

Illegal Working Group - ninth meeting, 25 February 2004

Date: 25 February 2004; Time: 09:45

Location

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

Present

Ministers

Beverley Hughes, Minister of State for Citizenship, Immigration and Counter-Terrorism (Chair); Gerry Sutcliffe, Parliamentary Under-Secretary of State for Employment Relations, Competition and Consumers.

Members

Lutfur Ali (NHS Employment Policy Branch); Ian Barr (CRE); George Brumwell (CSCS); Nick Clark (TUC); Martin Couchman (BHA); Tom Hadley (REC); Shaun Leavey (NFU); Justin McCracken; Colin Moffat (J Sainsburys)

Officials Attending

Martin Donnelly; Lorraine Rogerson; Tim Woodhouse; Catherine Pool; Nicola Mortlock; Peter Whittington; Jane Whewell; Jason Goddard.

Apologies

Lewis Sidnick (BCC); Anthony Thompson (CBI).

1. Introductions

The Chair thanked the group for making time in their busy diaries to meet so soon after the last meeting on 2 February. This has proved a particularly timely meeting of the Illegal Working Steering Group and steering group members in light of the Prime Minister's and Home Secretary's recent announcements on the Workers Registration Scheme for nationals of eight former Communist accession states, which will become operational on 1 May.

2. Matters Arising

The minutes from the last meeting of the IWSG and steering group members will be amended to show that Colin Moffat attended. Officials offered their apologies for this oversight.

3. EU Enlargement and Illegal Working

The Chair introduced Lorraine Rogerson who would outline the proposals for monitoring the entry into the UK labour market of accession state nationals following enlargement of the European Union on 1 May. The Chair also indicated that if IWSG members wished to discuss the implications of accession in further detail, officials could set up seminars with members to do this at a later date.

Lorraine Rogerson firstly reiterated that the UK would welcome migrant workers from all ten accession states from 1 May. There would be in place a system (the Workers Registration Scheme) which would require nationals from the eight former Communist accession countries to register with the Home Office on finding a job in the UK. No conditions or criteria would be attached to the scheme, aside from evidence of payment of the National Minimum Wage by the employer.

The registration would take place by post. The Home Office would need evidence of the employment undertaken and start dates, and a photograph of the worker. A certificate would be issued by the Home Office, confirming registration. The employer would need to satisfy himself that the accession state worker was registered within thirty days of the commencement of employment.

Those accession nationals already in the UK on managed migration schemes would be exempt from the scheme, and after twelve months in employment, would enjoy full treaty rights and would be entitled to apply for an EEA residence permit as evidence of this. However, if they changed employment after 1 May but before completing twelve months in employment, they would be required to register. Self-employed accession nationals would be exempt from the scheme, as European law precludes us from placing such a requirement on those of self-employed status.

Questions were then invited from group members.

Q: What about migrant workers who are already in the UK, for example on the low-skilled Sectors Based Scheme which has been running for less than twelve months?

A: The three thousand accession state nationals currently working in the UK on the Sectors Based Scheme will not be required to register with the Home Office on 1 May. On completion of twelve months uninterrupted employment, they will possess full treaty rights, and will be able to obtain a residence permit. If they leave their Sectors Based Scheme employment before completing the twelve-month period of employment, however, they will be required to register with the Home Office on starting their new job.

Q: What about students? Will they have to register?

A: Where students are defined as workers, they may have to register. This is likely to mean that students working in excess of a set number of hours may be defined as workers and caught by the scheme.

Q: What is the purpose of the registration scheme?

A: To monitor the impact of nationals from the eight accession states on the UK labour market. It is expected that numbers arriving from these states will be less than

the number of vacancies currently open in the UK, but we will need to monitor developments in the domestic labour market to ensure this is the case.

Q: But to avoid registering, all accession nationals will have to do is define themselves as self-employed.

A: We are bound by European law in respect of the self-employed - we cannot require them to register although we can encourage them to do so.

Gerry Sutcliffe recognised that the issue of definition of employment and self-employment, particularly in the construction industry, needed further consideration, and undertook to meet with representatives of the construction sector to investigate this.

Q: Will the registration scheme apply to Malta and Cyprus?

A: No - none of the member states are applying restrictions or special requirements to Malta or Cyprus as they are relatively small, wealthy countries with low populations. From a UK perspective, they also have old commonwealth links.

Q: What will be the proof of registration, and will it be easily forged?

A: A certificate confirming registration will be issued. This will be as secure as possible.

Q: Where will application forms be available from?

