Introduction
The issue of the safety of migrant workers in the UK became a national issue when at least 23 workers were killed by rising tides while harvesting cockles in Morecambe Bay. Since then there have been a number of further individual tragedies, mainly in agriculture and construction. Unfortunately there are no accurate figures on the number of migrant workers who are killed, injured or made ill through work. However many migrant workers do face specific difficulties and this guide from the TUC has been written to help safety representatives and other union officials work with migrant workers to make sure that their rights are protected.

Who are migrant workers?
This booklet covers the safety of people who come to the UK from abroad and who work permanently, temporarily or seasonally. It covers those who appear on official statistics, such as those from the European Economic Area; those with work permits; those on working holidays; and also those who work without the protection of legal status.

Estimates of the number of migrant workers are notoriously unreliable. Official figures show that in 2005/6, 662,000 overseas nationals registered for national insurance. The biggest group of migrants in recent years has been from the eight former Eastern Bloc countries that joined the EU in 2004. In the three years since then a total of 427,000 from these countries have registered to work in the UK. If the self-employed are added then the Government estimates that the total number of new workers coming from the new EU countries is around 600,000.

A DWP analysis of migrants in the UK shows that currently 3.6 million people of working age were born overseas. This represents approximately 10 per cent of the working population and 8 per cent of the total population. A breakdown of the origins of the migrant population in the UK, based on the 2001 Labour Force Survey showed that, at that time, 31 per cent came from Europe, 20 per cent from the Indian sub-continent, 19 per cent from Africa and 11 per cent from the Americas. However since then the proportion coming from within Europe has risen considerably.

In terms of routes into the labour market, the UK Control of Immigration Statistics (2001) showed that 339,000 of the migrants who entered the labour market that year had previously been students in the UK, as opposed to 140,000 who entered the country on work permits. In addition there are those who entered the country and are working without formal legal status. For obvious reasons this part of the workforce is particularly well hidden and so it is very difficult to give an accurate indication of numbers.

60 per cent of all migrant workers were concentrated in London and the South East (with 42 per cent in London alone, where they constitute 26 per cent of the overall population). A large number are found in construction, but also in almost every low pay sector in the capital, including catering and cleaning. Within the South East of England outside London there are high numbers of migrants within agriculture. East European workers are found in food processing plants in North England and Northern Ireland, while Chinese and Korean workers can be found in many electronics factories in the North East of England. Certainly, recent migrant workers are more likely to work with other migrant workers from the same country or region. One of the reasons for this is that migrant workers feel more comfortable when they are part of a community. Another is the way that some employers recruit using word of mouth or gangmasters. Many industries which depend on migrant labour use labour providers or recruitment agencies who specialise in a particular industry or nationality.

Most migrant workers are not low skilled, although many do low-skilled jobs. There is significant migration of workers into areas such as banking, IT, education and medicine from other EU member states, North America, Australasia, India and South Africa. Research from the Migration Research Unit, University College London, shows that of those entering the country on work permits the biggest group was from India (mainly health and IT), followed by the USA (mainly business). In addition over 80 per cent of migrant workers are under 35.

What risks do they face?
Many migrant workers face no, or very little, increased risk. They speak fluent English, may have worked in the UK for many years and have the same working conditions and security as non-migrant workers. Nevertheless there is no doubt that migrant workers with low English language skills or with vulnerable employment or residency status are at greater risk. It is these that this report will concentrate on.
No figures are available on how many migrant workers are killed or injured every year but as migrant workers are found in significant numbers in the agriculture and construction sector, and these have significantly higher risks, it is likely that these would be reflected in any statistics. Unfortunately, given the nature of migrant work, there is significant underreporting of injuries and illness in this area. The only accurate information would be on fatalities, and there is currently no accurate information on the proportion of fatalities that are amongst migrant workers.

