

2007/08 Work Plan: Temporary and Migrant Working

SIM 01/2007/04

Target Audience:

**Operational Inspectors
B3/B4
HSAOs**

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This SIM outlines the work on migrant working to be carried out by FOD Divisions during 2007/08.

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Background

1 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 poor wages. An unknown proportion is believed to be working illegally in the UK.

2 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 (GB), 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 English, 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.

3 Given the limitations of existing statutory and other reporting systems and suspected 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.

4 Government remains concerned at the potential for abuse and exploitation of temporary and migrant labour. There is evidence of wide-scale 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. As a result,

this area of work continues to have a high political and media profile and poses reputational risks to HSE.

5 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.

6 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 subject to licensing regimes, under the Gangmaster (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 - and related offences managed and enforced by the GLA are now fully operational. It is believed that up to approximately 600,000 people p.a. including both indigenous UK citizens and migrants may be employed under temporary contracts in the sectors covered by the Act.

7 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 be generated in 2007/08 to inform divisional programmes of work. The Memorandum of Understanding (MoU) with the GLA will also be extended to facilitate multi-agency interventions.

8 Against this background, in July 2006, the Health and Safety Commission (HSC) reaffirmed its commitment to ensuring that all workers enjoy the protection of health and safety legislation, irrespective of their immigration status and that HSE continues with programmes of inspection and enforcement in priority sectors including agriculture/food, cleaning, healthcare and construction.

Aim

9 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.

10 Given the current concerns of HSC/E and informed by the outcomes of HSE commissioned research, the project in 2007/08 aims to reduce the level of risk and resultant injury and ill health experienced by temporary and migrant workers in HSE enforced sectors - other than in construction and for this year at least, the healthcare sector.

11 The main focus of activity in 2007/08 will again be agriculture and fresh produce/food processing. In addition, relevant inquiries on temporary and migrant working will be made as part of the Slips and Trips Programme's Floor Cleaning Project (see OM 2007/01).

12 For the purposes of this SIM:

- Agriculture means:

- 1 the growing and harvesting of crops, cereals, vegetables, horticultural and nursery products; and
- 2 the farming and care of livestock and poultry.
 - Manual shellfish harvesting means the harvesting of cockles, mussels, oysters, clams and razorfish and manual fisheries for winkles, shrimps, crabs etc.
 - Fresh produce/food processing means on-farm packhouses and on-farm and off-farm primary food/fresh produce processing factories; and
 - The contract-cleaning sector means contractors covered by the Slips and Trips Programme's Floor Cleaning Project (see separate instruction).

Objectives

13 The objectives in 2007/08 are:

- 1 To share and exchange intelligence and information and support joint initiatives on workplace enforcement with relevant OGDs and non-governmental agencies.
- 2 To reduce and minimise the level of risk experienced by temporary and migrant workers in agriculture and horticulture and related industries through proactive inspection and other activities; and
- 3 To reduce and minimise the level of risk experienced by migrant workers employed in the contract-cleaning sector.

Resources

14 Delivering this work is a political imperative, and a total of 5 staff years (operational inspectors at Bands 3/4) has been agreed with FOD for this work in 2007/08; allocated to Divisions as in Table 1:

TABLE 1	
Division	No. of B3/4 ops inspector contact days
Wales & South West	41
East South East	58
Midlands	81 ¹
Yorkshire & North East	29
North West	41
Scotland	41
Notes:	
1 This figure includes 0.6 of a Band 3 inspector currently attached to the Home Office-led Joint Workplace Enforcement Project (JWEP) in the West Midlands.	
2 No allocation has been made against FOD London in 2007/08	

Intelligence

15 Pending the development of new cross-Government arrangements to tackle illegal labour provision and other employment abuses through a virtual intelligence network, Divisions are asked to co-operate with and participate in:

1 Any regional or local joint/cross-departmental initiatives to share and exchange information on temporary and migrant working - subject to existing legal gateways - where and to the extent that they are invited to do so by the lead departments concerned; and

2 planned joint exercises where the perceived benefits contribute to or support HSE's aims and objectives. Any involvement in joint initiatives or operations with other enforcement agencies, including in particular the GLA and the Joint Workplace Enforcement Project, will be subject to the guidance in OC 205/1 and relevant MoUs.

16 Further information, guidance and support on the gateways to the sharing, exchange and use of information by HSE under existing legal provisions, on MoUs and other relevant matters will be provided by the Agriculture & Food Sector (the Sector) to staff engaged in these areas of work.

Proactive inspection and activity

17 Subject to the reactive workloads generated by the work described in para.23, **at least 60%** of the resource allocated to Divisions should be directed to the following activities:

1 Developing and carrying out programmes of proactive inspection to agricultural and fresh produce/food processing businesses known to use, or suspected of using, temporary (including migrant) workers. Informed by local knowledge this work should wherever possible piggyback on other FIT3 programme work. Inspectors should enquire at visits into the use of such labour and the work activities in which they are engaged, the arrangements in place for carrying out risk assessments, the implementation of control measures, the provision of information, instruction, training, supervision, the provision (where appropriate) of personal protective equipment and the accident and ill health experience of any contracted labour. Further guidance on the key issues to be considered at visits is set out at Annex 1.

2 Additionally and in particular, Divisions are asked to target some of this inspection activity at early, late or night shift working. A topic pack on temporary and migrant working is in preparation.

