

Illegal Working Group - tenth meeting, 23 June 2004

Date: 23 June 2004; Time: 1615

Location

Palace of Westminster Committee Room 6

Present

Ministers

Des Browne, Minister of State for Citizenship, Immigration and Nationality (Chair); Gerry Sutcliffe, Parliamentary Under-Secretary of State for Employment Relations, Competition and Consumers.

Members

Ian Barr (CRE); Mark Boleat (ALP); Kay Carberry (TUC); Martin Couchman (BHA); Tom Hadley (REC); Shaun Leavey (NFU); Justin McCracken (HSE); Mary Senior (STUC); Anthony Thompson (CBI).

Officials Attending

Lorraine Rogerson; Tim Woodhouse; Catherine Pool; Catherine Gardner; Nicola Mortlock; Peter Whittington; Jane Whewell; Jason Goddard; James Lowen; Patrick Collier; Rachel Prime.

Apologies

Lutfur Ali (NHS); George Brumwell (CSCS); Colin Moffat (J Sainsburys); Lewis Sidnick (BCC).

1. Welcome

The Chair welcomed group members and apologised for the late change of location due to Ministers' commitments in Parliament. New group members Mary Senior (from the Scottish Trades Union Congress) and Mark Boleat (from the Association of Labour Providers) were introduced.

2. Matters Arising

The Chair indicated that he would be interested in returning to the purpose and title of the Illegal Working Steering Group. This would be looked at during a future meeting.

The minutes from the last meeting of the Illegal Working Steering Group were agreed.

The Chair briefly updated the group on recent developments in immigration policy. There was increasingly a focus on identifying and reducing means of abusing legal routes of migration to the UK, and on reviewing the effectiveness of these routes. This work would continue.

The group was invited to raise any further areas of concern before turning to formal agenda items. The point was made that the suspension of visa-issuing at posts in Sofia and Bucharest had caused disruption, particularly in the agricultural sector. IWSG members requested an explanation of the suspension, and an update on subsequent action.

Lorraine Rogerson explained that serious allegations of widespread abuse of legal routes of migration to the UK in Romania and Bulgaria had necessitated the immediate suspension of visa-issuing in the two posts, pending a full investigation. Once evidence was established that the required procedures to prevent abuse were in place and were being used, visa-issuing restrictions were lifted for the various routes.

Restrictions on visa-issuing to seasonal agricultural workers and sectors based schemes workers were lifted on 20 May. The only category to which visa-issuing restrictions still applied was that of the European Community Association Agreements, pending revisions to the operation of the scheme in light of the recommendations in Ken Sutton's report of 17 June. Lorraine Rogerson explained that IND would continue to risk-assess managed migration routes on order to address abuse and realise the benefits of legal migration to the UK. IND would welcome IWSG members' input into this process.

3. Gangmaster (Licensing) Bill

The Chair introduced James Lowen from the Department for the Environment, Food and Rural Affairs, invited to the IWSG to give a presentation on the Gangmaster (Licensing) Bill proposed by the Honourable Member for Renfrewshire West, Jim Sheridan.

Context

James Lowen began by highlighting increased public concern surrounding abuses by some gangmasters, and particularly in relation to the use of illegal migrant workers in the agricultural and shellfish-harvesting sectors. The introduction of a Private Members Bill to establish a licensing scheme in the industry had attracted support from across the industry and from across the political spectrum, particularly in light of the Morecambe Bay tragedy.

DEFRA recognised that the passing of the Bill would not remove all illegality in the temporary labour provision sector, but it was an important step towards addressing the problems. DEFRA also recognised the importance of joint work between departments to ensure that the force of all relevant legislation was brought to bear on gangmasters who flouted the law.

Parliamentary process and time-scales

Second Reading in the Lords took place on 16 June, and it was expected that the Bill would receive Royal Assent before summer recess. DEFRA was aiming to establish the Gangmaster Licensing Authority by April 2005.