In 2006 the HSE published research on the position of migrant workers. It interviewed 200 migrant workers and found that:

- Most had received no, or little, training, even if this was required for the work they do, such as scaffolding or food handling. This was also the case with health and safety training with a third receiving absolutely none and most of the rest simply getting a short induction session.
- Because many migrant workers only intended to stay in the UK for a limited period of time and their main aim was to make money and then return home they were more likely to work when ill, and if they became ill for a long period would usually return to their country of origin. This was made worse by the widespread denial of sick pay. This meant there was a serious underreporting of illness and injury.
- Many migrant workers worked over 60 hours a week. This was particularly the case in agriculture, catering and processing and packaging. Often overtime was not paid. There was evidence that long hours were more common in the low-paid sectors, especially those that paid less than the minimum wage.
- Very low wages and long hours were more common among undocumented or unauthorised workers who worked under greater fear of dismissal and deportation. This group also had less information about their health and safety rights.
- Around half of these interviewed had difficulties with English, although many tried to hide it from their employer for fear of not getting work. Because they were working long hours and spent most of their time within a migrant community, many migrant workers had no time or opportunity to improve their English.

- Many migrant workers reported discrimination, harassment or racism, either from supervisors or co-workers. Sometimes this would relate to verbal abuse, in other occasions they would report unfavourable treatment.
- Women workers were more likely to report that they had received no training, that their health was being compromised by the work they were doing and that they suffered from discrimination.

Other issues that have been raised either by this research or by trade unions working with migrant workers have included:

- Lack of adequate protective clothing. Often migrant workers are asked to provide their own protective clothing, not told about the need for protective clothing or issued with inappropriate or inadequate protective clothing and equipment. Often protective clothing is second hand, and there is little training in how to use it.
- Lack of welfare provision. Where workers are employed through agencies they are often given accommodation by the agency, the cost of which is taken from their wages. There have been appalling reports of overcrowding, totally inadequate toilet washing and cooking facilities, lack of heating, privacy or security.
- Cultural diversity. Many unions have reported that employers are completely failing to address issues of cultural diversity, including conflict between tradition or religious dress and health and safety clothing.

There has long been a debate that some cultures have less tradition of health and safety or that religious beliefs in pre-destination make a willingness to protect your own safety less likely and this makes accidents more likely in some communities. It has also been argued that workers from more hierarchical societies are less likely to raise problems. There is no evidence that this is a real factor in reducing the safety of migrant workers and any cultural differences can be addressed through training, engaging workers, and installing a positive health and safety culture.
Recruiting migrant workers

Given that organised workplaces have half the serious injury rate of those without trade unions or consultation, one of the best ways to protect migrant workers is to ensure they are members of a trade union. Clearly there are obstacles to recruiting migrant workers, which include a fear of victimisation, language issues, the low level of organisation in some of the areas where migrant workers are most common and the fact that many are seasonal or temporary. Nevertheless there is no evidence that migrant workers, where they are approached and supported, are less likely to join a trade union than other workers.

Many trade unions have been very successful in organising and supporting migrant workers, in some cases even setting up separate migrant workers’ branches. Recruiting and organising migrant workers also helps remove some of the tensions that can exist between migrant workers and traditional workers who may fear that migrant workers are undermining pay structures.

The GMB have set up a migrant workers’ branch in Southampton and are using health and safety to help organising. The feedback they received from workers was that health and safety issues are the ones that the majority feel strongest about. Initially this is likely to take the form of a collective grievance around issues such as: lack of provision of PPE (safety footwear, goggles, glasses and gloves) and charging for it in certain instances; no information, instruction or training around the use of work equipment, e.g. guillotines; no translation provided for instruction and training; slip, trip and fall issues; manual handling issues. They are producing a series of health and safety fact sheets and are running monthly advice sessions at the branch meetings, with particular emphasis on employer responsibilities and employee rights around health and safety.

Unions have also found that organising around health and safety issues, or providing language training, has been a very good way of involving migrant workers. However those unions that have been most successful have been ones that have encouraged migrant workers to become active through holding a position such as safety representative. Where safety representatives, stewards or learning representatives come from within the migrant community itself they are likely to be far more successful.

