

Illegal Working Group - fifteenth meeting, 3 May 2006

Date: 3 May 2006; Time: 1345 - 1515

Location

Ministerial Conference Room,
Home Office,
2 Marsham Street

Present

Ministers

Tony McNulty, Home Office Minister of State for Immigration, Citizenship and Nationality
Gerry Sutcliffe, DTI Parliamentary Under Secretary of State for Employment Relations and Consumer Affairs

Members

Officials Jeremy Bevan (HSE), Mark Boleat (ALP), Glenn Cleary (CRE), Douglas Cooke (CSSA), Martin Couchman (BHA), Anne Fairweather (REC), Tom Moran (CBI), Ronald Morton (CSCI), Habib Rahman (JCWI), Owen Tudor (TUC), William White (NFU), Patrick Wintour (EF)
Gordon McLardy (NCP)

Ragnar Clifford, Brendan Crean, Nigel Farminer, Claire Hoskins, Clinton Nield, Rachel Prime, Nicola Thomas, Amanda Willits (all HO), Dominic Scullard, John Thorpe (DTI)

Apologies Anne Carvell (BATC), Keith Best (IAS), Alan Christie (CRE), Paul Deemer (NHS Employers), John Fraser (CSCI), Gerry Lean (CC), Colin Moffat (Sainsburys), Mary Senior (STUC), Lewis Sidnick (BCC), Anthony Thompson (CBI)

1. Welcome

Tony McNulty welcomed and thanked members for attending the meeting. The Minister confirmed that Gerry Lean of the Construction Confederation has agreed to join the group to represent that industry following the death of George Brumwell.

2. Minutes from last meeting and matters arising

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

Matters arising:

- Group members to obtain feedback from their organisations if they have been involved in the Joint Workplace Enforcement Pilot or other illegal working operations

Tony McNulty invited members to share their experiences, whether at a meeting or by circulating a note to members, if they become involved in the pilot or other operations. No comments were made by members.

- 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

Tony McNulty advised that operational staff will visit a future meeting; time constraints prevented them from attending this meeting.

- Officials to provide members of the Group with information about the issue of National Insurance Numbers and comparison with WRS figures. Officials to circulate summary of members' comments on illegal migrant working measures and Government responses

Tony McNulty advised that officials had circulated a paper in January informing them of the numbers of A8 nationals registering under the WRS and those applying for National Insurance Numbers. The paper compared the two sets of data. No further comments were received from members about this particular issue.

At the last meeting members took part in two Syndicate workshops, one of which was concerned with illegal migrant working and the support the Home Office can provide to employers. At this meeting, Tony McNulty advised members that the planned move of Employers Helpline to Sheffield successfully took place on 3 April, and that following this move, plans are now underway to enhance the service offered, later in 2006. The enhancement will involve providing employers with a verification service. The verification service will provide information to employers about the entitlement to work of existing employees or potential employees who have an application or appeal outstanding with IND. The actual mechanism for providing the service is currently being devised, and in formulating the process there will be engagement with key stakeholders to ensure the proposed service meets the needs of employers.

3. Gangmasters Licensing Information Item

Tony McNulty invited members to comment on the Gangmasters Licensing Authority which commenced licensing from the 6 April. One member commented that the Gangmasters Licensing Authority (GLA) had published that they had received approximately 220 applications, yet had only issued 6 licences. The member asked whether this was indicative of teething problems with the system of issuing licences.

Tony McNulty suggested that it would be a good idea for officials from the Gangmasters Licensing Authority to attend a future meeting of the Group to report back on progress made since it commenced licensing. Gerry Sutcliffe added that there is also a role for health and safety officials to be included in this discussion. The DTI's policy paper "Success at Work" also relates to some of the work of the

Gangmasters Licensing Authority as key issues to do with protecting vulnerable workers through ensuring workers are aware of their rights, targeting enforcement on unscrupulous employers and piloting a new approach to help vulnerable workers. The Transport & General Workers' Union won funding to run a pilot project that will focus on sectors and locations most affected by the Gangmasters Licensing Act 2004 and offers services such as translation, advice on employment rights and signposting to community support services.

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

4. Presentation: Free Movement of Persons Directive

Clinton Nield from the European Policy Directorate gave a presentation on the Free Movement of Persons Directive. A copy of the presentation is attached with these minutes.

The Directive sets out the right of free movement and residence for an EEA national and their family members when moving or residing in a state other than their own. EEA nationals will have permanent residence once they have resided in the UK for 5 years exercising their Treaty Rights.

To meet the Directive, IND is to change the wordings within the documents issued to EEA nationals and their family members, and will provide an immediate service via the Public Enquiry Office. Old-style wet ink stamps will be replaced with Euro vignettes which will improve security, combat fraud and enhance the data entry and despatch process within IND.

