

Illegal Working Group - sixth meeting, 8 July 2003

Date: 8 July 2003; Time: 1500

Location

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

Chair

Beverley Hughes, Minister of State for Citizenship, Immigration and Community Cohesion.

Present

Lutfur Ali (DoH), Kay Carberry (TUC), Shaun Leavey (NFU), Tony Merricks (CSCS), Margaret Murray (CBI), Paul Williams (SBS) Martin Couchman (BHA), Colin Moffat (J Sainsbury's).

Officials attending

Russell Bain, Mary Batchelor, Don Ingham, Catherine Pool and Sara Kvarnstrom, Ian Barr (CRE), David Frost (BCC), Justin McCracken (HSE), Marcia Roberts (REC), Denise Keating (M&S).

1. Introductions

The Chair welcomed attendees, in particular Don Ingham, speaking about enforcement on behalf of the Immigration Service, and apologised for a slightly early departure from the meeting due to Parliamentary commitments.

2. Minutes

The Minutes of the fifth Illegal Working Steering Group and steering group members, held on 18 June 2003, were agreed. The minutes would be published on the Home Office website shortly.

3. Consultation process on proposed changes to section 8

Introducing the proposed secondary legislation on a sector-by-sector basis (as suggested at the last IWSG meeting) may appear a more proportionate response to illegal working. Legal counsel having been sought, the Chair confirmed that legally it is possible to introduce two schemes: one - comprising all the measures laid out in the consultation paper - for the sectors in which illegal working is deemed to be prevalent, and another, with legislation as it currently stands, for remaining sectors.

The Chair illustrated that the definition of a sector would be difficult and that the lines between sectors, and between sectors and their subsidiaries, are blurred.

There are three options going forward after the consultation period: applying the proposed legislation across the board; applying the proposed legislation to those sectors that are most affected by illegal working; or doing nothing. The public consultation should inform the decision over which of these options is best.

Approval of the consultation paper (provided to the members before the meeting) was sought. It will be sent out for wider consultation before the parliamentary recess in order to test views more systematically amongst businesses and the general public.

Discussion

Reference was made to the need to ensure that agencies and gangmasters cannot escape statutory liability on a technicality (the definition of "employer"). It was felt that some licensing or accreditation system for agencies and gangmasters would be an important corollary to the consultation. It was pointed out that most responsible agencies already carry out checks to ensure that temporary workers are entitled to work, so this would not place an extra burden on them. If agencies could be in some way approved by the government, then employers could more easily ensure that they use legal sources of labour. The Chair indicated that this line of enquiry would be explored before the next meeting of IWSG.

Clarification was requested in the consultation paper over what action should be taken under the proposed secondary legislation when an employee produces two documents from the second list which are inconsistent. (For example, a woman born outside of the European Economic Area who is married to an EEA national who produces two documents in different names). Mary Batchelor explained that a document reconciling the other two (in this example a marriage certificate) would need to be produced. This is currently in the statutory instrument itself, but it was felt that further clarification in the consultation paper would be useful.

A list of European Economic Area/EU/EU accession states in the consultation paper was also requested.

The possible introduction of entitlement cards was raised again. The Chair explained that an ID card for all people entitled to reside in the UK containing information on working status would be very effective in tackling illegal working. However, there is still much to be done before the card can be introduced. Even once the legislation and technology is in place to produce a secure ID card with biometric data (like a passport or driving licence) it would still take time to roll out. It is likely that people would receive a card on applying for a new driving licence or passport so it could take at least six years for the card to be generally in use. Therefore, continuing with the work currently underway remains a valid and important task.

The group felt it would be advantageous to give consultees some context in which to consider the proposed changes to legislation, by way of a summary of the issues covered by the Illegal Working Steering Group and steering group members. The Chair agreed that a brief covering letter summarising the composition of the group and outlining the range issues it has considered would be useful. IWSG and steering group members would like to see a copy of such a letter before it is sent out.

Some references to legal routes through which migrants can work in the UK would be beneficial within the consultation document. It would be better received by employers and less likely to be perceived as another way to inhibit the employment of ethnic minorities.

Action

It was agreed that the following amendments would be made to the consultation paper:

- A list of EEA countries will be annexed to the paper;
- Legal migration routes in place will be highlighted within the paper;
- The need for a third document to account for any discrepancy between two documents from the list will be made clearer;
- A question to determine what employers currently know about legislation and their responsibilities regarding illegal working will be included in the questions for consultees.