The TUC has produced a guide for unions on organising and recruiting migrant workers, which should be of use to all safety representatives. This will be published in the summer of 2007.

Employment status

It has to be stressed that workers have the same legal and moral right to a safe and healthy working environment regardless of their country of origin or legal status. The HSE have made it clear that health and safety regulations are there to protect all workers, whatever their immigration status.

However in practice the fact that many migrant workers are employed through agencies or gangmasters, or are listed as “self-employed”, means that many employers do not feel that they have any responsibility for the safety of the workers who actually work for them. This is not the case. Where someone is employed by an agency both the agency and the person controlling the work have joint responsibilities for the person’s health and safety. In addition the Conduct of Employment Agencies and Employment Business Regulations (2003) specifically states that the agency or labour provider has to ensure that they establish with the employer that any risks arising from the employment have been adequately controlled. They also have to ensure that those they place in work are suited in terms of experience and qualifications.

In agricultural work that includes the processing and packaging of products derived from agriculture and also gathering shellfish, agencies are covered by the Gangmasters Licensing Act (2004). Under this law agencies have to be licensed and must ensure that workers receive their legal rights and comply with health, safety and welfare provision.

While gangmasters and agencies are very common within the agricultural sector and in some parts of construction, there is also widespread abuse of “self-employment” in the employment of migrant workers in these and other sectors, with employers claiming that their workforce are actually self-
What safety representatives can do

- Safety representatives should ensure that both workers and employers are aware of the legal requirement of the employer to ensure the health, safety and welfare of the worker regardless of their employment status. In some cases equality and anti-discrimination legislation will also apply.
- They should make it clear that the Health and Safety at Work Act provides an absolute duty on employers to ensure the safety of employees and anyone else who might be harmed. They are not exempt from legal responsibility just because a worker is not directly employed, or has no legal employment status.

Risk assessment

The key to dealing with most issues around the health and safety of migrant workers is exactly the same as for other workers. That is to ensure that there is a full and adequate risk assessment. Few migrant workers report knowing of a risk assessment having been done for their job and it is quite clear that, in many industries where migrant workers are concentrated, risk assessments are rare. Even where a risk assessment has been done, it is unlikely that it has covered many of the issues that might be specific to migrant workers, such as cultural differences or language problems.

The process of drawing up an adequate risk assessment will, in itself, ensure that the mind of the employer is focused on the real issues necessary to create a positive health and safety environment within the workplace.

The lack of any tradition of risk assessment or safety policies within many of the areas where migrant workers are most likely to be found may mean the safety representatives will have to tell the employer where they can go for advice. For most employers the HSC guidance “Five steps to risk assessment” is the best starting point, although the risk assessment should also specifically address the presence of migrant workers, in particular issues around previous work experience, perceptions of risks, language and literacy skills, the applicability of current training and safety materials, and whether training methods need to be tailored to different groups of workers.
What safety representatives can do

- Safety representatives can ensure that migrant workers see risk assessments and can comment.

In the Meat Hygiene Service (MHS), UNISON has raised concern over the fact that many migrant workers in abattoirs are provided by agencies and have no training, and no specific risk assessments. UNISON asked the MHS to carry out its duty under the Management Regulations to work with the providers of agency meat inspectors (mainly European migrant workers) to jointly assess risks to the directly employed meat inspection workforce and to the migrant agency inspectors. They have concerns that agency workers are being asked to work dangerous shift patterns, thereby placing both these workers and other MHS workers in danger from fatigue and resultant workplace accidents. They have also asked the MHS what contract compliance arrangements exist with the agencies in respect of joint health and safety responsibilities.

Accident reporting

There is evidence of considerable underreporting within those industries where migrant workers are concentrated. The primary reason for that is the failure of employers to record injuries and near misses, although it is possible that many migrant workers, after an injury, especially a serious injury, will choose to return to their home country for treatment. A lack of access to sick pay also means that, in many cases, a migrant worker sees no reason to report their injury and simply does not turn up for work again; thus their employer has no record of the injury. It is also likely that most migrant workers will be unaware of the requirement to report incidents unless they have specifically received training on the need to do so.

