

# **Illegal Working Group - seventh meeting, 22 October 2003**

Date: 22 October 2003; Time: 1500

## **Location**

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

## **Chair**

Beverley Hughes, Minister of State for Citizenship, Immigration and Counter-Terrorism.

## **Present**

Nick Clark (TUC), Martin Couchman (BHA), Shaun Leavey (NFU), Rachel Lloyd (REC), Justin McCracken (HSE), Tony Merricks (CSCS), Margaret Murray (CBI), Sheila Rogers (CRE), Lewis Sidnick (BCC), Paul Williams (SBS).

## **Officials attending**

Martin Donnelly, Russell Bain, Mary Batchelor, Catherine Pool, Tim Woodhouse and Sara Kvarnstrom.

## **Apologies**

Lutfur Ali (DoH), Ian Barr (CRE), Kay Carberry (TUC), David Frost (BCC), Marcia Roberts (REC), Colin Moffat (J Sainsbury's).

## **1. Introductions**

The Chair welcomed Rachel Lloyd from the REC and Lewis Sidnick from the BCC, attending Illegal Working Steering Group and steering group members for the first time. Marks and Spencer were unable to send a representative to this meeting due to a change in personnel.

## **2. Minutes**

The Minutes of the sixth Illegal Working Steering Group (IWSG) and steering group members, held on 8 July 2003, were agreed.

## **3. Matters Arising**

The Chair established that members of the group had no outstanding issues they wished to address before moving on to the main items of business.

Russell Bain explained that work was being taken forward on some of the issues raised at the previous meeting of the Illegal Working Steering Group and steering group members, namely on how to ensure compliance among gangmasters and the possible introduction of a national ID or entitlement card. The Group would receive further information on progress in these areas in due course.

## **4. Initial Feedback on Consultation on Proposed Changes to Section 8 of the Asylum and Immigration Act 1996**

### **Introduction**

Russell Bain recalled the purpose and the nature of the consultation on proposed changes to section 8. The consultation ran from 21 July to 13 October, and set out the government's overall strategy to tackle illegal working and the way in which the proposed secondary legislation would contribute to this (along with other strands of work such as improved guidance for employers and increased enforcement). It also included a partial Regulatory Impact Assessment which consultees were invited to comment upon. Four main approaches were outlined in the consultation:

- no change to current legislative arrangements;
- introduction of the proposed two-list system;
- adopting voluntary codes of practice;
- introducing legislation on a sector-by-sector basis.

It was sent to 150 organisations with a key stake in this policy, including employers and employers associations, trade unions, non-governmental organisations and other government departments. It was also available on the Immigration and Nationality Directorate website.

### **Presentation**

Mary Batchelor presented a brief report on the initial outcomes of the consultation covering the following issues:

- Overall level of response, and representativeness of respondents;
- Consensus on the need to tackle illegal working;
- Effectiveness of the proposed changes to the document list in tackling illegal working;
- Implications of proposals for recruitment practices;
- Understanding of current legislative requirements;
- The ability of all those who are entitled to work to demonstrate this with documents on the proposed two-list system;
- Whether the proposals would increase the security of the statutory defence;
- What further assistance employers require to comply with section 8;
- Sectoral approach, voluntary codes or universal legislative standard?

### **Focus Group**

Catherine Pool fed back the outcomes of a focus group held by officials on 2 September with 5 small business people and a representative of the Small Business

Service. The Focus Group raised similar issues to the consultation. It illustrated that awareness of section 8 and the profile of the illegal working issue was probably lower among small businesses. This would need to be addressed by a comprehensive communications strategy. A summary of the outcomes of the focus group would be annexed to the final summary of the consultation, which would be sent to all respondents in due course.

## **Group Discussion**

The Chair summed up by saying that the consultation had not been overwhelming nor unequivocal, either in terms of numbers of responses or views expressed. Views on the effectiveness of the proposals were widely varied. Although many respondents had reservations about the proposed two-list system, no alternatives were suggested. The current legislation is clearly not working, and this is unacceptable, therefore the Chair felt that doing nothing was not an option. The consultation did highlight that a sectoral or voluntary approach was generally not felt to be effective. The consultation also clearly indicated that whatever legislation is in place, the key to its success is comprehensive guidance and support material for employers and an effective communications strategy. The Chair then invited comments on the consultation and the next steps from the Steering Group.

The point was raised that further analysis of the responses to the consultation was needed, and that this should be broken down by type of respondent, so that the relative weight of a given respondent could be taken into account when considering responses. The Chair concurred.