Scope, objectives and powers within the Bill

The measures in the Bill covered gangmasters supplying labour to the agricultural and shell-fish harvesting, processing and packaging industries. The broad objectives of the Bill were:

- to curb exploitation by gangmasters;
- to ensure transparency in the labour provision sector;
- and to facilitate the distinction between legal and illegal operators.

The Bill created four criminal offences:

- operating as a gangmaster without a licence;
- using an unlicensed gangmaster (for which there would be a due diligence defence);
- presenting false documents (in order to appear to be a licensed operator);
- and obstructing an officer in the course of enforcing the powers within the Bill.

The Bill also created two-way information sharing gateways between the licensing body and other public authorities for the purposes set out in the Bill, and for the purpose of enforcing other relevant legislation regulating the conduct of gangmasters.

The Bill did not contain all of the detail of the licensing scheme - this would be established through secondary legislation. Regulatory impact assessments and public consultations would be carried out before such regulations were introduced. The Bill provided for strong industry representation on the Board of the licensing authority.

The Licensing Scheme

The Licensing Authority would house compliance and probably enforcement officers. Compliance officers, on visiting an applicant to the scheme, would need to satisfy themselves that the conditions attached to the licence were being met. . It would be for the Licensing Authority to determine these conditions, the basis for which was likely to be the Ethical Trading Initiative - Code of Best Practice for gangmasters, developed in consultation with a range of interested organisations last year.

The scheme would be self-funding (licence fees covering the cost of the audit), with licences likely to be renewable every three years. Current estimates for the licence fee stood at around £1750-2250. The exact level would depend on the number and stringency of the conditions that needed to met and thus audited.

The group questioned whether one audit every three years would be sufficient to ensure that licensed gangmasters were abiding by the terms of the scheme. The suggestion was made that an interim postal check, for example of VAT returns, could

be carried out to reinforce the auditing process. More work was needed on these detailed areas of concern, DEFRA would continue to consult stakeholders throughout the development of the scheme.

Action point: DEFRA undertook to ensure that interested parties would have the opportunity to comment on proposals for the implementation of the scheme, and would carry out consultations and regulatory impact assessments as required.

Discussion

There were conflicting views over whether it was better to create a register of gangmasters before audits were carried out (to gather information on those who were acting as gangmasters) or whether this would lead to gangmasters who were breaching the terms of the licence appearing on the register. DEFRA made clear it was not planning to formally licence gangmasters until the audit had demonstrated the applicant's compliance, and was open to stakeholder views on the options of 'registration' or 'provisional licence'.

James Lowen was asked which of the offences contained within the Bill would be the main priority from an enforcement point of view. He indicated that the top priority would be tackling unlicensed gangmasters. The point was made that the supply chain would also police itself under the scheme, with those at the top (such as supermarkets) applying commercial pressure by only using licensed operators.

It was pointed out that gangmasters supply labour to sectors not covered by the Bill, and that to ensure that abuses were not perpetuated in other sectors, there would need to be close links between the gangmaster licensing scheme and existing enforcement agencies. This was reinforced by the wider view that more joined up working was required across departments to ensure that the entire range of illegitimate practices by gangmasters was tackled. This could mean, for example, ensuring that national agricultural minimum wage inspectors worked with the licensing scheme - compliance officers to ensure that visits were not duplicated and that information was shared where non-compliance was identified.

There was a question as to whether the gangmaster licensing scheme could be used as a model, to be rolled out to other sectors in which similar abusive practices may be occurring (e.g. construction or the care sector). A number of group members felt that a thorough evaluation of the impact of the licensing scheme on gangmasters in agriculture would be required before this could be considered. There was evidence that licensing schemes were not always effective in stamping out abuse. The licensing scheme for the agricultural industry had comprehensive buy-in from across the supply chain (which made success more likely), but it was not known that this was the case in other sectors.

