

Illegal Working Unit - sixteenth meeting, 25 October 2006

Date: 25 October 2006; Time: 1530 - 1730

Location

Ministerial Conference Room,

Home Office,

2 Marsham Street

Present

Ministers

Liam Byrne, Home Office Minister of State for Immigration, Citizenship and Nationality

Jim Fitzpatrick, DTI Parliamentary Under Secretary of State for Employment Relations and Postal Services

Members

Mark Boleat (ALP), Martin Couchman (BHA), Jenny Easterbrook (HSE), Anne Fairweather (REC), Colin Hall (NFU), Gordon McLardy (NCP), Henry Birks (NCP), Tom Moran (CBI), Ronald Morton (CSCI), Habib Rahman (JCWI), Sukhvinder Singh (CRE), Owen Tudor (TUC), Patrick Wintour (EF)

Officials

Paula Higson, Nigel Farminer, Jim Minton, Sharon Sawers, Ragnar Clifford, Brendan Crean, Alastair Coles, Amanda Willits (all HO)

Andrew Lawrence, Andy Cole (HMRC)

John Thorpe, Dominic Scullard (DTI)

Apologies

Anne Carvell (BATC), Keith Best (IAS), Alan Christie (CRE), Douglas Cooke (CSSA), Paul Deemer (NHS Employers), Gerry Lean (CC), Colin Moffat (Sainsburys), Kieran O'Keeffe, Mary Senior (STUC), William White (NFU)

1. Welcome

Paula Higson, Senior Director for Managed Migration, opened the meeting apologising for the Ministers' absence as they had been called to the House of Commons. She thanked members for attending and there followed a round of introductions.

2. Minutes from last meeting and matters arising

Paula Higson went through matters arising from the minutes of the last meeting with members.

Matters arising:

- *Arrangements to be made for officials from the Gangmasters Licensing Authority to attend a future meeting to update members on progress since licensing began:*

Paula Higson advised that from 1 October it became an offence to supply workers to the agriculture, horticulture and food processing and packaging sectors without a GLA licence. Officials consider that it would be more valuable for a representative from the GLA to attend a future meeting as more time will have elapsed and they will be able to report on more operational work. She also advised that enforcement officials will be considered to attend a future meeting. One member remarked that he had written to the Chief Executive of the GLA to raise concerns about the licensing backlog and that he believes some unscrupulous labour providers have been licensed. He also complained that there has been a lack of enforcement activity by the GLA.

Officials present from DTI, IND and HMRC confirmed that their departments have been fully engaged with the GLA.

The member commented that the operational start date has been public for over a year but nothing has yet happened. Another member asked whether the GLA has made plans to licence labour providers operating from abroad. A member responded that the GLA are already informing overseas operators that they will need to be licensed.

Nigel Farminer confirmed that the GLA would be invited to attend the next meeting.

- *Officials to provide members of the group with new sample documents to be issued under the Free Movement of Persons Directive when they have been produced:*

Paula Higson confirmed that the first Free Movement of Persons vignettes have now been issued and she agreed to chase and circulate to members as soon as possible.

- *Meeting with officials to be arranged in June to discuss the specifics of the Worker Registration Scheme:*

This meeting was held on 18 July and will be discussed further during the WRS agenda item.

- *Officials to consider member's remarks concerning the robustness of Lithuanian travel documents and revert to members on this:*

Paula Higson advised that Tony McNulty wrote to the member on 16 May following the last meeting. This item was clarified by the member who had

made the query; the member had been referring to the ease by which a genuine Lithuanian passport can be fraudulently obtained. While IND is doing work to identify forged documents, the member was asking what we are doing to prevent this illegal trade. Paula Higson advised she would feed these comments into IND's intelligence units. The member commented that imposing duties on employers to check documents is futile as it is easy to get real or excellent forgeries. Paula advised that she would take this point away as this needs to be factored into the work being carried out on the customer journey, although under the points-based system account managers will provide more support to employers to assist them in meeting their obligations.

3. Presentation: National Car Parks

Gordon McLardy and Henry Birks from NCP gave a presentation on the work their organisation is doing to ensure they comply with the legislation on preventing illegal migrant working.

The presentation covered the following issues:

- Overview of NCP staffing levels, levels of transient staff, diversity of cultures employed;
- The objective of their controls i.e. to comply with the law, create opportunity for genuine migrants, whilst celebrating diversity and creating an environment whereby it is difficult for illegal workers to get a foothold;
- Information on the work they are doing with the Home Office with the hope of creating best practice across other business;
- Information on their 12-step approach to achieving best practice; and,
- Through their experience, talk to other members about some suggestions for improvements.