Members of IWSG and steering group members agreed that the consultation paper, with the above amendments, should be sent out to the organisations listed for wider consultation. A covering letter will accompany the paper setting out the context of the consultation, the work of the IWSG and steering group members and, in very broad terms, the range of issues covered by IWSG and steering group members. This letter will be sent to IWSG members and steering group members before the consultation is sent out.

The possibility of a licensing/accreditation scheme for agencies and gangmasters in conjunction with other governmental departments will be examined before the next meeting.

4. Enforcement of illegal working - employers and the immigration service

The Chair summed up the questions that have arisen from the IWSG and steering group members regarding enforcement: how is it carried out; what happens to illegal workers and employers when immigration offenders are discovered in the work place; what are employers' obligations to report their suspicions.

Everyone in the group recognised the importance of stepping up enforcement activities in order to tackle illegal working, to make the legislation a real deterrent. While there are loopholes in the legislation which can be exploited, channelling IS resources into tackling illegal working is not as productive as the government would like as operations cannot be translated into prosecutions.

The Chair pointed out the challenges faced by the Immigration Service. Discovering and removing failed asylum seekers is the Immigration Service's top priority. However this is not necessarily incompatible with operations to tackle illegal working which can reveal failed asylum seekers to the authorities. The Chair then handed over to Don Ingham, Director of London Operations - Enforcement within the Immigration Service, to comment.

The Immigration Service

Don Ingham began by stressing that the Immigration Service (IS) has generally had very good relations with employers, although he recognised that the expectations of employers were not always met when they made reports to the IS.

On receiving information about a potentially illegal worker from an employer/another source, the IS first looks to work with the employer to make arrangements to apprehend any immigration offenders at the lowest risk possible to all concerned. Employers co-operating, even at a late stage, means it is difficult to prosecute them under section 8.

Very often tip-offs from employers pertain to documentation, and suspicions of forgery. In this instance, the Local Enforcement Office would talk through the documentation and/or get it faxed through. Sometimes forgeries are easily detected, even by fax (due to spelling mistakes or inconsistencies for example). Other forgeries are much more difficult to spot. In this instance, if the IS do not have the capacity to send someone to check the document first hand, this may preclude determining whether the document is a forgery.

Operations to tackle illegal working are intelligence led. Where good intelligence has been given, and the IS have the capacity to carry out an operation, Immigration Officers would usually seek to remove illegal workers from the country. Where appropriate, the IS would look to prosecute employers and/or illegal workers.

Responding to reports of suspected illegal working from employers can be affected by competing IS priorities. With an estimated 30 million employment changes each year, the IS is not in a position to respond immediately to each allegation of illegal working. Where there are no immigration officers available to follow up the intelligence, the Local Enforcement Office will try to obtain an address to follow up at a later point. These addresses are not always bona fide. Even when immigration officers are available to carry out enforcement, he/she needs to be arrest trained, or accompanied by a police officer. The IS is gradually training its officers in arrests but in the meantime, is dependent on the availability of police officers to carry out successful operations.

Discussion

What kind of "self-help" is available to employers currently? Guidance, printed or on the website, is necessary for employers to evaluate whether documentation is forged. There is not a clear view of what employers know and do in practice, and what information they have to hand. Reports about the help line have been mixed. This is an area where officials will seek more information

Don Ingham explained that the IS targets workplaces where intelligence suggests there is a number of individuals suspected of working illegally. It was agreed that it is currently unclear to employers who report suspicions of illegal working whether the tip-off is acted upon, especially where a single employee is concerned. An area for further thought is how the IS can communicate what action has been taken to employers.

Examples were cited of the seemingly threatening behaviour of potential organised criminals arriving at workplaces, and Eastern European Employment agencies contacting employers offering labour supplies. When asked what action employers could take in these instances, Don Ingham assured the group that they can get advice from the IS or the police. Employers may need some guidance for this, e.g. numbers for Local Enforcement Offices.

Action

Consideration must be given to how the Immigration Service can feed back to people making reports so that they feel confident that action is being taken.

Officials will investigate what sources of information are currently available to employers on the law to prevent illegal working, what the quality of these sources is, and how they could be improved, perhaps drawing on the example of Holland which has very robust support material for employers. Officials will also look into current practices among employers to ensure they are not committing a section 8 offence.

Employers would find a list of numbers to contact for advice on immigration issues useful - officials to look in to this.

5. Any other business

No other issues were raised.

6. Date and possible topics for discussion at next meeting

As the wider consultation will not be completed until October, it seems opportune for the Illegal Working Steering Group and steering group members to take a break over the summer. Therefore the next meeting will take place in early October, following the consultation. [Exact date to follow].

Officials will be maintaining contact with IWSG members and steering group members over the summer, where possible informing them of feedback from the Consultation on a rolling basis.