a casual or temporary basis by independent labour providers based in the UK or abroad.

4 Since April 2005, operational activity on casual and temporary (including migrant) working in FOD (other than in construction) has been tackled by way of a project which has, in the first instance, targeted the agriculture and fresh produce processing sectors.

5 This Topic Pack seeks to provide:

- HSE (and local authority) staff with background information on the employment of migrant workers in the UK;
- advice and guidance on the issues that need to be considered when inspecting dutyholders who directly employ or use migrant workers supplied by independent labour providers;
- advice on sources of intelligence and opportunities for partnership working with other agencies in the public and voluntary sectors; and
- advice and guidance on enforcement.

Definitions

Migrant Worker - There are a number of different definitions used in UK statistics on migrants. The most commonly quoted statistics are based on the International Passenger Survey (IPS) data definition of 'migrant' (of which migrant workers are a subset). This describes a migrant as 'a person who has resided abroad for a year or more and on entering has declared the intention to stay in the UK for a year or more'. The IPS data is based on a relatively small sample of migrants coming into the UK who have declared an intention to work, and excludes:

- those migrant workers who work in the UK for only a short period – a pattern not untypical among so-called 'A8/A2' workers;
- those who have no permission to work in the country (undocumented migrant workers); and
- others with a legal right to work in the UK, such as students and refugees.

To date, HSE has used as its definition of migrant workers 'those who have come to the UK within the last five years specifically to find or take up work, whether intending to remain permanently or temporarily and whether documented or undocumented.' This definition was used in the commissioned research project RR502: 'The health and safety of migrant workers in England and Wales', conducted for HSE in 2005/06 and referenced throughout this Inspection Pack.

However, for consistency, HSE has adopted the following definition:

A migrant worker is someone who is or has been working in the UK in the last 12 months, and has come to the UK from abroad to work within the last 5 years'

Employment Agency and Employment Business – as defined for the purposes of the Employment Agencies Act 1973 and associated Regulations. Further information can be found on the DTI website.

Labour provider – a person or corporate entity that supplies workers to a third party. The provider may be an employment agency or business or a gangmaster.

Gangmaster – a form of labour provision and a term historically associated with agriculture and the processing of agricultural produce. A gangmaster may be an individual, a partnership or a corporate entity. A person acts as a gangmaster if he/she supplies a worker to another person to do work to which the Gangmasters (Licensing) Act 2004 applies. Further information can be found on the Gangmasters Licensing Authority website.

Labour user – a person who hires or uses workers supplied by a third party.

Background

6 Many of the industries for which HSE is responsible require a flexible workforce to undertake a range of (often unskilled/manual) tasks. With the economy operating at or near full employment, many employers seek to reduce labour costs by sourcing workers on a just-in-time basis, supplied on temporary contracts by independent employment agencies and labour providers. Similarly, in some sectors, employers find it increasingly

difficult to source suitable indigenous labour and rely increasingly - in some cases, extensively - on migrants from EU and non-EU countries. Many are prepared to work in unpleasant and potentially unsafe/unhealthy conditions for comparatively low wages. It is not known how many migrant workers are working illegally in the UK.

7 Research carried out by HSE, other Government departments (OGDs) and non-governmental agencies into the migrant workforce has sought to clarify their countries of origin, where they are working, what they are employed to do and whether they are at increased occupational health and safety risk in comparison with the indigenous workforce. Notwithstanding, information about the temporary and migrant working populations in Great Britain, particularly in sectors other than agriculture, food processing, contract cleaning, healthcare and construction, remains unclear. However, the research does suggest that factors including unfamiliarity with the workplace/UK health and safety culture and not having English as a first language, combined with a historically poor record of compliance in sectors where migrant workers are strongly represented, may predispose them to a greater level of risk than UK workers.

8 Given the limitations of existing statutory and other reporting systems and the suspected widespread under-reporting of work-related injury and ill health, it is impossible to estimate the contribution of temporary and migrant working to the FIT3 targets for the reduction of fatal and major injuries and work-related ill health.

9 Government remains concerned at the potential for abuse and exploitation of temporary and migrant labour. There is evidence of illegal practices including illegal employment, bonded labour, avoidance of tax and National Insurance, payment of low wages, benefit fraud, provision of poor housing, excessive working hours, lack of employers' liability insurance and neglect of health and safety responsibilities.

10 Partly in response to these concerns and to the Morecambe Bay tragedy, the Gangmasters Licensing Authority (GLA) was established in April 2005 to regulate the provision and use of labour in agriculture and related sectors.

11 The provision and use of labour in agriculture and shellfish gathering and all processing and packaging of food and non-food products derived from agricultural produce, fish or shellfish are regulated by licensing regimes under the Gangmasters (Licensing) Act 2004 (the 2004 Act), unless specifically excluded by virtue of secondary legislation. The licensing regimes - which make no distinction between temporary and migrant workers - managed and enforced by the GLA are now fully operational.

12 As a result of increasing enforcement activity by the GLA, other cross-Government initiatives and improving links with other regulatory agencies, it is hoped that new and better intelligence on labour providers and users will progressively be generated from 2007/08 onwards. This intelligence will be used to inform future work.

13 Migrant workers are a special case of the more general problem associated with managing the health and safety of casual and temporary labour. In addition to the generic issues, migrants present particular challenges in areas such as language, supervision and safety culture.

Migrant workers in the UK

14 The number of economic migrants working in the UK is not known with any certainty. What is known is that:

- Migration for work is not new, but the issue has gained prominence because of the rapid increase in the number of migrant workers coming to Britain.
- Migrant workers are often transient; knowing how many there are in a local area at a particular time, and predicting future change, is inherently difficult.
- The geographical spread of migrant workers is much wider than even a few years ago. Migrants are no longer found only in large conurbations, but increasingly are working in rural areas or in regions that have had little or no previous history of migration, whether temporarily or for settlement.
- In 1996 foreign nationals made up 3.5% of the UK workforce. By 2006 this number had risen to 6%. Foreign nationals comprise 10% of the workforce aged under 35. Many foreign nationals work part-time whilst studying.
- Whilst many workers still come from countries with longstanding links to the UK, particularly the Commonwealth, ex-Commonwealth and the Philippines, an increasing number come from Europe, especially from countries that joined the EU in 2004. On 1 May 2004, ten countries, Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia, joined the European Union (EU). The UK Government put in place transitional measures to regulate A81 nationals' access to the labour market (via the Worker Registration Scheme) and to restrict access to benefits. The most recent EU member states, Romania and Bulgaria, joined on 1 January 2007.
- The following data is taken from the Home Office Accession Monitoring Report No. 10, which reports the findings of the Worker Registration Scheme:
 - A total of 579,000 applicants registered on the Worker Registration Scheme (WRS) between 1 May 2004 and 31 December 2006, but this does not indicate the number of long-term migrant workers into the UK, as most come for only short periods.
 - The vast majority of these workers are young, 82% aged between 18 and 34. Only 6% of all workers have dependents that travel with them. The ratio of men to women is about 57 to 43 in this total population.
 - In the period 1 May 2004 to 31 December 2006, the highest proportion of applicants were Polish (65% of the total), followed by Lithuanian (11%) and Slovak (10%) applicants.
 - The number of Czech Republic, Lithuanian, Estonian and Latvian applicants decreased by over 25% during 2006. The greatest decrease was from Estonian applicants (75%).
 - In the final quarter of 2006, Polish applicants made up 74%, Slovaks 9%, Lithuanians 6%, Latvians 3%, Czech Republic, 3%, Hungary 3%, Estonia 1% and Slovenia less than 0.5%.

15 The government launched a public consultation exercise and published details in March 2006 on reforming the UK's labour migration system. The intention is to replace over 80 differing channels of entry to the UK to work, with a simplified points system to

¹ That is, nationals of these new EU states excluding those of Cyprus and Malta

regulate the immigration and employment of skilled non-EEA workers and to limit severely low-skilled immigration from outside the EEA. This will mean the termination of the existing Sector Based Schemes (SBS) and the phasing out of the Seasonal Agricultural Workers Scheme (SAWS) by 2010. The restriction is based on the government's view that employers should be able to source all the workers they require for low-skilled jobs from within the enlarged EU.