They asked other members of the group for comments/questions. One member stated that the best way in which to operate the system is if an employer could contact the Home Office with a potential employee's details and obtain confirmation as to whether the person could work or not. He also added that a small employer would find it difficult to run the system. Gordon agreed that he feels there should be a dedicated bureau to deal with enquiries of this kind. Brendan Crean advised that this would be touched on in a later agenda item, but that work is being done on how the Home Office may be able to validate documents presented quickly and accurately.

One member asked how staff feel about their robust checking process and whether there was any consultation. Gordon McLardy replied that the checking process applies to everyone of every level and is written into new contracts and is part of staff members' terms and conditions. He said that one or two individuals have queried the process, but they have experienced those who are unwilling to comply also tend to be those who "disappear".

Another member commended NCP's approach and said that this is a good way to integrate migrant workers from a wide range of nationalities. However, he also feels that the Home Office needs to engage not only with employers but with migrant

workers as well on the subjects of integration, English language, and health and safety.

Liam Byrne and Jim Fitzpatrick then introduced themselves and apologised for arriving late to the meeting.

Liam Byrne thanked everyone for attending and stated that he feels this group is one of the most important groups to assist with work on change in IND. He advised that he intended to set out a framework for joint discussion for the future of the group's work priorities, what members want to hear about and where we need their help. The Minister advised that he intended to come back to this at the end of the meeting.

4. Presentation: Her Majesty's Revenue & Customs

Andrew Lawrence (Criminal & Enforcement Policy) and Andy Cole (Specialist Compliance Teams, National Compliance) in HMRC attended the meeting at the request of members at a previous meeting to talk about the work HMRC's compliance and enforcement work.

The presentation covered the following issues:

- Overview of HMRC's aims and PSA targets
- HMRC's focus on reducing the tax gap and compliance activity focussed on employer and not the individual
- Illegal migrant workers are not entitled to the National Minimum Wage (NMW)
- HMRC are happy to use their compliance activity to disrupt business that employ illegal migrants where they can in order to create a more level playing field and how these fit with illegal migrant working
- HMRC are happy to provide colleagues in IND with information required to pursue cases and both organisations are working together to improve reciprocal information flows more generally.
- Where HMRC come across information which they know will help IND to progress cases they make sure IND get it; HMRC expect the same in return.
- HMRC are working to better understand illegal working risk indicators so staff will be able to identify relevant cases.
- HMRC are actively looking for ways in which they can improve.

One member said he thought it was extremely difficult for migrant workers to get into the formal economy because of the time taken to get a National Insurance Number (NINO), tax code and open a bank account and asked whether there was any way in which this could be changed. Andrew Lawrence replied that HMRC and DWP are very aware of these issues and they are looking closely at the way NINOs are issued. Work is also being taken forward on whether the visa application process can merge with the NINO application.

Another member stated that he was interested to again see the PSA targets but that labour providers who are trying to operate legally are undercut by those that do not. They are not seeking to avoid paying tax but downward pressure exerted by their customers means that they are using illegal methods - not necessarily by employing illegal migrant workers, but by paying their workers cash-in-hand. Andy Cole replied

that there are finite resources available and so they are allocated to areas of biggest risk, and to have a deterrent effect they are as widely spread as possible. There has been major growth in labour provision but it now sits in many different areas outside of agriculture for example with the growth of on-line purchasing large workforces are required in warehouses and delivery firms.

Another member asked whether an inspector would investigate if evidence was discovered showing illegal migrant workers were receiving less than the NMW. Andrew Lawrence replied that they would not investigate but they are looking for ways to pick up this kind of information and pass to IND to investigate further.

Another member asked whether it would be possible to obtain information about the tax contribution made by migrant workers; Andrew Lawrence replied that HMRC cannot at the moment ask for information from employers as to whether they employ migrant workers and their tax contribution, but that it would need careful thought if it was to be considered in the future. Andy Cole added that there is work underway looking at how the labour provider market interacts with their workers, for example where workers claim tax credit and when they return home they are assisted by their employers so that payments continue illegally.

Paula Higson added that the IND review announced an increase in enforcement and compliance activity and as part of this, IND is working closely with other Government departments to share information. Andy Cole added that there has been a step-change in the relationship between IND and HMRC over the last year and this is a good opportunity to find a way match IND and HMRC data quickly.

Another member expressed concern that it is very difficult for seasonal workers to obtain NINOs quickly enough for the time period during which they are working in the UK. A second member added that it should be possible through joined-up Government to only require a person's documents once, for example when an A8 worker registers under the WRS this should allow a NINO to be issued at the same time rather than going through a separate application process.

Liam Byrne thanked Andrew and Andy for their presentation and told members there would be an opportunity for HMRC to be invited back to a future meeting of the Group to keep the dialogue going.