Action: Officials to provide members of the Group with new sample documents when they have been produced.

5. Worker Registration Scheme

Tony McNulty invited members to comment on his letter of 25 April informing them that the Home Office were going to continue with the Worker Registration Scheme (WRS) for Accession state nationals.

One member, who has been in correspondence with the Minister and officials about the decision to continue with the WRS, asked, why the decision to continue with the scheme was only announced in April if the decision itself was taken in October. The member believes that there have been practical difficulties with the scheme and a large number of people simply do not register. He also stated that there have been no prosecutions for failure to register and the member feels that good employers are being penalised by this administrative burden whereas negligent employers are simply ignoring the requirement that their workers register. The member has continually asked for discussion of the issues around the scheme but has not had the opportunity to do so. The member stated that the data gathered from the scheme is captured elsewhere such as in the Labour Force survey and NINO information, and that scrapping the scheme would at the margin remove an obstacle to working in

the formal economy which in turn would increase revenue to the Exchequer. The member advised that he had requested the papers on which the decision was made but they were refused and he feels that the time and effort he has put into making a case against the WRS has been wasted.

Tony McNulty advised that others including the TUC had made submissions against the continuation of the scheme. He said that it is a very difficult issue as 15 countries have had to decide now what they intend to do for the next three years, and that the UK is one of small number of countries to have allowed Accession state nationals access to their labour market since 1 May 2004. The Minister advised that the clear message is that we intend to keep the scheme under review. The information the UK is producing, by continuing the scheme, is also informing the decisions of other European countries, and is informing wider discussion of the accession of Bulgaria and Romania. We have committed to review the scheme again in October 2006 and the Minister encouraged members to feed in their concerns, assuring members that this is not a waste of their time.

The member then replied, asking for further consideration around the removal of the details requested on the form which are not required. He also expressed concern that by submitting their passports with their applications for registration, A8 nationals are being deprived of their passports when they need them the most. The member said that they should be able to submit copies of their passports rather than the original documents. The member said it is simply a counting exercise rather than a registration scheme.

Gerry Sutcliffe advised that the DTI's "Success at Work" document is provoking discussion and consultation on how to protect the most vulnerable workers and those that need the most support. The idea is to involve business in the scheme. Tony McNulty advised that officials would follow up the member's point regarding the submission of their passports with the application.

The member also went on to say that the IND website has been extremely slow running and only accessible occasionally, but the form currently on the website expired on 30 April 2006, and states that the new form will be available from June onwards. As this is the case, the member asked whether it would be possible to reduce the form before the new form is published. If not, the member advised that he will issue advice to his members to complete only the sections that they are legally required to.

One member asked the Minister to explain why the decision to continue with the scheme had cross-Government and cross-European implications. The Minister explained that in making the decision to continue with the WRS, wider concerns were considered as the decision has a knock-on effect on other EU countries that are also considering whether to open their labour markets to A8 nationals.

One member advised that he was concerned with both the way the WRS was unnecessarily introduced by the Government at the very last minute and he remained concerned now that the decision to continue with it was also made with no consultation.

Tony McNulty advised that the Government is continuing to allow A8 nationals free entry to the UK and other countries have not chosen to do the same. He advised that the WRS was introduced for a number of reasons, and since introduction it has been reviewed regularly.

The member commented that he is very much for the free movement of people but that it is not right to take money from the poorest of these workers for a scheme that does not accurately produce the data it is designed to produce. The Government's stated aim is to count the number of workers from A8 states in the UK but the data is inaccurate. The member informed the group that he will advise members of his organisation on the options available to them with regard to the scheme which in practice included workers completing the application form to be photocopied by the employer with the form not actually being submitted.. The member is of the view that the Government does not consider the scheme to be a priority as no resources have been allocated to enforce it effectively.

Tony McNulty advised that the first decision was with regard to the free movement of people, whereas the second was involved with the WRS. Gerry Sutcliffe advised that the specific questions around the application form could be discussed further, and a member pushed for timing of this discussion.

Tony McNulty advised that the review would take place with the decision made in October. Gerry Sutcliffe added that the review will need to take into account how else the Government may be able to collect the information it requires on workers from A8 states. He also said perhaps consideration should be given to on how else to reach vulnerable workers from A8 states who have not necessarily registered on the WRS.

One member said the scheme had been damaging and that continuation of it needed to be reconsidered.

Gerry Sutcliffe advised that reconsideration of the decision to continue with the WRS was not something that could be done at the meeting, but it is something Ministers and members can consider during the review period. Tony McNulty advised officials would get in touch with members interested in discussing this issue further and arrange a meeting to inform the review of the future of the scheme. Members agreed that a meeting in June with interested members would be helpful.