One IWSG member suggested that some employers and end users in the agricultural sector were complicit in abuse, particularly where they were paying a gangmaster a rate of less than Â£5.85 per worker. Initial DEFRA calculations suggested that this was the minimum required to cover overheads and the national minimum wage unless some kind of regulatory abuse was occurring. There was a

risk that end users would simply employ illegal workers directly (rather than through a gangmaster) in order to continue exploiting illegal labour, circumventing the new licensing scheme. However, another group member felt that the risk of loss of workforce in an immigration raid (and the subsequent loss of productivity and profit) effectively disincentivised labour users from employing illegal workers, and considered that the licensing scheme would ease relations between end users and labour providers by allowing legitimate operators to distinguish themselves clearly from unscrupulous competitors.

The Chair thanked James Lowen for updating the group on the progress of the Bill and the licensing authority.

4. Research

The Chair introduced Patrick Collier and Rachel Prime from the Immigration Research and Statistics Service who set out and sought opinions on plans for a programme of research into migrant and illegal migrant working.

IRSS planned to conduct research among three main groups: employers, migrant workers and stakeholders in local communities. Focusing on research with employers, this would cover illegal migrant working as part of a wider piece of work on attitudes to migration. The research would seek information on a number of areas, including:

- the prevalence of illegal working in specific sectors;
- employers' reasons for employing illegal workers;
- awareness of alternative, legal routes of migration to the UK among employers;
- recruitment methods used by those employing illegal workers;
- likely impact of increased immigration enforcement activity;
- likely effects of a range of policy initiatives to reduce illegal working.

Nature of research

Research would be commissioned externally to ensure employers felt confident that they could speak freely. In accordance with Home Office guidelines, IND would ensure that the contractors disclosed the source of funding for the research. The project was expected to take six months, with preliminary findings available in spring 2005. The research would consist of in-depth interviews with employers, employment agencies and trade associations. The Chair asked whether trades unions would also be invited to participate in the research and IRSS confirmed that this would be the case.

Sensitivities

Research of this nature raised a number of sensitivities such as the anonymity of respondents and the possible adverse commercial impact resulting from publicly acknowledged involvement in the project. Other sensitivities could include the confidentiality of the contractor, and the ethical handling of findings, particularly where respondents were sharing views and information on illegal practices.

IWSG's views

Rachel Prime then sought views from the group on the planned research, ways of encouraging employers and employer groups to participate in the research, mitigating the sensitivities involved in carrying out research in this area and practical suggestions for reaching respondents.

IWSG members began by recognising the inherent difficulties of the project and re-iterating their support for work to build a better picture of illegal working in the UK. They felt it was important that migrant workers' views were sought as well as employers', to develop a greater understanding of both supply and demand factors, and because workers would share information about their employers' practices too. IRSS confirmed that research among migrant workers would form a further strand of the overall research project.

One group member asked what sample size IRSS was aiming for and how the sample would be targeted. A range of methodologies for sampling were being considered, including "snowballing" (contacting a respondent who then suggests further respondents). IRSS recognised that it was important to seek views from a range of respondents, but admitted that it was highly unlikely that a representative sample could be achieved. (Rachel Prime re-iterated that the research would be of a qualitative rather than quantitative nature).

In fact, the size of the final sample would be dependent on the availability of employers willing to participate in the project. Factors such as the size of the company and the sector it belonged to would be taken into consideration in the research, along with the need for appropriately robust base sizes for analysis. One member pointed out that illegal working was not confined to the sectors represented on the IWSG, and that the sample would need to encompass employers from other sectors of the economy too.

It was felt by one IWSG member that employers might be nervous about participating in research on illegal or even migrant working. Using trusted members of the business community to forge links with employers could be one way of overcoming this reticence. This group member offered to facilitate these links through their organisation.

Another group member expressed the view that there could be scope within the research to gather some positive information, for example on ways that employers took on workers legally, in addition to researching illegal or negligent recruitment practices. The research could also feed into wider work to raise and maintain awareness of illegal working issues. It could even help to identify trends and illegal working "hotspots" (locations or sectors of the economy).

