

# **Illegal Working Group - fourteenth meeting, 1 November 2005**

Date: 1 November 2005; Time: 0900 - 1130

## **Location**

Ministerial Conference Room,  
Home Office,  
2 Marsham Street

## **Present**

### **Ministers**

Tony McNulty, Minister of State for Immigration, Citizenship and Nationality

### **Members**

Officials Anthony Thompson (CBI), Anne Fairweather (REC), Colin Moffat (Sainsbury's), Sonny Taank (CRE), Will Somerville (CRE), Kay Carberry (TUC), Martin Couchman (BHA), Lewis Sidnick (BCC), Paul Deemer (NHS Employers), William White (NFU), Habib Rahman (JCWI), Anne Carvell (BATC), Ronald Morton (CSCI), Douglas Cooke (CSSA), Jeremy Bevan (HSE)

Lorraine Rogerson, Tim Woodhouse, Amanda Willits, Claire Hoskins (all HO), John Thorpe (DTI)

### **Apologies**

Gerry Sutcliffe (DTI) Justin McCracken (HSE), George Brumwell (CSCS), Mark Boleat (ALP), Mary Senior (STUC), Tom Hadley (REC), Patrick Wintour (EF), John Fraser (CSCI)

## **1. Welcome**

Tony McNulty welcomed members, in particular new members of the group attending for the first time, including The British Apparel and Textile Confederation (BATC), Commission for Social Care Inspection (CSCI), Joint Council for the Welfare of Immigrants (JCWI), and the Cleaning and Support Services Agency (CSSA). The Minister confirmed that the Employability Forum (EF) had accepted their invitation to join, however could not attend this meeting.

[Secretary's note: The Immigration Advisory Service (IAS) also subsequently wrote to confirm their acceptance of the invitation to join the group]

## **2. Minutes from last meeting and matters arising**

Members confirmed they were content with the minutes, which would be placed on the IND website.

Matters arising:

- Arrange a workshop for members of the Group in the Autumn as part of the consultation on the points-based system and to discuss worked-up detail of the illegal migrant working measures in the Bill.
- Tony McNulty confirmed that these workshops will take place later in the meeting.
- CRE to circulate information on seminar regarding migrant workers. CRE did so, the seminar was held on 5 September. The CRE also drew members' attention to a further seminar to be held with the TUC on 5 December 2005 regarding protection against exploitation of migrant workers.
- Officials to circulate summary of members' comments on illegal migrant working measures and Government responses. Completed.
- Arrange a meeting to discuss WRS further. Tony McNulty confirmed this is an agenda item to be discussed later in the meeting.
- George Brumwell to send details of CSCS Smartcard. George Brumwell sent his apologies for this meeting. [Secretary's note: the Home Office subsequently informed members with regret on 11 November that George Brumwell had passed away earlier that month]
- Circulate a paper on future shape of IWSG. Officials had circulated the paper, and based on the comments received from members, new members had been invited to join the Group.

Tony McNulty emphasised that this should be a flexible group, and encouraged members to offer ideas for new members/topics for discussion as they see fit. Members were in agreement that meetings should be held three times per year for now, but again Tony McNulty advised that this could be reviewed regularly and meetings could be arranged more or less frequently, as required. Members agreed to the revised terms of reference for the group as set out in the paper.

### **3. Joint Workplace Enforcement Pilot information item**

Tony McNulty informed members that the Joint Workplace Enforcement Pilot (JWEP) was established in the West Midlands on 5 September to test the ability of workplace enforcement departments to share intelligence and cooperate in tackling use and exploitation of illegal migrant workers. The Government is seeking to develop closer working between departments responsible for enforcing workplace regulations, piloting a joint team of 10 officers drawn from the IND, HMRC, DTI, DWP, HSE and GLA. The Minister informed the group that an update on the pilot would be given at a future meeting, as and when appropriate.

One member advised that enforcement staff had visited his organisation to explain the process behind carrying out an operation, which they found very useful. They

have since observed operations which were carried out exactly as the enforcement staff had described.

**Action: Group members to obtain feedback from members of their organisations if they have been involved in the pilot or other illegal working operations.**

**Action: Officials to arrange for operational staff to attend a future IWSG meeting to inform members how they prepare for and carry out illegal working operations.**

#### **4. Worker Registration Scheme**

Tony McNulty invited comments from members about the registration scheme for accession state workers. The following points were raised by members in discussion:

- Complaints that there had been no consultation about the recent fee increase from £50 to £70, and lack of clarity on the reason for the increase.
- One member asked whether the fee increase was due to inefficiencies in the process for handling applications, and expressed concern that fee increases risked reducing the incentive to improve productivity and efficiency.
- The scheme had placed burdens on employers and accession state workers, although the information it had produced had proved useful in informing the public debate on the benefits of enlargement.
- Concerns remain about the accuracy of the data.  
The published statistics for registrations do not capture the flow of workers, and the picture they provide of the involvement of accession state workers in the labour market is liable to become increasingly inaccurate over time. Net figures would be more useful to all.
- More confidence is needed in the system if it is to continue as there seems to be less and less justification for it.