Another member raised the issue of A8 nationals being deprived of their passports, and Tony McNulty advised that officials would also look into that issue.

Another member raised the point that in the report by the Centre for Migration, Policy and Society on low-wage employment in Central and East European, which was recently circulated by a member to other members of the Group, one A8 national interviewed said they initially felt cynical about the scheme but they felt more positive when they received a leaflet concerning their employment rights and that registration provides a line of communication with these vulnerable workers.

Another member said that consideration and advice of this sort is not given to other migrant workers, including those from the 'old EU'. Tony McNulty advised that some

sectors are taking forward excellent work and pilot schemes in this area, such as these leaflets produced with the TUC and other work such as by the Transport and General Workers Union.

One member interjected saying that the most vulnerable A8 workers do not register, therefore they are not receiving this information. Gerry Sutcliffe advised that in the work the TUC and Citizens Advice Bureaux are taking forward, they are trying to get this information to various communities and there needs to be further discussion as to where we need to be involved for getting better quality information to these groups.

Tony McNulty advised that a meeting with officials will be arranged in June to discuss the specifics of the form. Gerry Sutcliffe advised that members will also be sent copies of the DTI Success at Work paper.

Tony McNulty also advised that he and officials would take away the point with regard to the robustness of Lithuanian travel documents and would come back to members on this point.

6. Study on Employers' Use of Migrant Labour

Rachel Prime from the Immigration Research and Statistics Service gave a presentation on a report, "Employers Use of Migrant Labour", commissioned by the Home Office and carried out by the Institute for Employment Studies. The presentation is attached to these minutes. The aims of the study were to ascertain why and how employers use or avoid migrant labour, and it was also used to inform the design of the Points Based System. Rachel thanked those members who may have been involved in the study which was carried out between May and September 2005, and she pointed out that the study was completed prior to the commencement of the work of the Gangmasters Licensing Authority but evidence found during the course of the study supports the policy work that has been undertaken in this area.

The main findings from the study to note are as follows:

- The current system is not well understood
- Many employers do not make a positive decision to seek migrant workers
- Increasing recruitment difficulties over the past 5 years
- Migrants are vital for low-skill business survival
- Migrants have a more acceptable work ethic
- Mixed views of agencies

In terms of illegal working, the findings indicated:

- It took place in lower-skilled employment
- There is a range of attitudes to illegality
- Some trusted agencies were used to conduct checks (or 'turned a blind eye')
- Employers received regular approaches by agencies (sometimes aggressive)

Members were invited to comment and ask any questions on the study. One member said that he did recognise the research and broadly agreed with the

conclusions drawn but commented that he is aware certain supermarkets who are members of the Ethical Trading Initiative who are selective about their ethical trading and continue to employ illegal migrant workers, undercutting competitors by 20%. Tony McNulty commented that it will be necessary to carry out work on other parts of the supermarket supply chain.

7. A Points-Based System: Making Migration Work for Britain

Nicola Thomas from Managed Migration Strategy and Review (MMSR) gave a presentation on the command paper, "Points-Based System: Making Migration Work for Britain", which outlines proposals for the points-based system and was published on 7 March. A copy of the presentation is attached to these minutes.

Nicola explained that a number of workshops with stakeholders have been held since publication of the paper to present the proposals, answer any questions and record observations. The presentation covered:

- The benefits the new system will have for migrants and sponsors
- Structured decision making and points-scoring will provide greater transparency, objectivity and consistency to decision-making process.
- Sponsorship will play an important role - those who benefit from migration should help in maintaining the integrity of the control
- Further workshops will be set up to clarify what the exact role of a sponsor will be under the points-based system.
- Focus of compliance to switch from applicant to sponsor therefore we will need to incentivise sponsor behaviour
- Financial securities will be applied based on generic risk factors indicating countries and sectors that are high risk
- Tier 1: for highest skilled migrants only
- Tier 2: skilled workers with a job offer from sponsor in UK
- Tier 3: employers should look the UK and EU workforce for low skilled labour, but schemes may be set up within this tier if a temporary labour shortage is identified
Skills Advisory Body will draw on existing networks, including Sectors Skills Councils and Sector Skills Development Agency, business, unions and the public sector. For Tier 2 it will provide an annual shortage occupation list and for Tier 3 it will identify shortages for which a scheme might be necessary.
- Tier 4: this tier is for students and educational institutions will act as sponsors.
- Tier 5: Youth Mobility scheme for young people from participating countries to experience life in the UK and allows a maximum of 12 months work in a 24 month period.
- Tier 5: Temporary Workers will allow people to work in the UK for non-economic reasons in the following five sub-categories: Creative and Sporting, Voluntary, Religious, Exchange and International Agreement.
- There will only be entry quotas under Tiers 3 and Tier 5 Youth Mobility.