Research

16 In 2005, HSE commissioned research to find out more about the jobs migrants are employed to do and determine whether they are at greater risk than the indigenous workforce. Migrant workers should not be viewed purely in terms of low-skilled and vulnerable workers. There is significant migration of workers into 'high-level' sectors such as banking, IT, education and medicine. Such migrants' level of education and language skills probably ensure that they are at no greater risk than their indigenous peers.

17 The research report (RR502) concluded that the main risk factor is working in sectors where compliance with health and safety requirements has historically been poor. There is insufficient evidence to show that being a migrant worker is in itself a risk factor. However, migrant workers tend to work in higher-risk sectors of the economy. Since the greatest risk factor for an accident at work appears to be the job workers do, migrant workers would, as a group, seem to face disproportionately higher risks. HSE already targets its activity towards those at greatest risk, and should therefore continue to focus on migrant workers working in high-risk sectors or occupations.

18 Although the research suggests that migrant workers are probably not at greater risk than any other workers doing the same job, employers need to consider whether their migrant status presents additional risks which need to be taken into account. These may include, in particular, language and communication barriers, differences in approach to health and safety in the workplace in their countries of origin and irregular or uncertain employment/immigration status. This last category covers not just those who are deliberately or inadvertently working illegally, but also those who may have been misled about their rights to live and work in the UK.

19 The research suggests that, for migrant workers, health issues such as stress and the health effects of repetitive tasks and long hours/shiftwork may be particularly important.

20 Risk assessments should address the particular needs of migrant workers. Good communication, comprehensible information, instruction and training and access to supervisors with whom they can communicate are especially important. The duty on employers to provide information in a form that workers can understand (regardless of their background) is made clear in the 'Approved Code of Practice and guidance to the Management of Health and Safety at Work Regulations 1999' (L21); see also guidance in 'Essentials of health and safety at work' (page 81).

21 As with the overall numbers of migrants and of those working illegally, accurate and comprehensive data on the accident and ill health rates for migrant workers is not available. Migrants will not generally be represented in traditional sources of information e.g. the Labour Force and Self-reported Ill Health Surveys. Employers are not required

to record the ethnicity of accident victims or to report that information to HSE, nor does HSE routinely record when language issues may be a factor in an accident.

22 Further information on HSE commissioned research can be found on the main HSE website.

HSE Activities

Internal

23 The Health and Safety Commission has endorsed a programme of work, taking account of the research findings, to protect migrant workers in both HSE and Local Authority (LA) enforced sectors; HSC papers HSC/04/61, HSC/05/04, HSC/05/77, HSC/06/36 and HSC/07/63 refer. The programme involves further research, inspection and investigation and advice, guidance and promotional activities.

24 The Agriculture & Food Sector has held the operational policy and operational lead (on behalf of FOD) on migrant working since April 2003.

25 Since April 2005, operational activity in FOD on casual and temporary (including migrant) working - other than in construction - has been addressed by a project. Guidance to operational inspectors and HSAOs on the project for 2007/08 is contained in SIM 01/2007/04 "2007/08 Work Plan: Temporary and Migrant Working".

26 There are clear links with important elements of the Strategic Programmes, such as the commitment to develop new ways of establishing and maintaining an effective health and safety culture in a changing economy, through partnership working with LAs and other stakeholders.

27 Despite earlier research, there is insufficient evidence to show that being a migrant is, in itself, a risk factor. HSE is considering its further statistical information needs in this area, particularly with regard to the accident experience and accident incidence rates of migrant workers.

External

28 Inspectors within HSE's Construction Division have undertaken some work with Polish workers, one of the largest groups of migrant workers in London. HSE held a health and safety event at a London Polish Centre, produced posters in Polish and articles for Polish magazines.

29 A small number of operational 'blitzes' were carried out in the 2006/07 focusing on employment sectors with significant migrant employment, such as Operation Fuchsia in the South West.

30 Some Divisions are planning inspection campaigns in 2007/08 focussing on the protection of temporary and casual workers in agriculture, a significant proportion of whom are migrant workers.

31 HSE's Slips and Trips campaign will be undertaking visits in the cleaning sector during 2007/08, seeking in part to target employers of migrant workers.

32 HSE is involved in supporting and encouraging 'responsible employer' schemes in various areas, and has been involved in developing performance standards for these.

33 HSE External Relations Teams continue to liaise at local level with Regional Development Agencies, Local Strategic Partnerships and voluntary sector bodies to gather and disseminate intelligence on good practice in relation to the management of migrant worker health and safety.

34 HSE's Infoline has facilities to set up a three-way conversation between an Infoline adviser, the caller and an interpreter where the caller does not speak English. This facility is available in over 100 languages.

35 HSE has produced guidance for employers on how to meet the legal requirement for 'comprehensible' information and instruction to employees and workers where they do not speak or understand English.

36 Guidance on issues that Inspectors should focus on at proactive/topic based inspection visits where migrants are known or suspected to be employed is attached at Annex 1.

37 HSE provides a variety of guidance leaflets on health and safety in different languages. For example, HSE has provided translations of basic health and safety guidance in 25 languages (in addition to English and Welsh). Inspectors have access to advice on dealing with language issues and interpreters where necessary.

38 HSE has produced a pocket card aimed at migrant workers: 'Working in the UK from Overseas? - Your health and safety at work in agriculture and food processing' (INDG410). The pocket card provides basic and essential information on their rights and responsibilities under UK health and safety legislation. The leaflet is available in English, Polish, Ukrainian, Latvian, Lithuanian, Russian, Romanian and Bulgarian. It is available from HSE Books or can be downloaded from the HSE website. It was produced in partnership with Lantra, the TGWU, the National Federation of Young Farmers Clubs (NFYFC), the Institution of Occupational Safety and Health (IOSH), the National Association of Agricultural Contractors (NAAC), Asda and the Home Office.

39 HSE is currently developing guidance for small- and medium-sized employers (targeted at the agriculture and food sectors) on good/best practice in the employment of migrant workers.

40 HSE is also developing a series of webpages that will provide information and practical guidance and a more readily identifiable and accessible channel of communication with employers and workers on these issues. The website, to be launched in 2007, will link to other relevant sites, such as the Home Office's 'Employing migrant workers' toolkit.

41 HSE has continued to expand its coverage of information available to migrant workers, and recently collaborated with the Centre for Filipinos to provide basic information leaflets in Tagalog. It has also worked with other Government departments to ensure basic information about its work and the UK health and safety system is

available in leaflets produced for migrant workers before they enter the UK (Work Permits UK and the BERR formerly DTI).

42 HSE has also contributed to:

- the North West Food Alliance's publication 'Working Safely in a Multicultural food Industry', which gave guidance on this and other issues affecting employers and workers in an industry employing large numbers of migrant workers (March 2006); and
- the Temporary Labour Working Group Code of Practice for labour providers to agriculture and the fresh produce trade' (November 2004).

43 In line with the Government's Hampton agenda for greater information sharing and joined-up enforcement working between agencies, HSE has worked with a range of departments on the Joint Workplace Enforcement Pilot in the West Midlands region. There are signs that such an approach can bring significant benefits in terms both of intelligence, targeting approaches and joint working.

44 BERR (formerly DTI) announced in April 2006 a strategy, 'Success at work' which contained significant proposals for protecting vulnerable workers, including migrant workers, through multi-agency co-operation. HSE is advising on the set-up of pilot projects to pursue this, which are likely to involve LA partners. These will create 'one-stop' advice centres for vulnerable workers and their employers in the building services (London) and hospitality and catering sectors (Birmingham). Referrals from the London centre may be made to HSE where there are matters of serious concern that the advisers cannot resolve without HSE input.

45 In June 2007, BERR set up a Vulnerable Workers Enforcement Forum, whose remit is to examine ways in which workplace enforcement agencies (HSE, the GLA, the Employment Agency Standards Inspectorate and the National Minimum Wage Inspectorate) can work more effectively together to ensure vulnerable (including migrant) workers are properly protected.

46 HSE continues to explore other effective ways of reaching migrant worker populations, notably through groups such as the Migrants' Rights Network and the faith groups.

Industries

47 Migrant workers are to be found in most sectors for which HSE and the local authorities have enforcement responsibilities under the Health and Safety (Enforcing Authority) Regulations 1998.

48 Those, for example, working within agriculture and food, construction, healthcare, education, the waste collection and disposal sector and for cleaning contractors operating in industrial premises fall within HSE's jurisdiction.

