



Department for  
Business, Energy  
& Industrial Strategy



Home Office

# Good Work Plan: establishing a new Single Enforcement Body for employment rights

Consultation

Closing date: 6 October 2019

July 2019

This consultation is available from:

[www.gov.uk/government/consultations/good-work-plan-establishing-a-new-single-enforcement-body-for-employment-rights](http://www.gov.uk/government/consultations/good-work-plan-establishing-a-new-single-enforcement-body-for-employment-rights)



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# Introduction

With record levels of employment, over 32.75 million people in work<sup>1</sup>, and wages growing at their fastest pace in over a decade, the UK labour market has been thriving. In part this is due to its flexibility which gives individuals the opportunity to find work that suits them.

Whilst there is huge value in this flexibility, it cannot be at the expense of workers' rights. Through the Industrial Strategy and the Good Work Plan, government has set out an ambitious programme to ensure that our labour market works for everyone – providing good jobs within a framework that can respond to the changing nature of work and delivering on our manifesto commitment to ensure the interests of everyone in the labour market are properly protected.

We recognise though that having the right legal framework alone is not enough. Workers need to be able to enforce their rights effectively. This also creates a level playing field for the vast majority of businesses who are doing the right thing and complying with the law – ensuring they are not undercut by unscrupulous and exploitative employers. While most employment rights are enforced by an individual through an employment tribunal, the state has an important role to play in protecting the most vulnerable workers from exploitative practices.

We already spend £33 million a year on enforcement covering:

- National Minimum Wage and National Living Wage (NMW and NLW)
- Domestic regulations relating to employment agencies
- Licenses to supply temporary labour in high risk sectors in the fresh food supply chain
- Labour exploitation and modern slavery related to worker exploitation

We have committed to do more, by extending state enforcement to cover holiday pay for vulnerable workers and umbrella companies operating in the agency worker market.

Government has already committed to provide adequate funding for enforcement through the Spending Review. To carry out enforcement effectively, we need the right institutions in place. That is why, through this consultation, **we want to consider the case for a new single labour market enforcement body** and whether this could deliver:

- **extended state enforcement**, delivering our commitments to enforce holiday pay for vulnerable workers and regulate umbrella companies operating in the agency worker market
- a **strong, recognisable single brand** so individuals know where to go for help. In a single organisation we could improve the user journey, making it easier for individuals to raise a complaint and to tackle cases that might currently be handled by different organisations
- **better support for businesses** to comply with the rules, including coordinated guidance and communications campaigns, and a more easily navigable and proportionate approach to enforcement;

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<sup>1</sup> [www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/bulletins/employmentintheuk/latest](http://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/bulletins/employmentintheuk/latest)

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- **coordinated enforcement action**, with new powers and sanctions to tackle the spectrum of non-compliance, from minor breaches to forced labour and increased focus on high harm cases to disrupt serious, repeated offending
  - **pooled intelligence and more flexible resourcing** enabling greater sharing of intelligence and national tasking and coordination of operational activity targeted at tackling serious breaches
  - **closer working with other enforcement partners**, including immigration enforcement, benefit fraud, health and safety, the Pensions Regulator and wider local authority enforcement

This would not be an exercise to reduce costs – resource for enforcement would be maintained, but used more effectively. Funding for new areas, such as enforcement of holiday pay for vulnerable workers will be considered through the spending review. Through this consultation we are also seeking views on:

- The core remit of a new body
- The interaction with other areas of enforcement
- The approach to compliance
- The powers such a body would need

A proposals to establish a new central government arm's length body would be subject to the usual, separate, government approval process, based on a business case.

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# General information

## Why we are consulting

The UK has a proud tradition of leading the way on employment rights. The Good Work Plan sets out an ambitious set of reforms to ensure our employment rights keep pace with the changing world of work. The government is also committed to ensuring workers receive what they are entitled to and protect workers from exploitation. Effective enforcement plays a vital role in giving individuals the confidence to challenge employers where they are denied their rights and it creates a level playing field between businesses.

