

Illegal Working Group - fifth meeting, 18 June 2003

Date: 18 June 2003: Time: 1300

Location

Home Office, 50 Queen Anne's Gate, London SW1

Chair

Items 1-3: Beverley Hughes, Minister of State for Citizenship, Immigration and Community Cohesion.

Item 4: Martin Donnelley, Deputy Director General Policy, Immigration and Nationality Directorate.

Present

Lutfur Ali (DoH), Ian Barr (CRE), Kay Carberry (TUC), Denise Keating (M&S), Shaun Leavey (NFU), Justin McCracken (HSE), Tony Merricks (CSCS), Margaret Murray (CBI), Marcia Roberts (REC), Paul Williams (SBS).

Officials attending

Russell Bain, Stephen Harrison, Ed Mackie and Sara Kvarnstrom.

Apologies

John Adshead OBE (J Sainsbury), Martin Couchman (BHA), David Frost (BCC).

Introductions

The Chair welcomed all attendees and apologised in advance for having to leave the meeting before its conclusion due to Parliamentary commitments.

Minutes

The Minutes of the fourth Illegal Working Steering Group and steering group members, held on 6 May 2003, were agreed. The minutes would be published on the Home Office website in due course.

Consultation process on proposed changes to Section 8

Russell Bain provided feedback from the two sub-group meetings involving members which discussed in detail the draft guidance for employers accompanying the proposed secondary legislation changes to Section 8. He identified three wider themes arising from the meetings:

- The level of enforcement carried out by the Immigration Service in relation to the illegal working offence.
- The potential of the proposed revisions to Section 8 placing increased bureaucratic burdens on employers.
- The role of labour agencies in supplying labour to sectors disproportionately affected by illegal working activity.

Russell then went on to summarise the main findings to emerge from the sub-group meetings in relation to the detail of the draft secondary legislation and proposed guidance for employers. These focused on the:

- National Insurance Number as a permission to work document and the problems that removing it as a single document might create for employers;
- need for the employer guidance to be drafted in plain English rather than its present legalistic manner so that all employers would be able to understand it.
- tone of the employer guidance and the need for it to fully engage employers by explaining how to employ someone legally rather than focusing on what employers must do to avoid an offence;
- handling of publicity surrounding the proposed legislative changes. The Government would have to be careful to ensure that this did not undermine the position of those legal migrants who are resident in the United Kingdom.

The Chair thanked Russell for his feedback and noted that following the sub-group meetings and the last steering group meeting it would be important for the Government to consult as widely as possible on the proposed secondary legislation. This process would need to be carried out as soon as possible in order to implement new secondary legislation later in the year.

The Chair also stressed that the consultation process should include as many options as possible for implementing the proposed legislative changes. However, the Department's legal advice about a specific sectoral approach to implementation, suggested at the previous meeting, indicated that this would not be feasible.

Discussion

The Chair invited a discussion of the issues raised by the consultation document and the proposed legislative changes. The following issues were raised:

- The emphasis upon a wide range of options included in the draft consultation paper for implementation was welcomed, but concerns were raised about a blanket approach which failed to achieve the objective of preventing illegal working while at the same time imposing greater bureaucratic burdens on employers.
- The legal advice regarding the feasibility of implementing the secondary legislation in a targeted sectoral approach was questioned and it was requested that further legal advice be sought. It was pointed out that the Government already implemented other legislation on a sectoral basis such as the EU Working Time Directive and the National Minimum Wage. A targeted sectoral approach to implementation would also enable the Government to accurately measure the success of the new legislation, which

currently the draft Regulatory Impact Assessment in the consultation document does not do.

- Many sectors would be excluded by a specific sectoral approach as they would not be directly affected by illegal working activity and so may not have to apply more rigorous documentation tests. This could mask the fact that the supply chains which related to these sectors may be significantly affected by illegal working. The definition of an employer under the legislation was also crucial to this. Without a wider definition in place, it was likely that the offence would still be difficult to enforce given the prevalence of sub-contractual arrangements in sectors affected by illegal working.
- The nature of illegal working was dynamic and influenced by the changing nature of labour markets; it was doubtful that a targeted sectoral approach to legislation would be able to reflect these changes. The nature of changing labour markets meant that unless the Government established a single legislative standard across all sectors, discriminatory practices were likely to occur.
- There was a need for greater levels of enforcement to be carried out against those who produced or used forged documents; if this did not occur then employers would continue to have problems complying with Section 8 legislation.
- It was pointed out that the legislative changes must tackle the systematic abuse of the immigration system, but if they failed to do so then they could instead discriminate against certain sections of the population and create problems of community cohesion.