49 Those working in the hospitality and catering sector, in some healthcare-related occupations (especially private care homes) and for cleaning contractors in commercial premises come within the jurisdiction of the local authorities.

50 Migrant workers are extensively employed in non-standard work patterns, such as mobile workers whose place of work frequently changes, or office cleaners working anti-social hours e.g. nights and/or weekends.

51 It is believed that substantial numbers of migrant workers work for employment agencies, employment businesses or gangmasters. It may not be easy to identify which relevant health and safety duties are owed by which party - it will depend on the exact circumstances - but responsibility for compliance with each such duty will lie with at least one of these potential dutyholders. The standards required by the law apply to migrant agency workers and do not distinguish between those working legally or illegally, permanently or temporarily. Similarly, dutyholders are also obliged to consider these duties in connection with self-employed workers, notwithstanding the duties that those workers may themselves owe.

Agriculture and agricultural produce processing

52 The deaths of 23 Chinese cockle pickers in Morecambe Bay in 2004 highlighted the health and safety of migrant workers in agriculture and in the processing and packing of agricultural produce as a matter of particular concern.

53 Much of the work in agriculture and the food processing sectors is seasonal, short-term and low-skilled. Changes in these sectors and in the food supply chain in recent years have created demands for a more flexible work force – characterised by casual and temporary working. It is believed that migrants make up more than 50% of the workforce in these industries.

54 Approximately 1.7% of the workforce in Great Britain works in agriculture - including farming, arboriculture, horticulture and fish farming - but the industry accounts for 19% of the fatal injuries (2004-05). The number of non-fatal injuries in the industry is obscured by under-reporting. Only about 25% of the non-fatal accidents to workers are actually reported. The rate of self-reported illness is also significantly higher than the average for all industries.

55 Lack of accurate information about the size of the migrant working population in the industry, the limitations of existing statutory and other reporting systems and gross under-reporting of work-related injury and ill health generally in the industry means it is impossible to estimate the potential contribution of these workers to the reported injury and ill health statistics.

56 Although employment in the industry has been steadily declining for many years, over half a million people still work in agriculture. In recent years, the shortage of labour and changes in the UK food supply chain has resulted in a dramatic increase in the number of temporary (including migrant) workers employed in the industry. Recent Government research suggests that more than 600,000 temporary workers (not full-time equivalent jobs) are legally employed to harvest and pack produce on farms and in farm factories (pack houses). A further 150,000 are thought to be employed in secondary stage food processing and manufacture. Legal workers are those entitled to work in the UK. This category includes UK nationals, EU nationals (including those from the Accession States) and workers from other nations who hold current visas allowing them to work in the UK.

57 In addition it is estimated that up to a further 200,000 workers may be working in agriculture and the food processing sectors illegally – mainly nationals from outside the EU who do not hold current visas to work.

Gangmaster Licensing

58 The term ‘gangmaster’ has particular and historic association with agriculture and agricultural produce processing sectors. The Gangmaster Licensing Authority (GLA) was established in April 2005 by the Gangmasters (Licensing) Act 2004. The primary objective of the Act is to curb the exploitative activities of gangmasters - a term used widely in agriculture to describe labour providers - some of whom run reputable and legitimate businesses, but others operate illegally and exploit their workforce. Evidence collected by the enforcement agencies of Government departments suggests this illegality takes many forms, including health and safety.

59 The GLA regulates the activities of gangmasters through a licensing scheme. From April 2007, it has been illegal to supply workers to the agriculture, shellfish gathering and associated processing and packaging sectors without a licence. Licences are issued following demonstration of compliance with wide ranging standards conditions, including conditions on health and safety. These are revised from time to time, but are set out in the current edition of the GLA’s “Licensing Standards”, available in hard copy or from the GLA’s website.

60 HSE, along with other government departments, is consulted by the GLA on the performance of licence applicants. HSE supplies any relevant factual information it holds on applicants via an electronic template supplied by the GLA.

61 The GLA is able to collaborate closely with other Government Departments and exchange information through legal gateways established by the 2004 Act. Where non-compliances of sufficient severity are discovered during the course of an inspection and, in the opinion of the GLA, are not being properly addressed, it will bring them to the attention of the appropriate government department or agency. This should assist departments and agencies to develop and implement intelligence-led strategies for tackling abuse and illegal activity within their respective statutory remits.

62 The 2004 Act allows for the wide-ranging sharing of information relating to gangmasters between the GLA and departments and agencies (including HSE and the local authorities) and arrangements have been formalised under Memoranda of Understanding (MOUs). For further information on the MoU between HSE and the GLA see paras. 110-115.

63 The Hampton Report recommended that the GLA should be merged within HSE by April 2009. If it proceeds, the merger will be effected by a Legislative Reform Order (LRO) under the Legislative and Regulatory Reform Act 2006. A public consultation exercise on the proposed merger is planned for late 2007.

Construction

64 Migrant workers have a vital role in providing skills and filling labour shortages in the UK construction industry. Many are experienced tradespeople; for example, some enter the workforce through the Highly Skilled Migrants Programme.

65 Vulnerable groups have been specifically identified in the Construction Programme. Workers with limited English language skills can still obtain a Construction Skills Certification Scheme (CSCS) card. The Construction Skills touchscreen health and safety test can be taken in a variety of languages or via an interpreter.

66 Migrant labour has been estimated to make up some 6% of the labour force in construction. In London and the South East, migrant workers form a higher percentage of the workforce, at around 9%. An estimated 88,000 non-UK workers were employed in construction in January 2003 (Trades Survey, Construction News Jan. 2003), mostly in London and the South East. HSE's Survey of Construction Workers, started in January 2005, indicates that, in Greater London, foreign workers now make up around 26% of the workforce.

67 The Construction Workers Survey found that 59% of the foreign workers in Construction were based in London, with a further 15% in the South East. The 2005 Labour survey states that 40% of all migrant workers of working age working in all sectors are in London.

68 Between April 2005 and March 2006, 5 foreign workers, were killed in construction work activities in the UK. This represents 8.5% of the total number of fatalities in the industry during the year. Of these, two were engaged in roof work, one in demolition, one in erection work and one in painting/decorating. In the reporting year from 1 April 2006, a further 5 foreign workers were killed. A three-year average of the proportion of migrant worker deaths in construction is between 7 and 8%.

69 The official sources of data from UK Government tend to underestimate the number of recently arrived migrant workers in construction, because of issues of time-lag, self-employment, workers changing jobs once in UK, and failure to register on the official (Workers' Registration Scheme) scheme. The scale of employment of migrant workers in UK construction appears to be rising sharply.

70 Unofficial data suggests that, in the reporting year from 1 April 2006 to 31 March 2007, rates of recently arrived migrant workers in the UK construction workforce may be anywhere between 10- 50% in the larger cities in the UK.

71 Inspectors within HSE's Construction Division have undertaken some work with Polish workers, the largest group of migrant workers in London. HSE held a health and safety event at a London Polish centre, produced posters in Polish and articles for Polish magazines.

72 HSE provides key language translations of documents, such as the practical checklist in 'Health and Safety in Construction HSG150'.

73 Construction Skills, the Sector Skills Council for construction, has developed web-based materials to support the effective integration of migrant workers into UK construction. It provides UK construction employers with information and support tools to help ensure that any migrants they employ are properly qualified, competent and safe.

74 There is conflicting evidence as to whether migrant workers, particularly those having worked in the UK for two years or less, are suffering more minor accidents than

workers in the UK workforce. The major factor in this may well be simply the quality of health and safety management of their employer.

75 The evidence indicating higher rates of minor accidents may be explained by migrant workers having had limited experience of working in Construction before arrival in the UK, being employed in higher risk trades such as demolition or roofing and failing to undergo any formal training or testing in the UK. There is also evidence that shorter job tenure may be a factor – as it is for those from the indigenous workforce who are new to their jobs.

76 There is some anecdotal evidence of an emerging trend of migrant workers suffering fatal accidents whilst working in poorer conditions on domestic or smaller construction projects.

Contract cleaning

77 Contract cleaning employs around 800,000 workers in the UK and includes activities such as recycling, maintenance and renovation work. The industry is dominated by large multi-site companies; four of the largest accounting for 25 per cent. of the total turnover. However, it is also characterised by small entrepreneurs, some of whom began their careers as employees before setting up their own businesses.