What safety representatives can do

- Safety representatives can make sure that workers are aware of the importance of reporting any illness, injury or near-miss, ensure that accident books are regularly checked, and seek information from management on what steps they are taking to investigate any reported injuries. This is best done by ensuring that training programmes are available and properly designed to cover this.
- Body mapping, along with risk mapping, has proved to be extremely useful tools for safety representatives who are seeking to work with migrant workers and find out what health problems they are experiencing. For more information on body mapping see www.hazards.org/tools/

Welfare and first aid provision

Employers often have to be reminded that the Health and Safety at Work Act covers not only health and safety but also welfare and there are specific legal requirements on them to ensure the welfare of their staff. Many of the specific requirements on an employer can be found in the Workplace (Health, Safety and Welfare) Regulations 1992, including the rules around toilets and washing facilities, drinking water, facilities for rest and eating, temperature, space, lighting and ventilation. The HSE research on migrant workers showed that this was a major issue for many of those surveyed.

Many migrant workers complained of extremes of heat and cold, in particular in catering or processing and packaging, a lack of breaks and, particularly in agriculture, problems with accommodation. In addition there have been a number of press reports of appalling working conditions and accommodation forced upon migrant workers, in particular within agriculture.

However, where the accommodation is provided by the employer, the migrant workers are often put off from complaining about it in case improvements in the standards of housing means that they will be faced with increased accommodation costs.

What safety representatives can do

- Safety representatives, as well as raising welfare problems with employers, can also refer migrant workers to local advice centres and community groups to seek assistance in housing or welfare matters.
- Safety representatives should also ensure that migrant workers have access to first aid provisions, that there are adequate arrangements for fire safety and, where appropriate, they have access to occupational health advice and support.

Safety & Migrant Workers
Personal protective equipment
Many migrant workers have reported that either they have not been given any protective clothing, even when clearly required, or they have been charged for it, or what they have been given is inadequate or inappropriate. The HSC research into migrant workers showed that while the majority of workers said they had been given basic protective clothing, such as overalls, those working outdoors were far less likely to receive protective clothing, such as footwear and, even where this was available, workers were often charged for it. Those working through agencies were more likely to claim they had not been provided with appropriate protective equipment.

The TUC has received reports of people being given second-hand shoes and gloves, and being charged a weekly laundry fee for protective overalls.

All workers are entitled to personal protective equipment where they are exposed to any kind of hazard where the risk cannot be removed or reduced by other means. It must be provided free of charge and the employer has responsibility for maintaining, cleaning and replacing it. They also have to ensure that it is suitable for use.

Personal protective equipment does not just cover things like safety helmets and safety boots but can also cover such things as aprons, gloves, ear protection, and outside clothing in cold weather or when working in cold stores. Often agencies and employers will argue about who is legally responsible for providing protective equipment, however the law says that they are both responsible in most situations and safety representatives should ensure that they do not get involved in an argument between employers and agencies over who should be providing safety equipment.

What safety representatives can do
• Safety representatives should ensure that all workers are provided with free and suitable protective clothing or equipment, and trained how to use it.

Training and information
Given that a large number of migrant workers have some, or considerable, difficulty with speaking and understanding English, this can be one of the most significant barriers to ensuring that they are suitably trained and informed.

The Management of Health and Safety at Work Regulations 1999 state “Every employer shall provide his employees with comprehensible and relevant information on health and safety risks, and preventive and protective measures”. The guidance to these regulations says that employers should make special
A mail order company employed large number of workers from Eastern European countries. At a health and safety committee meeting Unite (T&G section) members raised concerns regarding whether many of these individuals understood what was contained within risk assessments, health and safety procedures and many other documents. The company now employ a full time Polish trainer who assists in inductions and other areas where it is necessary to either translate or interpret.

arrangements for people with little or no understanding of English, or who cannot read English.

