

Illegal Working Group - thirteenth meeting, 6 July 2005

Date: 6 July 2005; Time 9.30 - 11.30

Location

Location Ministerial Conference Room,
Home Office, 2 Marsham Street

Present

Ministers

Tony McNulty, Minister of State for Immigration, Citizenship and Nationality
Gerry Sutcliffe, Parliamentary Under-Secretary of State for Employment Relations,
Competition and Consumers

Members

Anthony Thompson (CBI), Belinda Brooke (REC), Colin Moffat (Sainsbury's), Ian Barr (CRE), George Brumwell (CSCS), Mark Boleat (ALP), Martin Couchman (BHA), Mary Senior (STUC), Nick Clark (TUC), William White (NFU)

Officials

Nicola Thomas, Tim Woodhouse, Matthew Capper, Claire Hoskins (all HO), Jane Whewell, Peter Whittington, Jason Goddard (all DTI), Jeremy Bevan (HSE)

Apologies

Justin McCracken (HSE), Kay Carberry (TUC), Lewis Sidnick (BCC), Paul Deemer (NHS Employer), Tom Hadley (REC)

1. Welcome

Tony McNulty welcomed members. The group agreed to re-order the agenda to discuss the more substantive issues relating to the points-based system and the new illegal working measures first.

2. Points-based immigration system

Nicola Thomas (Head of the Employment Taskforce) outlined the current position:

- The aims of the proposed new system were set out in the five year strategy;
- The new system would govern admission to the UK for work and study;
- Officials have looked at defined objectives and the tests against which the system should operate;

- The Home Office would go out to consultation shortly;
- The consultation will be relatively high-level in terms of detail, will last for an extended period, and will be pro-active with various workshops and sector specific forums.

Tony McNulty noted that it was planned to publish the consultation prior to the Summer recess and although the Immigration, Asylum and Nationality Bill had its second reading on 5 July, the implementation of the points-based system and the measures in the Bill would run side-by-side. This timescale would leave sufficient time for detailed consultation. He suggested this Group meets as a workshop in the Autumn as part of the consultation exercise to discuss the points-based system and illegal working measures in more detail. He offered the TUC and CBI the opportunity to arrange additional, separate seminars with their members if there was demand.

Action: arrange a workshop for members of Group in the Autumn as part of the consultation on the points-based system and to discuss worked up detail of the illegal migrant working measures in the Bill.

The following points were raised by members in discussion:

- A points-based system is the right way to go in terms of transparency and providing a flexible means of meeting the demand for workers;
Features that should be part of the system include: a high value on existing job offers, flexibility in terms of points weighting, an effective communications plan utilising stakeholders, and clarity on how low and intermediate skill levels are to be used;
- Low-skilled schemes have historically been time-limited and subject to review, but low-skilled shortages in the economy are permanent;
Accession States will provide the bulk of low-skilled labour for some time, especially if EU grows further;
- The Government needs to ensure it consults employers and trade associations across all sectors as each sector will have differing needs and requirements;
- A points-based system in its design should not restrict successful applications to particular countries;
- The introduction of bonds as part of points-based system may encourage illegal entry;
- This is an opportunity to look at the long-term skills gaps in the domestic workforce and this should be connected to the work being undertaken for the points-based system - the Home Office and DTI need to ensure they are joined up with DFES.

Tony McNulty and Gerry Sutcliffe encouraged members to view this as an opportunity to convey positive messages about why the UK needs migrant workers, emphasising that it should not be viewed as either restricting migrants or taking jobs away from the domestic workforce. IWSG members had an important role to play in conveying these messages and their comments on these issues would be taken into account by the Government when implementing its manifesto commitments in this area. Tony McNulty praised the recent CBI statement on the contribution made by migrant workers.

The CRE is holding a seminar regarding migrant workers later in the year and would be happy to circulate information to other members.

Action: CRE to circulate information on the seminar.