78 Most workers in the laundering and dry cleaning industry work in small dry cleaners, but some are employed in large industrial laundries, handling hospital and hotel contracts and in specialised operations such as industrial wipers.

79 Contract cleaning workers are employed under a range of different, sometimes insecure, contracts, carrying high employment risks. Site supervisors or unit managers are often responsible for the organisation and control of work, monitoring of wage sheets and attendance and also for the supervision of health and safety standards and training of new workers in the use of machinery and cleaning materials. They are often also responsible for recruitment, which is done through word of mouth and social networks amongst the existing workforce.

80 Office cleaning is undertaken out of normal working hours, out of sight of the firm's work force and is generally managed by external agencies rather than directly by employers. Because contract workers do not share corporate identity with and are distanced from the firm's work force, they are often isolated and dependent on their supervisors, who control access to and the type of work done.

81 Women workers are in a majority in the cleaning sector. Almost two-thirds of the workforce belongs to ethnic minorities. There are no estimates of the numbers of migrant workers in the industry, but given that the workers are often employed through agencies for short term and flexible contracts, the presence of migrants is believed to be fairly high.

82 The shortage of indigenous workers in the industry is a reflection of the fact that the work is seen as being physically hard, low-skilled and not well regarded. Although the industry is dependent on migrant workers, there are no special schemes under which they can enter the UK for employment in the sector. Students, people on business visas and those who work irregularly all form part of the workforce in this sector.

83 Over 3,000 serious accidents involving cleaners are reported to HSE each year. The health and safety risks can be significant because the work often involves heavy manual work, use of hazardous cleaning substances and the use of cleaning equipment with which the workers may be unfamiliar. Health and safety risks to contract cleaning staff include dermatitis, musculoskeletal disorders arising out of manual handling, hand-arm vibration syndrome and repetitive strain injuries.

84 There is a significant local authority-enforced sector in the launderette industry, in “on-premises laundries” (e.g. hotels) and in dry-cleaning units in retail stores. The main causes of injuries in this sector include manual handling/musculoskeletal injuries, machinery and slips and trips. Work-related upper limb disorders from repetitive sorting and packing work, noise-induced hearing loss and respiratory irritation are the main health-related problems.

85 Within the waste industry, health concerns include manual handling and exposure to bio-aerosols. In 2001/02, the accident incidence rate in the waste industry was four times the all-industry average. The main causes of accidents include manual handling injuries (including cuts from sharp objects), slips and trips and being struck by objects (such as during refuse collection).

Healthcare

86 Healthcare services in Great Britain employ approximately 2 million people: 1.2 million employed by the NHS and approximately 0.7 million in the private sector. These figures include highly skilled medical practitioners e.g. doctors, dentists etc., a proportion of whom are migrants, but do not include those employed in the social care sector.

87 Primary concern focuses on migrants working as nursing, ancillary and domestic staff who are thought to be at greatest risk of exploitation and risk. Little is known about the numbers of migrants employed as domestic staff, but many of the issues faced by contract cleaners are likely to be relevant.

88 While there are many small private nursing and care homes, the NHS remains the single largest employer of nurses and carers in the health sector. Given expansion and growth over the past decade, the NHS has faced significant staffing shortages resulting from factors such as an ageing workforce, increases in demand and reduction in retention rates, with employees leaving to work in the private sector. The labour turnover rate in the NHS is the highest within the public services sector in the UK.

89 Recruitment from overseas has been a key strategy in the NHS. Nursing has been a shortage occupation in the UK for some years and the issue of work permits has been fast tracked. In recent years, overseas sources have contributed about 45 per cent. of the new entrants registered with the Nursing and Midwifery Council. Registration does not necessarily mean placement and does not extend to the private sector, or to health professionals who apply directly for employment in the UK.

90 According to the HSE, in the period 1996/7-2000/1, over 60,100 healthcare workers suffered reportable injury, of which more than 50% involved manual handling/sprains. There were two fatalities in this period. The Labour Force Survey (1998/9) suggested that the accident incidence rate for healthcare and social work was above the all-

industry average. The rate for ambulance staff and nurses was approximately 2.8 times that for clerical workers. The Self-reporting Work Illness Survey 1995 suggested that nursing had one of the highest rates for musculoskeletal disorders; more than twice the all-industry average. Nurses also reported high rates of work-related stress, depression or anxiety and, in the private sector, bullying.

91 The main causes of reported injury include manual handling/musculoskeletal injury, slips and trips, assault/violence and being struck by sharp objects.

92 Other reported issues include difficulties of communication and language, (social) exclusion and racism from both staff and patients.

Manufacturing

93 Because of the practical difficulties of accessing migrant working populations, the research shed little light on the extent of migrant working in those industries covered by the Manufacturing Sector, other than food processing and packaging, which is discussed under the heading 'Agriculture and agricultural produce processing' (paras. 51-56 refer).

94 Notwithstanding, there is anecdotal evidence from HSE's Manufacturing Sector and FOD Divisions to suggest that the employment of migrant workers (often in small numbers) is ubiquitous.

95 Manufacturing Sector is currently working with stakeholders to consider the extent and nature of migrant working in the industries and the implications for health and safety. Further information will be included in future revisions of the Topic Pack.

Sharing and exchanging intelligence

96 Increasing involvement in temporary and migrant employment issues in recent years has required HSE to work more closely with other enforcement agencies, departments, public authorities and non-governmental bodies. In doing so, questions have arisen about our and others' ability to share and exchange information or intelligence to facilitate joined-up working and promote better regulation. The pressure to work more closely and in partnership is unlikely to diminish in the foreseeable future.

97 Whereas HSE tends to receive and act upon information supplied by third parties, many/most other agencies/departments (including the police) act upon intelligence i.e. information which has been assessed/evaluated against specified criteria. The most commonly used criteria are those originally devised by the National Intelligence Model (NIM) and generally referred to as 5x5x5. The 5x5x5 format provides a basis for ensuring the quality and reliability of intelligence and, amongst other things, allows for evaluation as to how widely it should be disseminated amongst other regulators and prosecuting agencies. As a result, it is often the case that what HSE has to offer will be of little value to others because it has not been assessed/evaluated, whilst what they have to offer to HSE may be of little relevance or interest.

Health and Safety at Work etc. Act 1974: Section 28

98 There are a number of ways in which HSE inspectors can disclose information obtained in the exercise of their powers under the Health and Safety at Work etc. Act 1974 (HSWA).

99 By s28(2) HSWA, an inspector can disclose any information provided as a result of a legal obligation imposed by health and safety legislation, providing he/she has obtained the consent of the person who supplied it. To the extent that such information contains anyone else's personal data, it may be necessary to obtain their consent to the disclosure as well. In many instances, particularly in the context of sharing information for regulatory purposes, this scenario will be unlikely.

100 More generally, s28(3) HSWA allows an inspector to disclose such information to (amongst others) government departments, other enforcing authorities, local authority officers and constables who are authorised to receive it, without the need to obtain the consent of the person who supplied it, subject to the following conditions:

- If the material contains any personal data (as defined) i.e. if it identifies any person, then under the Data Protection Act 1998 (DPA), it must be anonymised e.g. by scoring out any information which might identify that person, unless the disclosure of that **personal data** "is necessary for the administration of justice".
- If the material concerns the commission (or alleged commission) of a criminal offence by an identifiable person, under the DPA it must be anonymised unless disclosure of that **sensitive personal data** "is necessary for the administration of justice ... [or] ... the purpose of, or in connection with, any legal proceedings (including prospective legal proceedings)".

101 Sensitive personal information is defined in Section 2 of the DPA and includes data consisting of information as to a subject's commission or alleged commission of an offence or any proceedings for any offence committed or alleged to have been committed by him (which is relevant here). In these circumstances, you will need to consider the following factors:

- The DPA applies to personal data and requires that it be processed fairly and lawfully. Processing will be fair and lawful if it is done under any enactment, including s28 HSWA.
- However, processing must also comply with one of the conditions in Schedule 2 (in the case of personal data) or Schedule 3 (in the case of sensitive personal data), which state, inter alia, that such data may be processed where it is necessary for the administration of justice.