Tony McNulty advised members that there is still sufficient time before the commencement of the points-based system for much more discussion, and that he observed that a detailed session on Tier 3 would be of interest to members. The Minister advised that officials will be exploring the various sectors in great detail to

ascertain how the points-based system will affect them. The Minister invited members to comment or ask questions.

One member said he thought much more detailed work would need to be undertaken to establish the Skills Advisory Body. He also expressed concern over the issue of sponsorship for small businesses who may only wish to bring migrant workers into the UK occasionally and thus would not have a proven track record in terms of compliance. He also raised the point as to how the distinction between shortage occupations in Tier 2 and the low-skilled temporary routes would be made by the body.

Tony McNulty advised that views on highly-, medium-, and low-skilled workers will vary and will be defined when working through further detail of the points-based system.

A second member asked a general question about whether work is being done on the possible unintended consequences of the points-based system. He advised the options seemed to be that migrants must find another job before their leave has expired, or else return to their country of origin and re-apply. This would lead to quite an easy slip into illegality. Another member supported and agreed with this comment; he feels that the new system implies that once the migrant worker has lost the support of their employer, they are effectively on their own. However, this does not take into account the thriving informal economy and the network of family and friends that migrant workers build up and from whom they can receive support.

Nicola Thomas responded to these points, saying that officials are spending a considerable amount of time each week trying to identify potential problems and assuring the design of the system. She stated that she wants to know about these potential problems. She also said that at the moment, the system is the same in terms of the slip into illegality, but the new system is looking to better manage compliance. Nicola acknowledged it is going to take time to get this right and it is through holding further workshops with employers, including small businesses that we will be able to work through these issues. Nicola observed that the problem of sponsor rating will also affect new companies. The aim is to meet with employers of all sizes to ascertain best practice at the moment and build on this to encourage all employers to comply.

A member asked about the illegality of employment and the issue of undocumented workers in the UK at present. He asked whether the Government has been thinking creatively about this issue. He also referred to the Code of Practice for employers on the avoidance of race discrimination in recruitment practice in relation to the illegal working measures introduced in the Immigration, Asylum and Nationality Act, saying that the Government had committed to consulting with the CRE. He asked whether his organisation and others would be consulted on its content.

Tony McNulty advised that we have undertaken to carry out a consultation on the illegal working measures and that this would form part of it. The Minister advised that there are no current plans to regularise the status of undocumented workers in the UK at the moment. He reiterated that with greater clarity of the immigration system with the introduction of the points-based system, this would improve employer

compliance with the system. The member replied that regularisation is just one way of bringing these undocumented migrant workers back into mainstream society; this would be a win-win situation as they could be brought into the formal economy, thus making a contribution to revenue which currently goes unpaid, but also it would decrease the likelihood of their exploitation. Tony McNulty advised that this would however create a pull factor for others who may attempt to come here to work illegally and then later be eligible under a regularisation programme. The member commented that this should be linked in with managed migration strategies.

The Minister advised that one of the widest regularisation schemes was allowing Accession State nationals full access to the UK's labour market. He advised that it is clear that more detailed discussion would be helpful on this issue and that within the next 12-18 months before the introduction of the points-based system there would be opportunities for all sectors to feed in during this time.

One member raised a query about the Seasonal Agricultural Workers Scheme (SAWS) - as five EU member states are now allowing Accession state nationals access to their labour markets, there is more pressure on agricultural businesses in recruiting staff. The member sought a commitment from the Minister that the SAWS quotas would not be drastically cut over the next three years. The Minister was unable to give that commitment but did advise that he would revert to the member on the detail of the future of SAWS. Whatever is decided, it needs to be robust enough to be able to deal with the work and explore whether it will in the future be necessary to look elsewhere for this sort of labour.

Another member commented that as wealth is increasing in Eastern Europe, nationals from those states will increasingly switch to work in other sectors such as the financial sector.

The Minister advised that consideration will need to be given to Bulgaria and Romania.

One member advised that he considered that the influx of labour from Eastern Europe would continue for some time as the UK is an attractive place for these workers. He expressed doubts about the Skills Advisory Body as it will be employers who cannot get workers in their particular sectors/areas who will be best placed to identify any labour shortage. This member asked whether more work may be moved abroad.

Gerry Sutcliffe advised that if the SAB did not keep track of skills shortages, businesses would have to complete their own audit. The member argued that most businesses do this already. Another member interjected and said that he thought there would need to be someone to police the system to decide who was needed, in which sector and at what time. There would need to be a central body to be able to give such advice.

Tony McNulty closed the meeting concluding that there needs to be and will be significant input from across the business sectors over the coming months. He advised that he will write to members on the points raised and action points will be circulated to members shortly.