3. Discussion: new illegal migrant working measures

Tony McNulty updated members on the progress of the Bill. The Second Reading had taken place yesterday and the Government would anticipate gaining Royal Assent well into 2006. The Bill needed to be seen in the context of the 5-year strategy and was not intended to be the vehicle to achieve all the proposals set out there, as not all of them required primary legislation.

Members had received a letter from Tony McNulty setting out the illegal working measures included in the Bill and the item was opened to discussion.

Members expressed the following views:

- One member reiterated their organisation's continued opposition to the introduction of civil penalties;
Some members felt the principle behind civil penalties and a knowing offence seemed sound and encouraged the Government to publish evidence to demonstrate what improvement the changes make;
- Others members felt it was be difficult to support the proposals at this time without more detail being provided;
- Distinguishing between employers who show incompetence and those who deliberately flout the law will do little to address the exploitation of workers - this echoes discussions held with the Gangmaster Licensing Authority regarding its licensing conditions;
Withholding an individual's passport should be made an offence - although accept this is included in ID card legislation;
While the emphasis remains on tracking down people in illegal employment relationships, as opposed to focussing the exploitation, the financial incentives for exploitation will continue;
- The fines would not provide a deterrent when compared with the likelihood of getting caught;
- Rogue businesses make their money through tax evasion (i.e. illegal migrant working is a subsidiary issue), and HMRC appear unable to act unless a business is registered leading to the authorities pursuing businesses with good records rather than genuine criminals - dealing with tax evasion is a key element in tackling illegal working;
- While dealing with the consequences of illegal working through penalties, the Government needs to ensure it is also preventing abuse by for example putting pressure on procurers to maintain certain standards in their dealings with contractors and by more rigorously tackling false self-employment;
- Employers will need clear, unambiguous and easily accessible guidance to ensure they are aware of their obligations and treat applicants and employees fairly;
- Concern that given the burden on business, the new proposals would be no more effective than the existing legislation;

- The greater the burden on business the more scope there is for perverse incentives as more businesses could be driven to the rogue end to avoid the bureaucracy with the effect that the market for illegal workers increases;
- A key problem appears to be enforcement strategy - members have been assured that the Immigration Service pursue rogue employers, but all legitimate businesses see is an increase in the burden on them. Section 8 has made employers check documents, but they see little result. The Government needs to present more evidence of the work it is doing in this area;
- Businesses will need support from the Home Office to enable them to successfully carry out follow-up checks after the point of recruitment;
- The Government needs to be clear from the outset about the terms under which civil penalties will operate and be enforced - how many inspectors will there be, how will the bureaucracy of yearly checks work, will penalties be used where students work more than 20 hours.

Members were reassured that employers would not be penalised where students worked beyond the conditions of their stay without the employer's knowledge.

Gerry Sutcliffe contextualised the measures in the light of the Hampton Report into the regulatory burdens on business, emphasising the compliance side to civil penalties.

Tony McNulty reminded members that the measures in this Bill did not represent the entirety of the Government's action against illegal working, but formed part of a larger picture which included combating exploitation, although this to a degree was outside the aims of the Bill. Tony McNulty agreed to circulate a summary of members' comments providing Government responses and emphasised that although the measures placed burdens on businesses, the Government would also play its part and improve the support service it provided.

Action: officials to circulate summary of members' comments and Government responses.

4. Worker Registration Scheme

There was acknowledgement that though the application process had previously had practical problems, it was now running fairly smoothly, although a number of agricultural businesses had reported problems regarding lost passports and returned application forms.

The rationale for the scheme's continuation was queried especially when according to one member's calculations the scheme undercounted Accession State workers in his sector by a factor of four or five and had cost businesses approximately Â£2 million and the workers Â£6 million. It was also felt that the scheme detracted from the effort to combat illegal working and added to the problem of tax evasion.

Several members endorsed this view, although there was recognition that some of these issues were sector-specific (the numbers registering in the hospitality sector were considered to be about right) and acknowledgement that the figures provided

by the registration process were useful both in helping to understand managed migration and for presentational purposes.