A: From the IND and from the Working In The UK website. Employers should be able

Q: Will a photograph be required for the certificate?

A: Yes.

Q: What will be the position for SAWS students from accession countries?

A: As accession state students will acquire free movement and access to the UK labour market, they will no longer need to come through the SAWS scheme. They will simply need to register on taking up employment in the UK.

Q: Will the system be in place in time for 1 May?

A: Yes. There may be scope for some arrangements prior to this for the agricultural sector if this is needed - for further discussion with representatives from the sector.

Q: Do job seekers need to register?

A: No. Accession nationals have free movement and can come to the UK to seek work without registering. Only once they have secured employment must they register within thirty days.

Q: Will the communication of section 8 changes link in with the accession regulations?

A: Yes. See item 4 below.

Q: Isn't there a risk that accession nationals will not wish to register for fear of removal by the authorities in the event that they lose their job?

A: Accession nationals will not be removed if they are not employed - they simply will not be entitled to any benefits until they assume full treaty rights (i.e. following twelve months uninterrupted employment). Provided they can support themselves or find another job, they can stay in the UK. And they will not be bound to unscrupulous employers as they will have regularised their status.

Q: What will be expected of the employer, and what sanctions might they face if after thirty days their accession state worker is not registered with the Home Office?

A: The employer will be expected to check that an application had been made (by checking the form, and possibly through an on-line system of monitoring the application); and check within thirty days that the certificate had been issued. Lorraine Rogerson explained that the scheme was not meant to be punitive, nor bureaucratic. The first reaction of the authorities on discovering an accession state national working without being registered would be to encourage the worker to register, and the employer to check that registration was carried out. Only in extreme cases would a sanction be required. This would be equivalent to the current section 8 sanction (although it would not be an offence under section 8 as accession nationals are not subject to immigration control).

Q: How will workers demonstrate twelve months uninterrupted employment?

A: Through registration certificate(s), payslips and contracts/letters from employers.

Q: How will the employer be defined for accession regulations?

A: As defined in section 8 of the Asylum and Immigration Act 1996.

A few other issues were raised, such as what happens to accession state nationals' national insurance contribution records from before 1 May when they have been working illegally. The Chair felt that these issues might better be addressed in writing; officials will send a written outline of the registration scheme to IWSG and steering group members shortly, and seminars can be arranged if members feel this would be beneficial. The Chair thanked the IWSG and steering group members for their input in working through some of the more detailed issues arising from the scheme.

4. Communications Strategy

The Chair handed over to Tim Woodhouse to confirm the communications strategy that had been distilled from the ideas paper and resultant discussion on communications at the meeting on 2 February.

Tim Woodhouse thanked the members of the IWSG and steering group members who worked with officials to refine both long and short guidance on the prevention of illegal working. He summarised the communications strategy as follows:

Initially, we will place A5 guidance on IND's, other government departments' (including the Small Business Service's), IWSG's and other relevant organisations' websites when the Order making the changes is laid in Parliament.

- We will look to the IWSG members to help us communicate the changes to the widest possible audience.
- There will be a media launch when the Order is laid.
- A5 guidance will be sent to all PAYE-registered employers in early April, and will include information on the accession regulations.
- A4 guidance requires more work, and detailed Q&A on the accession regulations, but will be completed in early May and made available to employers on the IND website, and from the Employers' Helpline.
- Section 8 changes will come into effect on 1 May to coincide with accession regulations.
- More awareness raising activity will take place at this point to inform employers that both accession regulations and revised section 8 requirements are coming into force.
- Finally, in order to maintain awareness through the year, further activity will be undertaken, including advertising and editorial in trade press, and PR opportunities and events (such as those arranged by IWSG members or by other organisations within their sectors).

The Chair invited comments from group members on the plan.

One IWSG member stressed the importance of making it clear in our communications on the section 8 changes that employers must also comply with the Race Relations Act.

Additionally, the point was raised that employers needed clear images of the documents they could come across, and if long guidance was only available on the website, some employers would be precluded from obtaining them. However, the Employers' Helpline will also have hard copies of the A4 guidance which it can send out on request, so this should not be the case. Information from steering group members on likely demand for the A4 guidance from the Helpline would be helpful. The Chair also made the point that we would need to re-visit communications after the launch of the regulations to evaluate their efficacy, and if necessary amend the plan.

The Chair confirmed with officials that the quality of document images downloaded from the internet would not be greatly different from those contained in the printed version of the guidance.

5. Any Other Business

No other agenda items were forthcoming.

6. Timing of the Next Meeting of the IWSG

It was agreed that the next meeting of the group should take place in May.