102 Section 28(7) deals with information obtained by HSE using its powers under Sections 14(4)(a) or 20.

103 If HSE wants to share this sort of information with other enforcing authorities, government departments or the police, it may do so, provided that where personal data is concerned, it is necessary for the administration of justice. Where, for example, HSE is concerned that illegal activities may be underway at certain premises and wants to discuss such activities and possibly propose joint inspection activities with the other departments/regulators, this would be processing necessary for the administration of justice. HSE would not need to have evidence of such activities, but simply to suspect such activities are ongoing and to use discussion and any inspection with the other

departments/regulators as part of a requisite investigation. Conversely, if the discussion/inspection were essentially a “fishing” exercise and HSE had no real grounds for suspecting criminal activity, it would be difficult to argue that disclosure to the other departments/regulators would be necessary for the administration of justice. In these circumstances, whilst it would be possible to talk to them in general terms about tactics, what evidence you should be looking for, etc. it would not be appropriate to disclose personal information, such as names.

104 In circumstances where HSE is considering an inspection/investigation of a dutyholder’s premises or a “blitz” on a number of dutyholders, it would suggest it has reason to suspect illegal activities in which case discussion with other departments/regulators in advance (including revealing personal data) may be for the administration of justice.

105 Self-evidently, any disclosure must be consistent with any HSE investigation, and not prejudicial to it.

106 In summary, provided either HSE or the other departments/regulators are carrying out an investigation (including an investigation at preliminary stages) into potentially illegal activities, it is possible to disclose/share personal information (including sensitive personal information) as it will be necessary for the administration of justice and/or (in the case of sensitive personal information) for the purposes of, or in connection with, any legal proceedings.

Statutory gateways to disclosure

107 The purpose for which disclosure may be made under HSWA, where it is proportionate to do so, have been further widened/defined by statute, specifically, Section 17 of the Anti-terrorism, Crime and Security Act 2001 and Section 19 of the Gangmasters (Licensing) Act 2004.

(a) Anti-terrorism, Crime and Security Act 2001

108 Section 17 and Schedule 4 of the Act permit disclosure, where it is proportionate to do so. What is proportionate needs to be determined on a case-by-case basis. The provisions apply in circumstances where the police are carrying out an investigation and would allow HSE to disclose information in connection with that investigation. Generally however, it is unlikely HSE would need to rely on these provisions because disclosure would, in the majority of cases, be permissible under s28 HSWA/DPA, in which case it would not be necessary to carry out the “proportionality” test. Inspectors are advised to consult with LAO if they believe they need/want to disclose information under the Act.

109 The information the police could pass to HSE, is not covered by Section 17 and Schedule 4. They will only be able to disclose information they have the vires to disclose, subject to the provisions of the DPA.

(b) The Gangmasters (Licensing) Act 2004

110 Section 19 provides for the disclosure of information between departments (including HSE) and the GLA for the purposes of the Act i.e. to disrupt and prevent the

exploitation of labour by gangmasters (defined in Section 4) in agriculture, shellfish harvesting, food processing etc.

111 Any disclosure under the 2004 Act takes place notwithstanding any restriction on the disclosure of information imposed by any other enactment, including the DPA. Any related disclosure to the police or another regulator would be subject to the limits on disclosure discussed above.

Memoranda of Understanding

112 A Memorandum of Understanding (MoU) is an arrangement freely entered into by HSE with other government departments, non-departmental public bodies or external agencies. It is used to formalise new or existing working arrangements when there is power to do so but where it is not necessary or desirable to create legal obligations as between such bodies or agencies.

113 MoUs are widely used to set out co-operation arrangements between HSE and another body or agency in circumstances where health and safety legislation overlaps with other legislation enforced by other authorities.

114 With respect to sharing and exchanging information on migrant working activities, MoUs have been agreed to support the Home Office-led Joint Workplace Enforcement Pilot project and with the Gangmasters Licensing Authority. They set out agreed arrangements and procedures for sharing information and intelligence and should be followed by staff working with these bodies. Copies of the MoU's are available from Graeme Walker in the Agriculture and Food Sector.

115 Over time, further MoUs may be agreed to provide inspectors with clear guidance and advice as to when, what and how information relevant to temporary and migrant working can and should be shared.

Managing health and safety: key issues

Introduction

116 This Section provides advice and guidance on the legislation and enforcement in connection with the health and safety of, and the provision of welfare and accommodation for, migrant workers.

117 Similar issues and considerations apply to the employment of the indigenous workforce employed under casual and temporary contracts of employment, but additionally, the employment of migrants may raise issues of language, cultural differences and accommodation.

118 Levels of knowledge about health and safety law and rights and responsibilities amongst migrant workers are generally low. Without access to information, there is evidence of a fairly widespread view amongst migrant working communities that responsibility for health and safety lies with the workers themselves and that accidents and other incidents at work are their own fault. This perception means that workers often do not understand that their employers, employment agencies or businesses and other labour providers e.g. gangmasters have responsibilities for their health and safety.

119 Similarly, many employers seem confused about the allocation of duties and responsibilities under health and safety legislation, particularly where workers are supplied by a labour provider to work in a labour user's premises under some form of temporary contract.

Responsibility for health and safety

120 There is no simple answer to the question "Who is responsible for the health and safety of temporary and migrant workers?" When a labour user uses workers supplied by a labour provider, both parties may have duties under health and safety legislation, including a responsibility to protect the health and safety of those temporary workers. For example, the Management of Health and Safety at Work Regulations 1999 (MHSWR) impose specific duties on, amongst other things:

- the conduct of risk assessments;
- the provision of health and safety arrangements;
- the provision of information, instruction and training etc.; and
- co-operation and co-ordination between employers, including the provision to workers of comprehensible information on:
 - any special qualifications or skills required to carry out the work safely;
 - risks to their health and safety; and
 - health surveillance.

121 The employment status of the workers is important in determining where and upon whom the duties under the legislation apply. In practice, it will depend on the facts of each case i.e. on the nature of the relationship between the labour provider and user and the circumstances under which the work is being carried out. In many cases, the de facto employer will be the labour user rather than the labour provider, particularly where the former controls and directs the activity. However, it will not always be the case.

122 To avoid misunderstanding and confusion, labour providers and users should be encouraged at the outset to clarify and agree their relationship and respective responsibilities for health and safety and the practical arrangements for day-to-day management and supervision, direction and control of the workers. This agreement should be formalised in writing by way of a contract, or Service Level or other form of agreement.

123 In coming to common understanding and agreement, both parties need to:

- consider whether the migrant workers are to be employed directly, or if the workforce (or part of it) is to be supplied by an employment agency, employment business, gangmaster or other form of labour provider;
- consider which of the parties is best placed to exercise direction and control over the work on a day-to-day basis;
- consider whether the labour provider is based in the UK or abroad. Unless a labour provider based abroad has a UK-based representative, the labour user will have to take on board full responsibility for the health and safety of any labour supplied;
- bear in mind that employment agencies and employment businesses have specific legal responsibilities under the Conduct of Employment Agencies and Employment Businesses Regulations 2003 to provide information to businesses which use their

workers. This may affect the allocation of responsibilities for health and safety. Further guidance can be obtained from the Department for Business, Enterprise and Regulatory Reform (BERR) formerly the DTI; and

- check:
 - before the workers start at the workplace, whether any special vocational qualifications or skills are needed for the job and, if so, make sure that any worker supplied has those qualifications or skills;
 - the language skills of workers before they start work – and in particular, their understanding of spoken and written English; and
 - based on the outcome of a risk assessment, what information, instruction and training will need to be provided at the workplace – and in particular, think about how best to provide it, and what steps will need to be taken to ensure it has been understood.

Risk assessment

124 In assessing the risk to migrant workers, employers must comply with key duties contained in the Management of Health and Safety at Work Regulations 1999, which will include the need to ensure that arrangements are in place so that:

- Before they start working, the risks to which migrant workers are likely to be exposed have been assessed and that any necessary control measures have been identified;
- The control measures have been implemented and that arrangements are in place to maintain them. These measures will almost certainly include the provision of necessary information, instruction, training and supervision and may include matters such as the provision of safe plant, equipment, substances for use at work, personal protective equipment, emergency procedures etc.; and
- The needs of non-UK nationals have been taken into account; and in particular consideration has been given to:
 - Language issues. Not all migrants speak English and the ability of those who do varies widely. Some who speak English cannot read it - others may understand it better than they can speak it;
 - Basic competencies including literacy, numeracy, physical attributes, general health, relevant work experience etc.;
 - The compatibility or equivalence of vocational qualifications e.g. lift truck driving certificates obtained abroad with those required in the UK. In general, vocational qualifications obtained abroad are not recognized in the UK. If in doubt, seek advice from trade associations or training and awarding bodies; and
 - The need to regularly review assessments to ensure they keep pace with any changes to processes or working practices.