Action

Summing up, the Chair agreed to commission further legal advice to look into the feasibility of implementing the legislative changes through a targeted sectoral approach. The findings would be fed back to the group at the next meeting.

She also pointed out that while some members of the group wanted more to be done to enforce the illegal working offence, this would only be possible if the legislation itself was secure. The proposed legislative changes would go some way to ensuring that when employers have a statutory defence it is a genuine one, and this would then enable the Immigration Service to increase enforcement resources and improve their conviction rates.

Finally, it was requested that officials produce another draft of the consultation paper which would be sent out by the Chair to members for their final comments and agreement in the next meeting.

Presentations and Discussion

Entitlement Cards and Illegal Working

Stephen Harrison from the Entitlement Cards Unit gave a presentation on the issues surrounding the introduction of an entitlement card and how it might contribute to improving the way illegal working is tackled:

- A public consultation exercise was held by the Government from July 2002 to January 2003 to discuss the benefits and drawbacks of an entitlement card. Around 4,000 responses were received and the Government also conducted wider research into public opinion through qualitative and quantitative surveys.
- An entitlement card had a potential wide range of uses such as helping to combat identity fraud, a proof of age document; and medical information card. But it could also be a powerful tool in helping to tackle illegal working activity by enabling employers to check only one document to see if an individual has permission to work in the UK.
- Employers could check the card through different levels of security ranging from a phone check to a card-reader check. The level of check to be carried out might depend on the level of illegal working risk that the employer is exposed to.
- It was emphasised that if the Government proceeded with the scheme, then transition costs would be spread over a lengthy period of time. The card would not be rolled out across the population for a substantial period of time, and would not be a short-term solution to the problems of illegal working.
- Even if the principle of adopting a card was agreed across Government, the Entitlement Cards Unit would welcome further group or bilateral contacts with members of the group as policy proposals were further developed.

Discussion

The Chair thanked Stephen for his presentation and invited a discussion of the issues arising from the introduction of a possible entitlement card in relation to how it might improve the way the UK tackles illegal working. The following issues were raised:

- The introduction of a card would represent far more of an issue for small employers who may not be aware of the law on illegal working, or who are knowingly employing illegal workers due to cost issues. It would be vital for Government to enter into a dialogue with such groups in order to ensure that they were aware of the introduction of a card and to educate them about its possible uses.
- The introduction of a card may harm the competitiveness of many UK industries who would be faced by far tighter enforcement controls than many of their EU counterparts.
- The value of introducing an identity card just on the basis of tackling illegal working was questioned. There was a real need for Government to focus on current arrangements if it was going to tackle illegal working, rather than looking to a card which would be a number of years away from being fully implemented.
- It was argued that if the Government could not effectively manage current schemes such as the national insurance number process, then the business community would remain sceptical about the effectiveness of any future identity card scheme.
- By introducing such a card it was noted that the Government would be requiring employers to check the integrity of the documents produced to them.

This would be a step-change in the obligations placed on employers compared to current requirements under Section 8.

Action

Summing up, the Chair asked Stephen Harrison to return and provide the group with an update on progress if and when the Government introduces legislation on the card. This would enable a more detailed discussion to take place on how exactly the card might be used in the context of illegal working.

Any Other Business

Tony Merricks highlighted a number of key points that he felt needed to be addressed by the group in order for it to move forward in delivering key outcomes. These focused on the following areas:

- Enforcement. This should include what happens to illegal worker on discovery and what the responsibility was on employers to report such offences. The issue of a possible moratorium for illegal workers was also crucial.
- Definition of a employer. In order to bring greater pressure to bear on supply chains to comply with illegal working legislation, there was a need for a wider definition of employer liability.
- Agency labour. The need to look at the potential for introducing a licensing system for employment agencies to isolate the employer from liability for short-term engagements, i.e. one week.
- Forged documents. The need for guidance on what action should be taken when the employer and Home Office discovered such documents. What guidelines were there for detection and what punishments were there for those caught using such documents.

The Chair agreed that this list of points would be circulated to the group and that these would be answered or addressed as far as possible at the next meeting.

Date and Possible Topics for discussion at next meeting

The Chair reminded members that the next meeting would be held on 8 July 2003 at 1500.