Some employers have got around this by ensuring that materials on safety are produced in other languages. However, that is not an adequate response to the specific needs of migrant workers. Some migrant workers will be less familiar with basic safety concepts and these may have to be explained to them more fully.

That means that employers have to look at other ways of ensuring that staff are informed and trained. Training should ideally be available in the native language of the worker if there is any doubt as to their proficiency in English. Many migrant workers are reluctant to admit that they have problems understanding English and therefore will not make their needs known to their employer, or to any training provider. While assessment is a way of ensuring that the worker has understood at least some of the training, assessment methods are very uncommon outside of construction.

Where safety is compromised by poor language or literary skills, the employer has a responsibility to look at other ways of communicating with the worker on safety issues. Although translated materials can play a role in this, consideration should also be given to bilingual trainers and supervisors. However, there is evidence that migrant workers often prefer non-verbal methods of training such as demonstrations and picture guides. The same is the case for basic health and safety information. A number of employers have replaced written signs with pictorial signs.

The HSE in Northern Ireland have produced a pictorial guide to safety for migrant workers. It can be downloaded at www.hseni.gov.uk/hseni_universal_safety_booklet_migrant_workers.pdf

Whatever training method is used, it is important to check that the worker has fully understood what is being communicated.

In the Midlands distribution depot of a large supermarket, the majority of the staff, both warehouse workers and drivers, is migrant workers – mainly Polish but also from Latvia, Romania and other EU accession states. Union membership is high among the migrant workers and there is a full quota of shop stewards and health and safety reps. Usdaw safety representatives have ensured that all the signage in the warehouse is now in English and Polish. They are also using the union learning centre to run ESOL courses so that workers can understand health and safety briefings when they come out. In addition they made sure that all the HGV drivers go through the same theory test and site-specific training for deliveries, wherever they come from. The company uses translators from the shop floor whenever there is a problem involving someone who does not have much English. They are all in the union and they know to get the safety representatives involved if a member has a health and safety issue.

Unions have also reported issues relating to drivers from abroad being unaware of health and safety requirements and about UK road traffic law. Where incidents do happen it is invariably the driver that gets prosecuted rather than the employer.

The HSE website has a number of publications which have been translated into languages other than English. In addition, the HSE offers a telephone interpreting service. For more information go to the HSE website at www.hse.gov.uk/languages/index.htm

The TUC has, with the HSC, produced simple advice on health and safety in twenty languages. This can be found at www.tuc.org.uk/h_and_s/index.cfm?mins=403

Safety & Migrant Workers
What safety representatives can do

- Unions should ensure that they are communicating with migrant workers in the most appropriate way possible. Ideally this will be done through bilingual safety representatives or union officers. In other cases unions can ensure that materials are available for migrant workers. The most successful union material has actually been written specifically within the language of the migrant workers rather than simply being a translation of standard union material in English.

- A number of trade unions are now producing regular bulletins in languages other than English.

- Unions have also been instrumental in ensuring that migrant workers are offered access to language training outside the workplace, or, better still, through an on-site resource centre. Often the language training has been linked to giving workers access to internet, email, etc. In many cases unions have used the language training and the internet facilities to help introduce concepts of health and safety to the worker by tutoring them about safety as part of the language training.

Enforcement

The main reason that many migrant workers face increased risks to their health, safety and welfare is simply the lack of adequate enforcement of existing regulations. Employers who fail to conduct risk assessments, do not provide personal protective equipment, ignore training needs, do not provide adequate welfare facilities, ignore the working time regulations and pay below the minimum wage, should all be prosecuted, yet we know this is not happening. The average employer will receive a visit from a health and safety inspector once every 12–20 years. Many small employers will never receive a visit. The number of enforcement officers employed by the Gangmasters Licensing Authority is 10. The number of inspectors responsible for ensuring compliance with the Working Time Directive is 11. The fact that many employers are operating illegally also means that it is difficult for regulatory authorities to trace them. It is therefore hardly surprising that so many employers feel confident that they can continue flouting the law. Tragically, we are more likely to hear a report of a migrant worker being killed or injured than an employer being prosecuted for failing to undertake a risk assessment.