125 This is not to say that the duties imposed by health and safety legislation will fall only on employers. As mentioned above, more than one person may owe health and safety duties in relation to the activities of migrant workers. For example, the duties imposed by sections 2, 3 and 4 HSWA may apply respectively to the labour provider (if it is the employer), the labour user and the person in control of the premises on what that work is carried out.

Information, instruction, training and supervision

126 It is believed that more than a third of migrant workers do not receive any training in health and safety and that, for the remainder, training is generally limited to a short session at induction.

Any new workers, whether directly or indirectly employed and irrespective of whether they are migrants or UK citizens, should be provided with the information, instruction and training they need to work safely.

127 Migrant workers should be provided with necessary induction and work-related, health and safety training in a comprehensible form and employers need to ensure that they have understood and are acting upon it. Employers, in particular, need to:

- Make sure that essential induction training is provided;
- Make sure that any necessary job related / vocational training is provided;
- Make sure that relevant information as to the risks to which they may be exposed and the precautions that they will need to take to avoid those risks is provided;
- Consider the needs of workers who may not speak English well, if at all. It may be necessary to provide information and instruction using visual, non-verbal methods such as pictures or signs or learning materials such as videos/DVDs/CD-Roms, which can be provided or supported in multiple languages;
- Consider the need for translation services. It may be acceptable to use the services of existing bilingual or multilingual employees to translate simple, non-technical information, instruction or training materials. For more complex and technical training requirements, it is advisable to use the services of accredited translators;
- Make sure that the migrant workers have received and understood the information, instruction and training they need to work safely;
- Consider what steps you need to take to ensure it has been understood and is acted upon;
- Make sure the workers are adequately supervised and that they can communicate with their supervisors; and
- Make sure the workers know how and with whom they can raise any concerns about their health and safety.

Enforcement guidance

129 HSE's Enforcement Management Model (EMM) provides a framework to assist inspectors to make enforcement decisions in line with the Health and Safety Commission's Enforcement Policy Statement. Inspectors are expected to apply the EMM in all their regulatory actions, but it is not intended to fetter the exercise of discretion: it is a toolbox, not a rulebook.

130 Most, if not all, of the risks to which migrant workers are likely to be exposed are the same as those to which the indigenous workforce working alongside them is also exposed. They include risks from machinery, exposure to hazardous substances, workplace transport, falls from height, slips, trips and falls, contact with moving objects, lifting and carrying, noise, asthmagens and dusts etc. Guidance on these generic risks and on related enforcement under the Enforcement Management Model (EMM) is available in relevant Inspection (Topic) Packs.

131 Issues which are particularly relevant to migrant workers include:

- Accommodation;

- Transport to and from the place of work;
- Provision of personal protective equipment;
- Provision of welfare facilities; and
- Provision of information, instruction, training and supervision.

Accommodation

132 Permanent, fixed accommodation made available or supplied to migrants by labour providers or users is subject:

- in England and Wales to the Housing Acts 1985 and 2004 and associated secondary legislation and local regulations on Housing of Multiple Occupation; and
- in Scotland, where appropriate, to licensing or registration in accordance with the Antisocial Behaviour etc. (Scotland) Act 2004 (part 8: registration of landlords) or the Civic Government (Scotland) Act 1982 (Licensing of Houses in Multiple Occupation) Order 2000.

133 Residential accommodation in caravans is subject to the Caravan Sites and Control of Development Act 1960. Sites normally require planning permission and are subject to licensing by the local authority.

134 Charges for accommodation are subject to limits set by national and agricultural minimum wage regulations.

135 HSE is responsible for gas safety matters. The current legislation controlling the installation and use of gas fittings is the Gas Safety (Installation and Use) Regulations 1998, which aim to prevent injury to consumers, tenants and the public from carbon monoxide poisoning or fire and explosion. The Regulations place duties primarily on installers, landlords and some gas suppliers.

136 In particular, landlords have duties to ensure that the gas appliances and flues they provide for tenants' use are maintained in a safe condition at all times and checked for safety each year by an approved person, and that a copy of the check record is provided to the tenant(s).

137 Enforcement guidance can be found in Operational Circular series OC 440 and on the HSE Enforcement Action webpage.

Transport to and from work

138 Vehicles used to transport temporary and migrant workers to and from their place(s) of work on the public highway are subject to road traffic legislation with respect to registration, licensing, roadworthiness and maintenance (including possession where appropriate of a valid MOT certificate) and insurance. Drivers should hold a current, valid licence appropriate to the class of vehicle.

139 Any vehicle with nine or more passenger seats used for hire or reward should be registered as Public Service Vehicles (PSV) and drivers must have a Passenger Carrying Vehicle entitlement on their licence. Further information is available [here](#).

140 Road traffic legislation is enforced by the police and others, including the Highways Authorities, the Traffic Commissioners and the Vehicle and Operator Services Agency (VOSA). Where safety cannot be regulated by the enforcement of specific legislation e.g. the Road Traffic Acts and the Motor Vehicles (Construction and Use) Regulations, there may be a need to use health and safety legislation, particularly in cases of serious management shortcomings. Further guidance on HSE's role in work-related road traffic incidents is set out in Operational Minute OM 2003/103.

Provision of Personal Protective Equipment

141 Subject to the provisions of the Personal Protective Equipment at Work Regulations 1992 (as amended), personal protective equipment (PPE) should be supplied and used at work wherever there are risks to health and safety that cannot be adequately controlled in other ways. Guidance on the Regulations and further information on the supply and use of PPE is available here.

142 The provision and use of wet or cold weather clothing may be particularly important where migrant workers are required to work outdoors.

143 Advice and guidance on the provision of PPE with respect to the storage, use and disposal of pesticides (plant protection products) can be found in Operational Circular series OC 301 and obtained from the Agriculture and Food Sector.

144 The issue of charging for PPE is raised by labour providers and users from time-to-time. Regulation 4 requires that suitable PPE be provided where a risk assessment shows it to be necessary and Section 9 of the HSWA 1974 prohibits employees being charged for anything, including PPE, provided in the interests of health and safety.

145 The Temporary Workers Directive (91/383/EEC) seeks to prevent temporary workers being treated differently from employees, specifically in respect of access to PPE where 'access' should be read as including 'provision'. It would be inconsistent to allow temporary workers to be charged for PPE when employees are not.

146 Thus whilst labour providers and users should come to an arrangement as to who will pay for any PPE required, they may not pass on any charge to a temporary or migrant worker. Neither may they charge a refundable deposit against non-return of the equipment. However it is lawful to make a deduction from a worker's final wages if the equipment is not returned on termination of the employment for which it was issued **provided** this had been made clear in the contract with the worker at the outset.

147 Some employment businesses have argued it is lawful to charge a non-refundable contribution where the equipment provided is not exclusive to a workplace and/or is used for non-work purposes. Although it was proposed in the Directive on which the 1992 Regulations were based that employers could request (not require) a contribution in such circumstances, that part of the Directive has not been enacted in the UK.

148 Where labour providers or users anticipate a significant and continuing requirement for PPE provision, they should ensure a range of sizes is available. They may re-issue previously used, returned PPE for use by another worker, provided suitable arrangements are in place for cleaning and disinfection.

149 Enforcement guidance in line with the EMM is set out at Table 1 below. The risk is almost infinitely variable ranging from ‘**serious**’ (possibly fatal) injury where head, eye or respiratory protection is required to ‘**minor**’ in the case of minor cuts or abrasion to the skin. If all necessary control measures identified by a suitable and sufficient risk assessment have been implemented and are being used, the benchmark can be considered to be ‘**nil**’ or ‘**negligible**’ risk. The risk gap will depend on the nature of the risk to which workers are exposed.