3 Where appropriate, maintaining close liaison and co-operation with the local Sea Fisheries Committees in England and Wales and with SERAD in Scotland and collaborating in the activities described in SIM 01/2004/04;

4 Working with and supporting other Government departments and agencies in joint initiatives including the Home Office's Seasonal Agricultural Workers scheme, at regional/local levels;

5 Developing and maintaining good and effective relationships with other active stakeholders and non-Governmental agencies such as local police forces, the Regional Development Agencies, Local Authorities and local Citizens Advice Bureaux; and

6 Supporting regional or local initiatives with non-Governmental agencies, industry and/or other stakeholders (including the social partner organisations) targeted at raising standards of health and safety for temporary and migrant labour workers in the target industries (as defined).

18 In addition FOD Midlands Division will continue to collaborate in the three-year, Home Office-led, Joint Workplace Enforcement Project (JWEP).

Reactive work

19 Under the terms of the MoU with the GLA, it is anticipated that the Sector will receive intelligence about labour providers' failures to comply with health and safety legislation in connection with licensing arrangements under the 2004 Act. Intelligence may arise out of the GLA's assessment/auditing of licence applications, from its enforcement activities or from the receipt and evaluation of information supplied to it by third parties, including members of the public.

20 Similarly intelligence may be generated by the JWEP in respect of the provision and use of labour in any industry, anywhere in GB or from other Government departments and agencies.

21 If the intelligence flows from the GLA, JWEP and OGDs do not generate the anticipated level of reactive work the operational resource allocated should be redirected to the activities described in para.17.

22 Relevant intelligence received by the Sector will be forwarded to Divisions via COIN. On receipt of intelligence from the GLA, the JWEP or other sources, the Sector will create 'Company', 'Site' and 'Contact' records as necessary on COIN and will generate and assign a 'Case' record to nominated Band 2 Team Leaders (case owner). Further information on the nomination of FMU Team Leaders to take responsibility for this work on behalf of each Division is at para.24.

23 Divisions are asked to:

1 Follow up all 'Case' records generated by the Sector (para.22 refers) within the limits of the Divisional resource allocation;

2 Investigate any accident or case of ill health involving temporary and migrant workers reported under RIDDOR 1995 by or in connection with a gangmaster

licensed under 2004 Act or by an unlicensed labour provider supplying workers into agriculture and the food processing sectors (as defined);

3 Investigate any accident or case of ill health involving temporary and migrant workers reported under RIDDOR in other FOD enforced sectors or drawn to its attention by other routes; and

4 Investigate any complaints received involving temporary and migrant workers.

FMU Team Leaders will need to establish local arrangements with Divisional admin. teams and Complaints Officers to identify events falling within the above categories.

Management arrangements

24 Divisions should allocate the resources in Table 1 to the work streams described in paras.17-22 (above). The 'virtual team' arrangements described in OM 2006/06 (para.24 refers) remain in force. As before, in order to facilitate the virtual team concept and to build expertise and competence in this area of work, Divisions are asked to assign this work to a limited number of Band 3/4 inspectors, taking into account the geographical distribution of the industries involved and of existing local knowledge of temporary and migrant working.

25 Again responsibility for managing this project work should be allocated to a single FMU Team Leader to whom the 'Case Orders' under COIN can be allocated. He/she in turn can then allocate the work to one of the assigned inspectors for delivery.

Work recording

26 Inspectors should record the progress of operational work; key decisions made and the outcome of interventions in the Notes facility attached to the COIN record. Detailed inspection reports may also be attached. These should be brief but contain enough details to enable the Sector to understand the activities Divisions have been involved in and the action taken. Further information on COIN recording requirements will be notified by FOD.

Further information

27 The Sector will continue to provide necessary advice, guidance and support to Divisions on request.

Annex 1 – Key issues re: temporary and migrant workers

Inspectors should focus on the following issues at proactive/preventive inspection visits referred to in para.16:

- 1 Does the business employ temporary and/or migrant workers?
 - 2 Does it employ them directly or are they supplied by an employment agency or other labour supplier?
 - 3 If supplied by an agency or labour provider, is it based in the UK or abroad?
 - 4 If supplied by an agency or labour supplier, is the labour provider licensed with the Gangmaster Licensing Authority (GLA)?
- N.B. If not, advise it needs to be and that the GLA will be informed.
- 5 Who is responsible for the migrant workers' health and safety? The employing business i.e. the labour user or the labour provider?
 - 6 Has a suitable and sufficient assessment of the risks to which the workers are exposed been carried out?
 - 7 Does it take account of the particular needs of non-UK nationals; in particular does it take account of language issues?
 - 8 If relevant, does it address the issues of compatibility/equivalence of vocational qualifications e.g. lift truck driving qualifications obtained abroad?
 - 9 Have the workers been provided with necessary and relevant information as to risks, instruction, induction and other health and safety training?
 - 10 Has it been provided in a comprehensible format?
 - 11 What steps have been taken to ensure that it has been understood and is acted upon?
 - 12 Are the workers adequately supervised and can they communicate with their supervisors?
 - 13 How and to whom can they raise any concerns about their health and safety?
 - 14 If relevant, has necessary and suitable PPE been provided without cost to the workers?
 - 15 Has suitable provision for toilet and washing facilities been made?
 - 16 Has provision been made to ensure that Employers' Liability Insurance is in place that covers the workers on the labour user's premises?
 - 17 If relevant, have appropriate and suitable arrangements been made to transport workers to and from their place of work? Are the drivers suitably qualified and are the vehicles suitable and properly maintained?
 - 18 Where domestic accommodation is provided for the workers, if appropriate and required, are copies of current gas safety certificates made available?
 - 19 Are accurate records of the hours being worked kept and available for inspection? Do the terms and conditions under which they are employed comply with the Working Time Regulations 1998?
 - 20 Are suitable arrangements in place for recording and reporting accidents and cases of ill health?
 - 21 Are suitable systems in place for first aid (including hospital) treatment, and any necessary health surveillance?