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6 August 2007

Prevention of illegal working

Response by the Association of Labour Providers to Home Office consultation

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Introduction

1. In May 2007 the Home Office began a consultation on the implementation of new powers to prevent illegal migrant working in the United Kingdom. Comments are sought by 7 August 2007.

2. This paper sets out the views of the Association of Labour Providers (ALP). The Association was formed early in 2004 by 18 labour providers. It now has 143 members and is recognised as the representative voice for those labour providers that serve the agriculture and food industry. (Full information about the Association and its work is available on its website: www.labourproviders.org.uk.) The Association is a member of the Home Office's Illegal Working Group. Illegal working is particularly relevant to labour providers. Legitimate labour providers face unfair competition from those who use illegal workers, evade tax and undercut them. They also have to meet a heavy cost in complying with requirement designed to curb illegal working. Labour providers therefore have a particular interest in the government's proposals to prevent illegal working.

Executive summary

3. The ALP fully supports the government's objective of preventing illegal working. Those labour providers that operate within the law face unfair competition from businesses using illegal workers as invariably such arrangements also involve tax evasion.

The government's proposals will have only limited success –

- They ignore the extent to which those not entitled work in Britain can obtain forged or fraudulently obtained documents from other EU states.
- They overstate the weapon of denying access to services as few illegal workers wish to use such services.

- They do not fully recognise that illegal workers generally do not have easily identifiable employers.
- The special schemes for the Accession States and the for Bulgaria and Romania get in the way of what it is trying to do on illegal working and should be abolished.

The government's proposals

4. Broadly speaking the government's proposals comprise –
- Tougher checks abroad on those seeking to enter the UK.
 - Making it easier for employers in the UK to check someone's identity.
 - Tougher penalties on employers caught using illegal workers.

Why curbing illegal working is important

5. If workers are not legally entitled to work in Britain then they will probably also be outside the tax system, as will the people who engage them. A labour provider employing illegal workers, avoiding PAYE, national insurance and corporation tax payments, enjoys a cost advantage of over 30% compared with a legitimate operator. In some parts of the country it can be difficult for legitimate businesses to win contracts because they cannot compete with those using illegal workers.

6. There are of course other reasons why illegal working should be stopped – including the loss of tax revenue, linkages with other illegal activity and the scope for exploitation of those not entitled to work in the country.

Routes for illegal working into Britain

7. Those not entitled to work in the UK but who intend to do so have a number of routes open to them –
- Acquire a forged UK passport.
 - Acquire a valid work permit or visa that will entitle them to work in the UK.
 - Acquire a passport or identity card, either forged or improperly obtained, from another EU country which gives the same entitlement to live and work in Britain as a UK passport.
 - Travel to Britain as a tourist or student and then work in the informal economy.
 - Travel to Britain with no documents and work in the informal economy.

8. The second route is probably closed – the UK passport system is secure. The fifth route is high cost and risky and is probably not greatly used – but where it is, the workers may well be subject to exploitation given their status.

9. The government's proposals are largely aimed at the middle three routes. However, they ignore two elephants rampaging around the room – the ease of obtaining forged or fraudulently obtained EU documents and the nature of employment in the UK.

Documents from EU countries

10. It is comparatively easy to obtain identity documents from a number of EU countries. These may be forged or fraudulently obtained. This route is most easily open to people from the former Soviet Union obtaining documents from the Accession States. Such documents, unless detected, are as good as a UK passport. Even if detected an employer could reasonably argue that he had done the appropriate checks. Expelling a worker caught with such a document achieves little as the worker can easily return with another document.

11. The government's elaborate plans for biometric visas are irrelevant to tackling the issues of bogus EU documents. The government is proposing nothing to address this problem, and accordingly workers, particularly from the former Soviet Union, who want to work in the UK will continue to use this route.

Tougher penalties for employing illegal workers

12. Tougher penalties are irrelevant as long as those who employ illegal workers believe that the government has no ability to catch them.