Everyone who registers currently receives information from the TUC about their rights to prevent exploitation and there was concern about how these workers could be reached without the WRS, especially as some employers may already be reluctant to encourage workers to register in order to keep them away from the authorities. There was also some concern that some workers were being labelled 'self-employed' in order to negate the need to register and that those in the UK and now registered for 12 months were not receiving any information on documents to confirm their status.

Other on-going concerns included the intrusiveness of the information required for registration, the difficulties faced by migrant workers in opening bank accounts, and the problems in applying for a national insurance number - the applications for which are not commensurate with the WRS figures.

Tony McNulty informed members that the WRS would be reviewed in the Autumn and a decision taken about whether it would continue beyond May 2006. He suggested that the issues raised merited further discussion and suggested a meeting to tie in with the review. He encouraged members to continue to feed in their comments as a proper and informed debate was important.

Actions: officials to arrange a meeting to discuss the WRS further in the Autumn.

In the context of the WRS one member outlined the Construction Skills Certification Scheme and the role it played in regulating employment in the construction industry through its link to health and safety and skills. There are approximately 750,000 construction workers registered on this scheme. The sector is looking at enhancing this scheme and developing a smartcard.

Tony McNulty asked to be sent more details of this scheme.

Action: member to send details of CSCS and the proposed smartcard to Tony McNulty.

5. Update of activity

Tony McNulty informed members that since the last meeting the Government has undertaken substantial work in the area of illegal working, including:

- Earlier this year, DTI and the Home Office jointly produced brief guidance specifically for the construction industry, clearly and concisely setting out the responsibilities of employers in respect of illegal working. This arose as a response to discussions held with representatives from the industry.
- Officials have conducted compliance support work, in particular giving a presentation to Birmingham City Council and attending the HR in the NHS conference, discussing issues and distributing guidance to delegates.

- UKIS have attended talks with supermarkets as part of the audit being undertaken in relation to compliance with the gangmaster licensing regulations.
- As some members will know, officials attended the CBI's Sectoral Employment Issues Committee to discuss issues relating to illegal migrant working with wider industry representatives.
- The Home Office with IOM is producing a leaflet for distribution in Romania highlighting the realities and dangers of clandestine entry and illegal working in the UK and the measures in place to tackle it. Tony McNulty also informed members that he was due to appear on Romanian television to discuss such issues.
- In February, we published our five year strategy for asylum and immigration in 'Controlling our borders: Making migration work for Britain'. The Government has published the Immigration, Asylum and Nationality Bill.
- Correspondence with STUC on a range of asylum and immigration issues following their Annual Congress.

Members were also informed about an audit scheme being run by the Recruitment and Employment Confederation which measured their members' practices against legislation, including that governing illegal working, and REC's own code of practice. This was felt to be a successful example of sector-led compliance action.

6. Future of the IWSG

Tony McNulty inquired whether members felt the stakeholder group should continue and if so whether there should be any change to its format.

There was a general consensus among members that the group could consider wider issues insofar as they related to illegal migrant working, such as the question of tax evasion, the nature of employment relationships, and the consequences of economic migration in terms of its possible impact on wages and domestic workforce skills gaps.

Gerry Sutcliffe noted that he believed the group sat well within the Home Office migration agenda although agreed it touched on a number of cross-government issues. As a consequence, expertise from other departments should be brought in to keep the group informed and enhance debate.

Tony McNulty summarised the discussion stating it was clear that members did not want to lose the focus on illegal migrant working, but that there was a need to bring in some wider managed migration issues to inform that debate. Given the agenda at today's meeting there was clearly an on-going work programme and he was keen to get issues onto the table and have a proper and transparent policy focussed debate.

Tony McNulty recommended that officials prepare a paper for the next meeting looking at the shape and format of the group. If members wish to feed into this then they should write to the Home Office.

Actions: officials to provide a paper setting out future shape and format of group for the next meeting and members to feed in via correspondence should they wish.

7. Close