Tony McNulty explained that the initial fee had been an underestimate of the actual cost incurred by the Home Office in administering the scheme, as concluded by a review conducted late last year. From the Home Office's perspective, the WRS has worked well in providing a good indication of the impact of accession state workers on the labour market. He further advised that by April 2006, the Government would need to inform the Commission if the WRS is to be continued. The Minister confirmed that he will keep members informed of any decision made on this issue.

The Minister reflected on the prospect of the future accession of Romania and Bulgaria. No decisions had yet been reached on how this would be handled and whether there would be a registration requirement; these issues would be the subject of debate in Parliament in due course.

One member raised an issue following discussion at the last meeting concerning the problems accession workers experienced in applying for National Insurance numbers and the fact that WRS registrations exceeded the number of National Insurance numbers issued. The minutes had failed to record this as an issue to be

pursued. Tony McNulty asked officials to respond to the Group with details about this without further delay.

Action: Officials to provide members of the Group with information about the issue of National Insurance numbers and comparison with WRS figures.

## **5. Presentation: Points-based system and illegal working measures**

Lorraine Rogerson, Director of Managed Migration Strategy and Review gave a presentation on the proposed points based system for admission of migrants for work or study and the illegal working measures in the Immigration, Asylum and Nationality (IAN) Bill, to engage and invite comments from IWSG members. Copies of the presentation were handed out at the meeting and a copy of the slides is attached to these minutes.

The main points made in the presentation were:

- The current public consultation on the proposed points based scheme involved a "first principles" examination of the reasons why migrants wished to come to the UK for work and study, and the UK's need for economic migration.
- The Government had proposed replacing the current, complex, multiplicity of migration routes with five tiers. The aim was to produce an immigration system that was better able to deliver the UK's needs, was simpler to use for employers and applicants, and more secure against abuse. The proposals incorporated an enhanced concept of sponsorship for employers and others; the Government believed it was right that the responsibility for ensuring that individuals complied with the Immigration Rules was shared with those who benefited from the admission of migrants to the UK. IND would develop a closer relationship with the sponsors and a risk-based approach to compliance activity. The new system would result in greater certainty about the outcome of decisions and greater clarity for persons wishing to apply on whether they would be likely to qualify.
- The formal public consultation would close on 7 November and members of the group were encouraged to respond formally. The Home Office was still working through the details in cross-Government discussions, and firm decision had yet to be taken.
- In parallel, the Immigration, Asylum and Nationality Bill currently before Parliament contained new provisions to replace Section 8 as the statutory control on illegal working, with a new civil penalty system and more serious criminal offence for those knowingly employing illegal migrant workers.
- Employers would be able to establish an excuse against a penalty by carrying out specified document checks; in some cases, this would involve a requirement for follow-up checks on certain workers at yearly intervals.
- A draft Code of Practice (circulated to members of the group and published to assist Parliament in its consideration of the Bill) enshrined a "yellow card" approach to first-time transgressors, and a graded, escalating approach to repeat offenders.

The Bill provided for the Home Office to issue a non-discrimination code to

address possible risk of employers breaching race relations legislation. Discussion on this with the CRE would continue.

- The Bill included important safeguards in relation to the proposed civil penalty system, including separate statutory rights of objections and appeal.
- The measures in the Bill should be regarded in the context of the reforms to be introduced by the points based system, including sponsorship and the simplification of routes of entry.

## **6. Syndicate Group Exercises: Skills in the PBS and Illegal Working**

Following the Minister's departure, the group divided into two for discussion in syndicate exercises on the points based scheme and IAN Bill illegal working measures respectively. Comments made were recorded on flipcharts and are attached as an annex to these minutes.

### **Annex**

Collated comments from each of the syndicate groups are as follows:

#### **a) Skills in the Points Based System**

##### **English Language**

The level of English language required across the Tiers was discussed. Some members present felt that health and safety should be a key factor when considering language skills needed in the workplace - information and instruction must be comprehensible to the employee/worker regardless of their English language ability. Other members commented that the required level should reflect the needs of the job. It was suggested that the level of English language should complement the current levels used in determining settlement (IELTS level 3). Other English language testing centres should be looked at as well as IELTS, e.g. Cambridge and Trinity College Exam Boards. English language training is already provided by employers in some instances.