Action point: There was not sufficient time for detailed discussions on the ways of conducting, analysing and using research at the meeting, so IWSG members were invited to put detailed thoughts/suggestions in writing and to feed these to Rachel Prime, Research Project Manager, and Catherine Pool, IWSG Secretary. IWSG members would receive feedback on their suggestions.

There had already been some research into the informal economy and undeclared work by the Department for Work and Pensions, and the point was made that it could be useful to tie findings from this existing research into IRSS's planned programme. The Department for Trade and Industry had also conducted research among groups who mistakenly thought they were illegal and had excellent community links with those who felt they were illegal and were more likely, as a result, to have experience of other illegal migrant groups in the UK.

The Health and Safety Executive had research on vulnerable workers, which included information on migrant workers. This could be shared with Home office researchers. Other possible sources of useful information included local authorities and migrant associations.

Action point: IRSS to contact research colleagues in the Department for Work and Pensions and the Health and Safety Executive to discuss sharing research findings on migrant workers. IRSS to investigate means used by DTI officials to reach migrants who felt that they were working illegally in the UK.

Summing up, the Chair thanked Rachel and Patrick for their presentation and welcomed the support of the IWSG in developing research into illegal working. In spite of the significant limitations which applied to research in this field, the Chair was keen to see policy developed and evaluated on a firmer evidential basis.

5. Feedback on section 8 changes and the Worker Registration Scheme

Changes to section 8

The Chair began by reminding the group that the section 8 legislation from 1996 had been unworkable due to the low standard of evidence required for a defence from conviction. The Government had taken sensible steps in removing the documents that were easily counterfeited in order to make the offence prosecutable.

Feedback from some employers indicated that there were British citizens who possessed neither a British passport nor a full birth certificate, who were being refused employment because they could not produce listed documents.

The Chair reminded the group that the section 8 offence was that of employing an illegal worker, and therefore an offence could not be committed in a case where the worker was British. It was not a criminal offence not to carry out the checks - these simply allowed employers to establish a statutory defence from conviction. Moreover, the vast majority of British citizens would have the required documentation.

Those who did not could easily obtain a full birth certificate from their local registrar's office. The Chair did not feel it was unreasonable to expect people to ensure that they had the necessary documentation to show that they were entitled to work when there was a clear public policy need for this. He recognised that there could be a need to make workers aware of their responsibility to obtain and provide such documentation through educational activity.

One IWSG member pointed out that the risk of discrimination was inherent in making assumptions about individuals' nationality or entitlement to work and therefore strongly felt that all workers should provide documentary evidence of their right to work, including where they appeared to be British. Tim Woodhouse mentioned that IND would be revising the existing statutory code of practice on preventing illegal working while avoiding discrimination. This would help employers to strike a balance between their responsibilities under section 8 and under race relations legislation.

Action point: IND officials would arrange to meet with the Commission for Racial Equality to plan the revisions to the code of practice on complying with section 8 while avoiding racial discrimination. IWSG members would be invited to "road test" the code to ensure that it was user friendly.

It was also suggested that some work could be taken forward with the Department for Education and Skills, possibly through citizenship classes, to communicate to young people who would be joining the workforce in future the need to demonstrate, through relevant documentation, their eligibility to work.

Action point: officials to explore opportunities for communicating with young people about providing documentary evidence of entitlement to work with DfES.

Tim Woodhouse summarised the communication activities undertaken by IND to inform employers of changes to the law on preventing illegal working, including publication and distribution of guidance, and updates to the IND website and those of other Government departments and IWSG members (with thanks in particular to the National Farmers' Union for updating their website so promptly). IND had also liaised with other organisations such as the National Association of Citizens Advice Bureaux and ACAS, who had received their own stocks of the long guidance booklet.