5. Worker Registration Scheme

Liam Byrne asked members to provide a summary of the paper they had written following the meeting held in July with officials to discuss the WRS and proposals for a different scheme.

One member said that they had concerns about the WRS from its introduction at very short notice, with no Regulatory Impact Assessment and no consultation. He feels that it taxes the lowest paid workers and he is of the opinion that it serves no useful purpose. The requirement to register on the scheme is an obstacle to an A8 worker obtaining a NINO and a bank account. A number of members therefore worked together on a paper containing proposals on how to get the data the Government needs without the scheme. The paper recommends basing this on

NINO information which will show a stock of A8 workers working in the UK. This would not show sectoral data but current data does not give sectoral data in a recognised format anyway. Members feel very disappointed that there was no announcement to abolish the WRS when the announcement was made on the terms of accession of Bulgaria and Romania.

Liam Byrne responded that he is sympathetic to the views the member expressed. The Minister outlined the future ambitions and areas of work to tackle illegal working including:

- A verification service for employers
- More assistance to employers in general to help them understand the requirements
- Closer joint working with other Government departments including the DWP
- Work on ID Cards
- The publication of IND's Enforcement Strategy

The Minister stated that he could not give a definitive view now on the proposals in the paper but that they would be considered in the work that is taking place with DWP and HMRC.

Another member stated that he fully agreed with the previous member's views, and he added that his organisation is again experiencing significant delays in the processing of WRS applications, as well as noting an increase in the number of passports being lost. He acknowledged that turnaround times had improved last year but they had worsened this year and this is causing unrest amongst A8 workers. Another member added that his organisation is concerned about workers handing over their passports to employers, because unscrupulous employers may well retain the workers' passports. Paula Higson responded that there had been a change in process over the summer and that application turnaround times had increased, but the work of the team is now back on track and applications should again be being processed quickly. She was not aware that there was an issue with the loss of passports in this area but she would look into this matter.

Another member added that the customer gets nothing more than a letter after applying for the WRS, but it would be helpful if more information, building on the TUC's leaflet, could be provided to these workers when they register if the scheme is to continue.

Paula Higson advised that in making any decision we would need to take into account its role in restricting access to benefits; a member responded that NINO information could be used to assess how long a worker had been employed in the UK and thus their access to benefits.

Liam Byrne advised that he would discuss practical concerns over members' proposals with the DWP.

6. Accession of Bulgaria and Romania

Liam Byrne told members that supporting enlargement of the EU has been a core policy objective, as shown by the access given to A8 nationals when they joined the EU in 2004. The decision to restrict Romanian and Bulgarian access to the labour market was taken in the light of other work currently ongoing within IND. The IND review, which was published in the summer, announced a major shake-up of the IND with key areas including the doubling of enforcement resources, ID Cards to foreign nationals and the establishment of the Migration Advisory Committee (MAC). The Minister went on to say that it would appear odd to take another step without first bedding in these other changes.

The Prime Minister's Strategy Unit undertook some research and found anecdotal evidence of pressure being exerted on public services due to immigration. The Department for Communities and Local Government (DCLG) is leading the work with local authorities on this. The DTI are to commence two Vulnerable Workers Pilot schemes next year, and the Minister is keen to understand how IND can contribute to this. Liam Byrne confirmed that he wishes to have some of these measures in place before taking any further decisions on immigration policy.

Ragnar Clifford, from Managed Migration Strategy & Review circulated and talked members through a handout detailing who exactly will be allowed to work in the UK on accession, and the documentation they will require in order to demonstrate their right to work in the UK. He explained that it will be an offence for an employer to employ a worker from Romania or Bulgaria who does not have the required documentation showing they can work, and in addition it will be an offence for the worker involved. This will potentially be a criminal offence but the offender will have the option of paying an on-the-spot fine.

Brendan Crean, Head of Contact Centres within Managed Migration told members that IND has committed to improving employer support. The Employers' Helpline are recruiting additional staff and providing improved training to assist. Brendan confirmed that he is acutely aware of the need and he and his staff are working hard to respond to A2 accession. He also suggested that at a future meeting of the group a session could be held to go into more detail on the verification service to ascertain what employers would want and need from this.

Liam Byrne asked members for their comments on this issue. One member commented that his organisation is deeply unhappy about these arrangements. Members asked the following questions:

- Will Bulgarians and Romanians also have to apply for the WRS?
- What will the cost of applying for the cards?
- What is the timetable for consultation on the MAC?
- How is this to be enforced - by whom and how many officers?
- How would you respond to the difference in treatment between A2 and A8 nationals?
- Why was there no consultation with the group?
- Will you require primary legislation for the worker's offence?
- Won't these measures just increase illegal working?
- If an A2 national comes to work in the UK under the Seasonal Agricultural Workers Scheme, what happens if they then abscond (place lost in quota)?