Table 1			
Observation	Risk Gap	Standard	Initial Enforcement Expectation / Action
Failure to provide suitable PPE to employee(s) who may be exposed to risks to their health and safety – reg.4(1)	Nominal – Extreme	Defined or Established	Prosecution / Improvement Notice/letter depending on the risk gap
Charging for PPE – s9 HSWA 1974	N/A	Defined	Compliance issue
Incompatibility of PPE – reg.5	Nominal - Extreme	Defined or established	Prosecution / Improvement Notice / letter depending on the risk gap
Failure to assess the suitability of PPE – reg.6	Nominal – Extreme	Established	Improvement notice or letter
Failure to maintain PPE – reg. 7	Nominal – Extreme	Established	Improvement notice or letter
Failure to replace PPE – reg.7	Nominal – Extreme	Defined	Improvement notice or letter
Accommodation for PPE – reg.8	N/A	N/A	Compliance issue
Provision of info. instruction and training – reg.9	Nominal – Extreme	Established	Improvement Notice or letter

Provision of welfare facilities

150 Standards are laid down in the Workplace (Health, Safety and Welfare) Regulations 1992. Guidance on the application of the Regulations is set out in the Approved Code of Practice and guidance, and further information is available here.

151 The Regulations cover a wide range of basic health, safety and welfare issues and apply to most workplaces with the exception, amongst other things, of construction work on construction sites. The Regulations define the term ‘workplace’ widely as non-domestic premises made available as a place of work, and ‘premises’ is in turn defined by s53 HSWA as meaning any place (including an unenclosed outdoor place).

152 Employers must, so far as is reasonably practicable, provide adequate welfare facilities and arrangements for workers whilst they are at work, however short the period.

'Welfare facilities' are those that are necessary for the well-being of employees, such as washing, toilet, rest and changing facilities, and somewhere clean to eat and drink during breaks.

153 The provision of basic facilities such as sanitary conveniences, washing facilities and drinking water are particularly important for migrant workers, many of whom are employed in remote, outdoor locations or premises and engaged in low-skill, manual activities such as labouring or planting and harvesting agricultural produce.

154 Guidance on the application of the Regulations to specific industries and sectors in which migrant workers are known to be employed in significant numbers, including agriculture and construction, can be found on the industry pages of the HSE website:

155 Enforcement guidance in line with the EMM is set out at Table 2 below. The level of risk will generally be minor except in the case of provision of washing facilities where in certain circumstances e.g. where migrant workers are exposed to chemicals or approved pesticide or plant protection products, the risk to health could be '**significant**' or possibly '**serious**' if adequate facilities are not provided. If other control measures identified by a suitable and sufficient risk assessment or required by product approval have been implemented and are being used, the benchmark can be considered to be '**nil**' or '**negligible**' risk.

Observation	Risk Gap	Standard	Initial Enforcement Expectation / Action
Failure to provide suitable / sufficient sanitary conveniences - reg.20	Nominal	Established or Interpretative	Letter / inspection for / verbal warning
Provision of suitable / sufficient washing facilities - reg.21	Nominal – Substantial *	Established or Interpretative	Improvement Notice / letter / inspection for / verbal warning
Failure to provide adequate supply of wholesome drinking water - reg.22	Nominal - Moderate	Established or Interpretative	Letter / inspection form / verbal warning
Accommodation for clothing – reg.23	Nominal – Moderate	Established or Interpretative	Letter / inspection form / verbal warning
Facilities for changing clothing- reg.24	N/A	Established or Interpretative	Compliance issue
Facilities for rest and to eat meals (general) - reg.25	N/A	Established or Interpretative	Compliance issue
Facilities for rest and to eat meals (pregnant women) -	Nominal – Moderate	Established	Compliance issue

reg.25			
* The risk gap varies depending on the nature of the work. See preceding para. on risk in relation to the provision of washing facilities in connection with the handling and use of chemicals and pesticides.			

Provision of information, instruction, and training and supervision

156 These are not risk-based factors but may indirectly affect the control of risk, and are referred to in the EMM as compliance and administrative arrangements.

157 There is often a strong relationship between failure to control risk and failure to address compliance and administrative issues. In circumstances in which both apply, enforcement action should be determined principally in relation to the control of risk.

158 The importance of providing information, instruction and training in a comprehensible form and of the role of supervisors is discussed elsewhere (see paras.126-128). The general requirements are laid down in section 2 of HSWA, and specific requirements regarding the provision of information and training are contained in the MHSWR, supported by the Approved Code of Practice and Guidance (HSE Booklet L21 refers). Any health and safety risks faced by migrant workers may be seriously aggravated by non-compliance with these duties.

159 The authority of the benchmark standards, although '**defined**' in legislation, vary in practice, given that the general duties under HSWA are qualified by the term 'so far as is reasonably practicable', whereas other requirements (e.g. to provide comprehensible information in reg.15 MHSWR) are absolute.

160 Where the arrangements are '**absent**' or '**inadequate**' (EMM Table 4 refers), the Initial Enforcement Expectations are set out in Table 5.2 of the EMM.

Language issues

Background

161 Communicating necessary health and safety information and training where there is no common language presents challenges to dutyholders. Some have responded by developing means of conveying information through non-verbal media. Visual aids can overcome many of the limitations stemming from a lack of English or poor English language skills. The greater the range of methods used to communicate, the more successful they are likely to be. Any single method used exclusively is unlikely to deliver a comprehensive message that will be understood by all workers.

162 Research suggests that only half of the migrant workers interviewed have fluent or good English language skills. Many workers assert that their inability to speak English is the reason why they take work below their qualifications or skills. Many workers admit to pretending to understand English for fear of not getting work or of losing their jobs if their lack of English became known, but this has serious implications, particularly in relation to health and safety training.

163 Although employers interviewed as part of the research said that knowledge of English was not an essential pre-requisite for work, the lack of English presented them

with challenges particularly in relation to supervising migrant workers. In many cases, employers preferred supervision to be in English, except where employers and employees shared a common language. Interpretation other than during the initial stages of employment was also considered a problem, because the employer did not know if instructions were being translated correctly. The use of interpreters was often considered impracticable and inflexible as it was not easy to move workers to different jobs if their translators did not then accompany them.

Advice / guidance

164 Employers must make sure all employees, whatever their competence in English, receive health and safety information, instruction and training they can understand.

165 The use of translated videos/DVDs/CD-Roms, translation/interpretation by a suitably qualified person, internationally-understood signs or other visual media can all be used effectively.

166 It is important to check understanding once information, instruction and training have been given. This can be done by observation and conventional supervision.

167 Emerging good practice where there is a reasonably sizeable and settled non-English-speaking workforce can include English language lessons for workers, tailored to the demands of the workplace, and basic lessons or phrase-cards in the language(s) of the non-English-speaking workforce where supervisors cannot speak their language(s).

168 However, in practice, effective communication with non-English speaking workers can be a challenge both for dutyholders and HSE. Inspectors have access to interpretation and translation services for field visits and investigations, and callers to HSE's confidential helpline can ask for advice in a number of foreign languages.

169 There will be very few situations where health and safety considerations alone justify not employing migrants with poor or no English. However, situations where workers are required to communicate with third parties to ensure health and safety, such as when using user-operated e.g. farm railway crossings, need careful assessment and management by employers and, initially at least, probably close supervision.

170 Employers' duties to provide information in a form that workers can understand are made clear in guidance to the MHSWR. The duty under regulation 10 obliges employers to provide employees with "comprehensible and relevant" information. This means information in a form that employees can understand, whether they are English speakers or not. This duty cannot be discharged by giving employees lessons in English. However, employees who do not speak English may nevertheless need to understand simple key words and phrases relating to health and safety that others around them might use - obvious examples are "Fire!" and "Stop!". If any more in-depth language training is required, it might be more appropriate for supervisors and managers to learn relevant languages. In order to comply with regulation 10, employers could ask an employee who speaks better English to act as an interpreter (as long as they can do this to a reasonable standard - not everyone can), or seek outside help.

171 In general, it is unlikely that employers will need to provide language training to demonstrate compliance with their duties under health and safety legislation. However, there may be circumstances where an employer concludes it is necessary to provide workers with English lessons to comply with the law. In such cases, the employer can insist that all those employees affected attend - but he/she must bear the costs, and it must be provided in the employer's, not the workers', time. It is therefore possible, at least in theory, that attendance at language lessons is required - but only if all of the above requirements are met.

172 Some employment agencies employ experienced foreign language speakers who can help smooth the transition when agency-supplied migrant workers are first taken on. Employers can club together to use a professional interpreter, e.g. for training sessions. Local citizens' advice bureaux may have contacts with migrant worker communities who could help in a similar fashion. Employers could also provide written information in a relevant language (as long as they know that the employees can read the language - this is not always the case), and they should use a competent translator familiar with the technical terms used. These matters should, of course, be taken into account in the employing business' risk assessments before they take on migrant workers.