##### **Shortages**

A short discussion took place on lower skilled vacancies in, for example construction, agriculture, the textile industries and the care sector. Discussion centred on whether migration was the most appropriate response to shortages in those sectors, the importance of seasonal employment to some sectors and whether EU enlargement would offer a labour pool to meet the UK's low-skilled needs in the short-medium term.

##### **Skills**

Members were interested in whether skills to be assessed were of the individual or of the job, the role of the National Recognition Information Centre (NARIC) in recognising international educational qualifications and what the role of the Sector Skills Councils would be in the new system.

Other comments made include:

- Salary levels in home country vary
- Salary levels vary in UK by region
- Concern about "Brain Drain"
- How would specialists be assessed e.g. sports

### **Sponsorship**

A general discussion on sponsorship raised a number of questions: who the sponsor should be: the employer or operator; the responsibilities of the sponsor and the penalties for failing to discharge those responsibilities.

Members were concerned over serious practical issues in relation to sponsorship, e.g. smaller organisations may not have enough money depending on the level of funds required.

### **b) Illegal Working Syndicate Group**

**Does your organisation have specific concerns about the illegal working measures in the Bill and what are they?**

- Emphasis on employer to do checks - but problems with forged documents e.g. passports / myriad of stamps and documents from HO
- Case yet to be made for introduction of civil penalties; principal concern is the transfer of responsibility to employers with no clear indication of support from HO
- Government responsibility to police immigration system, not employers
- Penalties will hit negligent rather than rogue employers
- "Fringes" of areas are where there will be problems
- Poor links with the Immigration Service in some areas
- Concern raised that even if report knowledge of illegal workers, do not see any action taken
- Intelligence is "out there" concerning abuse, but it is difficult to get hold of any real data
- Specific information required about specific people e.g. "Yes Mr X can / cannot work" as opposed to a non-committal or general answer
- Cannot expect employers to be Immigration Officers
- Some sectors, very large numbers of employers with very few staff members - fragmented and fragile industries that could be hit hard by penalties
- Members in different sectors use a variety of employment methods - directly employed or posts filled by agencies
- Need to target rogue employers who along with employing illegal migrants workers, may not be complying with Health and Safety, NMW etc but this problem applies to all workers, not just illegal migrant workers
- Increased use of inspection regimes to pick up other breaches
- Burden on legitimate side of business
- Complexity of current section 8 document checks - hundreds of possible combinations of documents  
Need for endorsement/notification clearly stating "Permission to work until"

- Small employers unable to / don't complete checks properly
- Not easy - small employers in particular may not want to risk employing people they suspect to be migrants at all (whether legal/illegal)
- Clarity of stamps
- Other checks completed e.g. CRB checks
- Need to equality-proof proposals for implementation, e.g. gender re-assignment and name changes resulting from civil partnership legislation
- Gender re-assignment
- Refugees who do not have Immigration Status Documents only have old/dated papers confirming permission to work
- Cost of repeat checks, amendments to systems in place
- Potential for cases of unfair dismissal if employee doesn't produce document when required to for follow up check
- Foreign looking/sounding people may be repeatedly asked for documents, even if British Citizen?
- Appeals against refusal of LTR - concern that employees may inadvertently become illegal workers at the point of refusal. What happens if they subsequently win their appeal?  
Code states that if appeal against civil penalties - penalty could increase but no scenario given of when/why this would happen

**Do you believe the new measures would represent a significant additional burden on your sector? If so, how can these be quantified/costed?**

- Annual checks not too much of a problem for larger businesses or those with good IT-supported personnel systems
- Will only become a burden if others are not complying and not being caught for non-compliance
- Full records are kept for a year
- Simplification of the system
- Proper checking system required e.g. CRB checks can be undertaken, used to be a similar system for checking NI numbers

**What additional support do you think IND should provide to enable your sector to comply with the new legislation?**

- Specify to employers categories of workers who will need repeat checks e.g. students etc
- Improved helpline service
- E.g. if application lodged in time, confirmation needed from IND that employee has permission to work until decision made
- Verification
- Certainty - a definitive answer about a person from the helpline
- Consistency of advice
- ID Cards - if/when introduced, will they contain information regarding a person's permission to work and if so, will companies need to invest in new technology to "read" card on site?
- Transfer of employment - if company taken over by another, continuing employment of employee - is "new" employer responsible for undertaking checks?

- Very latest stamps not in booklet sent to employers. Members agreed that a paper based document for checking would still be required even if new/latest information published on web
- Payback - if an employer takes the time and trouble to report, the Immigration Services need to be seen to be taking action to increase confidence in the system