### **Action point: More detailed analysis of the consultation will be carried out before the next meeting of the IWSG.**

It was felt that little information was given on the precise costs to businesses of the proposals because the direct costs (in terms of copying and storing documents) would be minimal. The indirect costs might be higher in as much as employers could be prevented from taking people on if they could not produce the correct documentation.

Enforcement was mentioned, and the Chair emphasised again to the group that allocating more resources to enforcement of the law to prevent illegal working would not be effective while the legislation remained weak and open to exploitation by unscrupulous employers, as convictions would still be very difficult to obtain. In this way, legislation and enforcement were inextricably linked, and both aspects needed improving.

The issue of the legal definition of employer was explored. Group members felt that prosecutions and convictions might be easier to secure if there were a clear, and wider, definition of 'employer?'. The Dutch model in which anyone in the employment chain could be held accountable for an illegal working offence was held up as an example of how this might be done. Also, the Dutch model of joint enforcement exemplified how employers could be prosecuted for a range of offences.

**Action Point: Officials will look again at the learnings from the visit to Holland to see if any of their policies could be incorporated into policy in the UK. We will also look at the definition of employer.**

The group asked how the proposals would improve prosecution levels. Russell Bain explained that the aim of the proposals was to raise the standard of documentation required to obtain a defence. By ensuring that employees produced either a document proving both identity and entitlement to work, or one document proving identity and another proving entitlement to work, employers would have a greater degree of confidence in the right to work of their employees. Moreover, by requiring compliant employers to carry out enhanced checks, it would be easier to identify and demonstrate the culpability of those who were knowingly employing illegal workers and avoiding prosecution by exploiting the weaknesses of the current defence. Employers would not be able to make a pretence of complying with section 8 any longer; they would be required to engage with the process to avail themselves of a defence. If they chose not to, they would be prosecuted, and would be likely to be convicted.

A member of IWSG concurred with this and stated that they felt the proposals would tighten up the defence. While it would not make non-compliant employers comply, it would be easier to prosecute them.

One group member asked if there was a central register anywhere across government which contained details of the entitlement to work of the UK population. The Chair confirmed that no system or document currently exists which adequately proves the identity and entitlement to work of all those who are entitled to work in the UK. Even the National Insurance system does not contain information on entitlement to work. This would be one of the functions that a national identity or entitlement card would fulfil were it to be introduced. The proposals for an ID card are a long way from implementation. Once agreed, it would still take at least six to ten years to roll out the card to the entire UK population, plus EEA and overseas nationals legally resident and working in the UK. Given the ineffectiveness of current legislation, doing nothing until such a card is introduced is unacceptable. Our proposals, should they be implemented, could help improve the law to prevent illegal working in the meantime.

One IWSG member expressed the opinion that the defence is almost automatic at the moment. Even if the defence is obtained after the commencement of employment, or with the knowledge that the document recorded is forged, it is very difficult for the Immigration Service to prove this. It was suggested that employers who have been prosecuted have not been employing people illegally unwittingly, and so should not be entitled to an automatic defence. Russell Bain explained that shifting the burden of proof onto the employer would change the offence entirely, and would not be accepted by employers as long as there is no secure way of establishing the entitlement to work of a prospective employee. This could be a possibility in the future, if an ID card proving eligibility to work is introduced.

The Group would like to know the reasons why prosecutions have not been translated into convictions in the past. Russell Bain indicated that data collection has not been consistent enough in this area for worthwhile analysis to take place, but

that officials were looking at ways to improve the gathering of statistics relating to illegal working operations and prosecutions. The Chair pointed out that in some cases a prosecution is not even pursued, especially given the discouragingly low penalties that have recently been levied on those convicted of a section 8 offence. By making the proposed changes and increasing enforcement, and therefore prosecutions, the profile of the offence could be raised and magistrates would gain more experience of section 8.

**Action Point: Officials will look into ways in which the reasons for section 8 cases failing to produce a conviction could be identified.**

In summarising the discussion, the Chair concluded that no decision on how to proceed could be taken at that stage, and therefore the meeting should be concluded. Further analysis was required of the consultation responses, and officials would write to IWSG members on this matter and on the date of the next meeting.

## **5. Any Other Business**

It was suggested that intelligence about trends in illegal working could be shared with employers in the local area - for example, where a number of Brazilians have been uncovered working using fake Portuguese passports, employers could be warned of this. This idea could be taken forward in future.

## **6. Date and Possible Topics for discussion at next meeting**

The Chair suggested that the group meet again in no more than eight weeks, once a more detailed analysis of the consultation was done. Officials would write to Steering Group members shortly to inform them of the date of the next meeting.