13. The government has announced tougher penalties on employers using illegal workers so many times and there have been so few convictions that it is clear that everything that has been tried so far has not worked. This is largely because government policy has not fully understood the nature of employment in the UK.

14. The consultation paper almost seems to assume that all workers work in a business that has an employment relationship with them. This is far from the case. As employer knowingly or recklessly employing an illegal worker is plain stupid. Someone running a business does not use illegal workers as an end in itself. He uses illegal workers because they cost less than legal workers – a combination of being illegal allowing less than the minimum wage to be paid and, more importantly, tax evasion. Accordingly, a business wanting to use illegal workers does so through one or more of many routes –

- Subcontracting the whole of labour supply to a labour provider who in turn sub-contracts, probably several times. The business has a perfectly lawful contract with a labour provider who may well supply a number of workers with immaculate records. At the same time illegal workers are also supplied. The factory owner pays cash for these or does some other form of side deal. In the unlikely event of the business being raided there is generally sufficient advance warning for the illegals to absent themselves, or they may do so when inspectors appear. Even if caught the illegal workers may simply say that they work for “Mr John” or that they had called in to see a friend. The chance of connecting the illegal worker to an employer is low. There will certainly be no employment contract.
- Subcontracting particular activities to a number of different businesses who in turn may subcontract. The business is paying a fee for a service.
- Subcontracting to self employed people.
- Claiming that workers are not working but merely visiting or passing by – prevalent in small scale businesses such as car washes, catering and hospitality, where cash can also be generated so that workers can be paid in cash.

15. If policy is based on an incorrect understanding of how illegal working operates it has little chance of preventing it. The proposals will not work unless they can tackle these sorts of arrangements. Whether the penalty is £625, £1,250 or £2,500 is of no significance if there is no effective enforcement.

16. There is a related concern here – that is that enforcement activity will concentrate on soft targets and process rather than large scale use of illegal working. The existing section 8 requirements have already been elevated in status in Home Office guidance such that there is a general belief that the documents checks must be carried out and documents copied as a matter of law.

Denying access to services

17. Part of the government’s strategy is to deny illegal workers access to services. This is unlikely to be successful.

18. Generally illegal workers have no interest in accessing government services.

19. In another area the government has been stunningly successful, by making it difficult for people not entitled to work in Britain to open bank accounts. Sadly, it has been equally successful in making it difficult for people who are entitled to work in Britain to open bank accounts. This gives yet another push towards the informal economy. There are now a

number of facilities for paying workers electronically in ways which do not involve opening a bank account.

The need for joined-up thinking

20. The government has a number of arrangements for migrant workers which have been developed in an unco-ordinated way and which can act against the objectives of reducing illegal working and tax evasion.

21. The Accession States Worker Registration Scheme serves no useful purpose. It demonstrably fails in its principal purpose of counting the number of Accession State workers in the UK. The government already has much more reliable information through National Insurance records. The fact that the government has chosen to set up a bureaucratic system to count numbers and that workers have to prove their identity separately to two different government departments at the same time speaks volumes about the lack of a joined-up approach in this area. In 2006 the government quietly increased the registration fee to £90, an 80% increase on the original figure. This increase followed the tradition of this scheme since its inception – no consultation, no analysis, no publicity and virtually no notice. The WRS sours relations between employers and the Home Office and gets in the way of what the government is trying to do. In 2006 at the instigation of the ALP, a meeting was held at the Home Office on the WRS at which those attending were asked to produce an alternative to the WRS. The ALP, the TUC and the NFU, perhaps an unlikely combination, did precisely that in September. We have had no response other than the promise of a review later this year.

22. The Accession States Worker Registration Scheme and the arrangements for Romanian and Bulgarian workers should be abolished. The opening up of the UK labour market to EU nationals cannot be reversed; there is no longer any point in trying to have separate schemes and records for particular groups of workers.