The five-fold increase in the number of calls to the Employers' Helpline and the increase in correspondence to IND on this issue indicated the success of the communications strategy, and that many employers had been unaware of their section 8 responsibilities prior to the recent changes. One group member felt that a significant contributory factor to higher levels of awareness of section 8 among employers was increased enforcement activity. The group recognised that continued enforcement activity would be important in maintaining the profile of the legislation.

IWSG members agreed that communications with employers had been very successful and urged the Home Office to press on with further communications activities, for example advertising in the trade press, to ensure that momentum and awareness were not lost. The guidance booklet that was sent to all PAYE-registered employers was also praised.

It was felt that the changes to section 8 were fundamentally changing the way that employers recruited staff, and that this change should not be underestimated. There was acceptance within the business community of the growing need to verify the identity of workers and to know who was on the premises of a business at a given time.

The Worker Registration Scheme

The Chair wished to make it clear from the outset that he would not be giving out figures from the Worker Registration Scheme at the meeting. The Home Office adhered to a quarterly publication cycle for immigration data and this would also be the case for the WRS. Early management information from the scheme would be released in early July.

The Chair stated that early indications from the scheme suggested that it had been successful, had not proved too costly or bureaucratic for applicants and employers, and had been worthwhile, as the information provided was sufficient to allow some coherent analysis of accession state nationals working in the UK. It seemed that a high proportion of applicants to the scheme had been in the UK prior to 1 May, not necessarily illegally, as many might have been on managed migration schemes and were now registering due to a change in their employment. As for the wider issues on EU enlargement, the flood of migrants from accession countries had manifestly not materialised, and the accession process with Central and Eastern Europe appeared to be following the model of the accession of countries from the Iberian peninsula.

Action point: IND officials would circulate information from the WRS to IWSG members once it was published in early July.

Appreciation was expressed for the circulation of leaflets produced by the Trades Union Congress explaining the rights of accession state nationals living and working in the UK. Gratitude was also expressed to the Home Office for undertaking to help fund the translation of this guidance into the languages of the new EU member states. The Chair acknowledged that it served a common purpose to do so, as it was in everyone's interest to ensure that accession nationals were aware of their rights and responsibilities in the UK.

Feedback from employers in the hospitality sector on the scheme was positive. There were no complaints about the way that documents were handled or about turnaround times. Labour providers had also commented that turnaround times were very rapid.

The point was made that some applicants to the scheme, particularly those who were newly arrived in the UK, would not have a fixed abode. This made it difficult for them to give an address where they could receive their registration card and certificate and their identity documents.

One group member felt that the length and complexity of the application form was acting as a disincentive to register. They thought that shortening and simplifying the form would head off much of the criticism of the scheme. In particular, the questions which sought to establish that the worker was required to register were causing concern as they were being misinterpreted by some applicants as trying to identify those who were working illegally in the UK prior to 1 May (possibly for the purpose of future immigration enforcement action).

Action point: The application form and the WRS process were being reviewed. Those suggestions that had already been received from IWSG members on the form and the process had already been fed into the review process, but members were encouraged to put their suggestions in writing. A draft of the revised form would be circulated to the IWSG for comment in due course.

It was suggested that the fee for registration was also disincentivising accession nationals from registering their work with the Home Office. The Chair pointed out that the Government was now charging for a range of immigration services as they felt it was right that those gaining an advantage by working in the UK should bear application processing costs rather than passing that along to the British tax payer.

A member of one of the organisations represented on the IWSG had been incorrectly instructed by the Office of the Immigration Services Commissioner that he would need to register with the OISC because helping a worker to fill in an application form for the WRS amounted to giving immigration advice. Lorraine Rogerson assured the group that this was not the case, and undertook to clear this up with the OISC.

Action point: IND officials would liaise with the OISC to clarify this point and ensure that correct information was given to employers in future.

6. Date and time of next meeting

The IWSG normally meets quarterly, but the Chair suggested reconvening the group earlier to discuss the objectives and title of the group. A meeting followed by an evening reception would take place on 15 July 2004.