173 We have little or no evidence that a lack of English has contributed directly to injury and ill-health among non English-speaking workers. However, for some workers, a lack of English language skills may mean that they are at increased risk, and employers need to ensure they have provided clear information and training.

174 HSE has produced guidance, including on rights and responsibilities, manual handling, dangers from noise at work and HAVS, in a number of European languages. Further information is available [here](#).

175 Guidance for employers on managing the health and safety of migrant workers is in preparation and will be published in late 2007.

Other issues

Employers' Liability Compulsory Insurance

176 The Employers' Liability (Compulsory Insurance) Act 1969 (ELCI) (as amended) obliges employers to insure against their liability for personal injury or disease suffered by their employees. It is required by law and is intended to protect workers if they are injured or made ill whilst at work.

177 The duty to provide ELCI is on the employer. Determining the employer depends on the circumstances of the work and the relationship between all of the relevant parties. Factors which point towards someone being an employer include the ability to:

- make deductions for national insurance and income tax from payments to workers;
- direct and control where, when and how workers work;
- supply most of the materials and equipment used by workers at work; and
- obtain the services of a substitute if a worker is unable to work.

178 In a typical farming or pack house operation where the labour provider's workers are working under the direction and control of the labour user, the labour user's policy

will generally provide cover. In other circumstances e.g. where a labour provider controls harvest work on agricultural premises, the labour provider may have to arrange insurance.

179 Labour providers should check with the labour users with whom they have a contract to check whether current and valid ELCI is in place that will provide cover for any workers supplied whilst working for the labour user.

Consultation

180 Trades union membership amongst migrant working communities is currently low, although a number of unions have begun to establish networks of dedicated migrant worker and nationality based branches.

181 The Safety Representatives and Safety Committees Regulations 1977 and the Health and Safety (Consultation with Employees) Regulations 1996 provide members of independent trades unions and non-unionised, unrepresented employees with rights to representation and consultation. Further information and guidance is contained in the Topic Pack: Worker Consultation and Involvement (July 2007).

Further information

HSE contacts

- Jeremy Bevan: Policy lead on Migrant Workers
- Ross Sanger: Policy adviser on Migrant Workers
- Graeme Walker: lead on Migrant Workers on behalf of FOD (except in construction) and HSE lead on the Gangmasters Licensing Authority
- Gordon Crick: Construction Sector lead on Migrant Workers

HSE research reports

- RR502 Migrant workers in England and Wales: An assessment of migrant worker health and safety risks.

Other reports

- Audit Commission: Responding to the local challenges of migrant workers.
- Commission for Rural Communities: A8 migrant workers in rural areas.
- Cornwall Strategic Partnership – Migrant workers task group.
- East Midland Development Agency (EMDA) and Lincolnshire Enterprise.
- Somerset County Council – Migrant workers in Somerset.
- TUC - Overworked, underpaid and over here. Migrant workers in Britain.

Useful information

- Construction Skills – Advice on skills, safety, recruitment and training of migrant workers in construction.
- Direct.gov – An introduction to working in the UK.
- DTI – Advice on working in the UK.
- Home Office – Employing migrant workers.
- HSE
 - Worker Involvement – Migrant and illegal working.

- Agriculture – Working in the UK from overseas?
- SIM 01/2007/04– 2007/08 Work Plan – temporary and migrant working
- TUC – Migrant workers webpages.
- Worksmart – Rights for migrant workers.

Annex 1 – Key messages

General

- HSC/E is committed to improving health and safety protection for all workers, whatever their immigration status.
- Migrant workers are entitled to the same protection under health and safety law as other workers, whether working in the UK legally or not.
- There is currently no clear statistical evidence that migrant workers are at any more risk than any other workers doing the same job.

For employers

- The employment of migrants is often characterised by a contractual relationship between one or more labour providers and a labour user. In these circumstances, the labour user and labour provider(s) should ensure that they are clear about their relationship and, among other things, their respective responsibilities for the health and safety of the workers supplied. While this may not be conclusive in law, it is likely to help them comply with their respective health and safety duties. For further information see also guidance prepared by HSE.
- Systems must be put into place to ensure that labour users and labour providers exchange relevant information so that legal requirements (such as accident reporting) can be met.
- Risk assessments must take account of all risks, which may include:
 - language issues;
 - basic competencies including literacy, numeracy, physical attributes, general health, relevant work experience etc; and
 - the compatibility/equivalence (if any) of vocational qualifications e.g. lift truck driving qualifications obtained abroad; and
 - Cultural factors, which may affect perceptions about responsibility for health and safety or the foreseeability and likelihood of injury or ill health.
- Employers should ensure not only that necessary health and safety information, instruction and training is provided, but that it has been understood and is being acted upon.

For workers

- Your employer has to protect your health, safety and welfare. You have the right to work in places where all the risks to your health and safety are properly controlled.
- You have a right to know who employs you. If you don't know, ask.
- Your employer must give you health and safety information in a form which you are able to understand and ensure that you are properly trained.
- There are some things you have to do under UK health and safety law:
 - Make sure what you do at work does not put you or other people at risk;
 - Help your employer to reduce health and safety risks in the workplace;
 - Use any work equipment in the way that you were trained; and
 - Use anything supplied for your health and safety properly.
- If you are concerned about your health and safety at work, speak to your supervisor, manager, safety representative or HSE.

(See INDG410 “Working in the UK from overseas? – Your health and safety at work in agriculture and food processing”.)

Annex 2 – Basic questions to ask

Basic questions to ask at inspection visits to clients who are known to employ or suspected of employing temporary and/or migrant workers can be found in Annex 1 of SIM 01/2007/04 ‘2007/08 Work plan: temporary and migrant workers’.

Annex 3 - Useful links to other websites

Comments
Advisory, Conciliation and Arbitration Service (ACAS) Provides independent, up to date advice and guidance on employment.
Border and Immigration Agency's requirements for settlement. This website will help you understand the immigration system and what your rights and responsibilities are when you make an application.
Business link website for additional information and guidance on agency worker's health and safety.
Citizen Advice Bureau. Links to guide for initiatives to support migrant workers in rural areas.
Department for Business, Enterprise and Regulatory Reform (DBERR) Provides guidance for employers and employees on a wide range of employment matters, including working time and annual leave entitlement. The Employment Agency Standards Inspectorate is also part of DBERR. [update this and link?]
Directgov – Access to and information from a wide range of government departments.
The Gangmasters Licensing Authority (GLA). The authority was set up to curb the exploitation of workers in the agriculture, horticulture, shellfish gathering and associated processing and packaging industries. The GLA is required to establish a UK wide Licensing Scheme and create a Register for Gangmasters.
An on-line Home Office toolkit to help employers ensure they stay lawful when employing migrant workers.
Local authorities (councils) A directory of local councils in the UK.
UK Income Tax Advice. Link to multi-lingual information sheet on UK taxes.
National Farmers' Union (NFU) Provides professional representation and services including advice and guidance on health and safety to its farmer and grower members.
The Trade Union Congress. Represents people working in Britain. The TUC have published a new safety leaflet, ['Your health, your safety: A guide for workers'] provides information about safety rights at work which is translated into 19 different languages. The TUC have also produced a leaflet for people coming to work in the UK from the eight new member countries of the European Union. The leaflet, [Working in the UK: Your Rights], gives information about your legal rights while you work here.
Department for education and skills (DfES) for information on funds available for employers to draw on for ESOL provision (where workers are earning less than £15K a year).
Workers Registration Scheme (SAWS). From May 1 2004, most nationals of the new member states (except Cyprus and Malta) who wish to work for more than one month for an employer in the UK need to register under the Worker Registration Scheme.
North West Food Alliance. The existing food and drink bodies, Northwest Food Alliance and Northwest Fantastic Foods Partnership

Comments
have been combined with the aim of making it easier for businesses in the sector to know who to contact for advice and business support.
Cornwall Strategic Partnership's Migrant Worker Task Group. This task group was pulled together to investigate the issues and opportunities connected with migrant workers.
Working in South Lincolnshire. Advice and guidance for migrant workers arriving in the East of England.
Construction Skills. Supporting the effective integration of migrant workers. Provides details on how CSCS cards might be useful.