There should be substantial fines and/or custodial sentences for employers when they consistently do not comply with the requirements of employment law or health and safety law.

The TUC has been calling for much greater resources to be put into enforcement of those areas where migrant workers are concentrated, and the support for migrant workers themselves. While there have been some positive moves towards improving enforcement of migrant workers’ rights, such as setting up of an inter-agency enforcement group and the passing, after union pressure, of the Gangmasters Licensing Act, this has hardly even scratched the surface of the problem.

What safety representatives can do

- Although safety representatives should normally ensure that any abuses of health and safety law, or the working time directive, are reported they may wish to discuss the matter with their full time official first. It is good practice to ensure that, before a complaint is made to an enforcing authority, you have fully involved the workers themselves, who may fear that any intervention by the authorities could lead to either their jobs disappearing as the operation is closed down or, if their immigration status is in doubt, them being deported.

Working with others

The most successful campaigns by trade unions have been those that have involved working with local community groups or migrant workers’ support groups. Support organisations exist within most towns and cities with a significant migrant worker population. Where these do not exist, often local churches, temples and mosques act as focal centres for migrant workers.

Trade unions have often found that approaches to these bodies have been welcomed and are a useful way of identifying potential activists as well as getting across basic information on people’s rights. This is particularly the case with health and safety information.

In addition a number of unions have made contact with trade unions abroad and are developing joint resources which are available either on their union website, or from the union movement in the home country.
In Ireland, the government, unions and employers have reached a new social partnership, Towards 2016, which includes a number of measures designed to protect the rights of both migrant and indigenous workers, such as:

- The exploitation and abuse of workers is now a de facto criminal offence.
- A new Office of Employment Rights Compliance (ODERC) will be established, with an increase from 21 to 90 in the number of Labour Inspectors in addition to new support posts, allowing for joint investigation units to target serious abuses of employment standards.
- The tax system will be reformed to prevent people in the building industry and elsewhere from being forced into bogus self employed status to allow employers to avoid pension contributions, etc.
- Employers will be obliged to keep accurate employment records in a prescribed format for inspection by the Labour Inspectors.
- There will be a new employment rights procedure to allow easier access to justice and compensation where rights are denied. Powers to award up to two years pay by way of compensation represent a very significant change and will help many migrant workers whose causes are usually about bread and butter issues like payment of correct wages.
- There will be new standards of compliance with labour law in order to tender for public procurement contracts – in other words, the taxpayer will no longer subsidise exploitation or sharp employment practices.
- There will be legislation to regulate employment agencies and educational establishments to prevent them from undermining employment standards and immigration law.
- There will be legislative changes to prevent Irish Ferries’ type collective redundancies and ‘Gate Gourmet’ type unfair dismissals.
- There will be a code of practice to protect people working as domestic servants.

Unions
Your union should be able to assist in addressing any of the issues raised in this guide.

TUC
The TUC website includes a section on health and safety and migrant workers at: www.tuc.org.uk/migrantworkers

HSE
The HSE research on migrant workers can be found at: www.hse.gov.uk/research/rpdr/rr502.pdf

The HSE have produced a short guide for migrant workers in agriculture and food processing. It is on their website at: www.hse.gov.uk/pubs/indg410.pdf?ebul=hsegen/08-may-2007&cr=4

Hazards
The website for Hazards magazine has a range of articles and news items on migrant workers at www.hazards.org/migrants

For employers
There is also advice for employers at: www.businesslink.gov.uk/bdotg/action/layer?topicId=1077243839&furlname=agencyworkers&furlparam=agencyworkers&ref=&domain=www.businesslink.gov.uk

Unionlearn with TUC Education
This part of unionlearn aims to help unions to become learning organisations and runs courses for safety representatives across the UK. For more information on safety representatives training, both in the classroom and online, see www.unionlearn.co.uk or email Liz Rees at lrees@tuc.org.uk

A unionlearn fact file on Migration and Refugees is available at www.tuc.org.uk/extras/factfileref.pdf