Liam Byrne addressed many of the questions above. Government lawyers are of the view that secondary rather than primary legislation is required to introduce the worker's offence, and its introduction will follow debates a vote in Parliament. The Minister understood members' feelings on the lack of consultation, but he explained that the decision had to be taken and co-ordinated with other EU member states. He wished to emphasise that this is the first step and not the last towards giving access to the labour market to these two states; after seven years the transitional arrangements will not apply anyway. Due to the standstill clause relating to students, highly-skilled migrants and those in work permit employment, the only real debate was on the treatment of the low-skilled.

Liam Byrne stated that he thinks it is the right decision for now and is confident that once established, the MAC will assess the relevant evidence and review the decision. The MAC is due to be appointed in April next year and they will review these arrangements within the next 12 months. On the point of discrimination, the Minister advised that the UK Government has been amongst the most generous in Europe in its attitude to the accession states.

The Minister was asked how many self-employed workers from 1 January 2007 are estimated to then move into employment once the restrictions were removed. The Minister did not wish to speculate on this; Andy Cole from HMRC advised that they have no evidence to show large-scale abuse self-employment by A8 nationals.

Liam Byrne advised that there is still a lot of work to do over the next three months to ensure the system is properly policed. The Government is relying on the goodwill of the vast majority of law-abiding employers, however there will be hard enforcement of these regulations.

7. Employers enforcement publicity campaign

Sharon Sawers, Deputy Head of Marketing and Strategic Communication in the Home Office gave a short presentation on the forthcoming employers enforcement communication campaign. The three elements to the campaign are as follows:

- Re-launch of the online toolkit for employers to help them understand their legal obligations when employing migrant workers.
- Direct mail to employers, focussing on SMEs to explain the basic document checks, direct employers towards the online toolkit and highlight the consequences of employing illegal migrant workers
- National press and radio advertising campaigns

Three areas are being researched:

- Means of detection - would your organisation survive an immigration audit?
- Name and shame - loss of reputation
- Criminality - no excuses. If you employ illegal migrant workers you are breaking the law.

Examples of the text/content were shown to members and comments were invited.

One member said the campaign focuses on checking migrant workers whereas employers are advised to check every potential employee migrant worker or not.

Liam Byrne advised he wanted members to know what the Government's plans are, and he is seeking members' views on the content/wording, and whether the method of communication is appropriate to the Group's colleagues and members.

The following comments were made by members during the course of this discussion:

- Members had not heard negative or positive views on the online toolkit, although it is difficult to judge whether this is because their members are using it and it works well, or simply they are not aware of it.
- There is variation in levels of access to the internet amongst businesses therefore the communications department should make contact with the Small Business Service, and ethnic minority businesses.
- The only way to communicate with all employers is via HMRC as it is the only organisation with a record of UK employers.
- One member commented that their organisation had already raised concerns over their members reporting the use of false documents to the Immigration Service but seeing no action. They also asked whether there is any commercial benefit in doing so.
- Another member commented that there is a commercial benefit in the long run in ensuring that the organisation only employs authorised migrant workers.
- The enforcement message should go hand in hand with a strong anti-discrimination message.

8. Future work plan for the IWSG

Liam Byrne spoke to the group about the reform agenda that has been set for IND. Immigration does have many benefits and these need to be highlighted, but the risks need also to be considered particularly as they are borne by the most vulnerable. A change in immigration policy is required so that the benefits and risks can be more evenly shared by all.

The IND review focuses on four main areas of work, with borders and enforcement central to reform as these are priorities for the public and are the areas for greatest opportunity. The doubling of resources allocated to enforcement and compliance will allow a change in enforcement priorities; the removal of failed asylum seekers remains a key target but additional resources will allow tackling illegal immigration for economic benefit to move higher up the agenda. He recognises that tackling illegal working will require help from employers.

The roll-out of ID Cards will assist in many ways. The Minister explained that identity management plans will be published before Christmas, setting out plans for the issue of biometric visas at posts abroad, the timescales for ID Cards for foreign nationals and British Citizens and e-borders. A document detailing the enforcement strategy will also be published.

Work is already underway to improve cross-government working. As discussed earlier, the consultation and commencement of the MAC will assist in assessing the optimum level of migration to the benefit of the UK economy.

The key issues to be covered over coming months would therefore be:

- MAC Consultation
- Enforcement Strategy
- Plans for ID Cards

Liam Byrne advised that members had already indicated that the future of the WRS is an early priority in their view, and he committed to looking into this and working closely with HMRC and the DWP on how to restrict access to benefits for those who are ineligible.

The Minister invited members to contact him with any further priorities they would like to discuss at future meetings.

Liam Byrne made closing remarks and thanked members for their positive contribution to the meeting.