Enforcement is a key priority in the government's Good Work Plan. We are extending the areas where the state enforces rights for vulnerable workers and expanding into new business models to ensure they play by the rules. We are also strengthening the sanctions available to both employment tribunals and state enforcers – ensuring that those intent on breaking the rules face tough consequences. These actions are all consistent with the recommendations from the Director of Labour Market Enforcement's 2018/19 strategy, based on his assessment of labour market enforcement.

This consultation considers options to go even further through the creation of a single organisation responsible for enforcing employment rights. This new body would harness and build on the significant developments already made in recent years to improve our enforcement capabilities and better connect those capabilities to wider enforcement partners.

## Consultation details

**Issued:** Tuesday 16 July 2019

**Respond by:** Friday 6 October 2019

**Enquiries to:**

Labour Market Directorate  
Department for Business, Energy and Industrial Strategy  
1st Floor, Spur 2  
1 Victoria Street  
London  
SW1H 0ET

Tel: 020 7215 5000

Email: [sebconsultation@beis.gov.uk](mailto:sebconsultation@beis.gov.uk)

**Consultation reference:** Good Work Plan: establishing a Single Enforcement Body for employment rights

## How to respond

**Respond online at:** <https://beisgovuk.citizenspace.com/lm/a-single-labour-market-enforcement-body>

or

**Email to:** [sebconsultation@beis.gov.uk](mailto:sebconsultation@beis.gov.uk)

### **Write to:**

Labour Market Directorate  
Department for Business, Energy and Industrial Strategy  
1st Floor, Spur 2  
1 Victoria Street  
London  
SW1H 0ET

When responding, please state whether you are responding as an individual or representing the views of an organisation.

Your response will most useful it is framed in direct response to the questions posed, though further comments and evidence are also welcome.

## Confidentiality and data protection

Information you provide in response to this consultation, including personal information, may be disclosed in accordance with UK legislation (the Freedom of Information Act 2000, the Data Protection Act 2018 and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential please tell us, but be aware that we cannot guarantee confidentiality in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not be regarded by us as a confidentiality request.

We will process your personal data in accordance with all applicable data protection laws. See our [privacy policy](#).

We will summarise all responses and publish this summary on [GOV.UK](#). The summary will include a list of names or organisations that responded, but not people's personal names, addresses or other contact details.

## Quality assurance

This consultation has been carried out in accordance with the government's [consultation principles](#).

If you have any complaints about the way this consultation has been conducted, please email: [beis.bru@beis.gov.uk](mailto:beis.bru@beis.gov.uk).

# Background

*Government is committed to supporting good employers to offer quality jobs. Most employers want to comply with the law. We need to make sure the system is set up to support these employers who are trying to do the right thing. At the same time, we recognise that there are some unscrupulous employers who deliberately violate the law and exploit their workers to reduce their costs and gain a competitive advantage. We want to stamp down on this behaviour to deliver a level playing field for business.*

## The UK Labour Market

The performance of the UK labour market has been impressive in recent years. Over the past year, the UK has experienced its highest rates of economic activity and employment, and the lowest rates of unemployment since the mid-70s. There are now over 32 million people in work. Wages are also growing at their fastest pace in almost a decade. In part this is due to the flexibility of our labour market, which gives individuals the opportunity to work in different ways to fit around other responsibilities.

Government is taking steps to boost productivity and increase earning power through the Industrial Strategy. The way in which people work is also changing as a result of advances in technology and new employment models. Particularly in this changing environment, we need to ensure that the labour market is working for everyone.

To do this, the Prime Minister commissioned Matthew Taylor to carry out a review of modern working practices. Government responded to the Review, accepting the vast majority of the recommendations. In December 2018 the Good Work Plan was published, setting out government's vision for the future of the labour market, including plans for implementing the Taylor Review recommendations. This package of measures will ensure workers have access to the rights and protections they deserve.

The Good Work Plan recognised the fundamental role that enforcement plays in ensuring workers actually receive these rights. Enforcement must be clear, fair and efficient for both workers and employers. It should deliver a level playing field for employers, so that the majority of employers who comply with the law are not undercut by those who try to avoid their legal obligations. As part of this, government committed to:

- Expand the remit of the state enforcement to cover umbrella companies
- Introduce state enforcement of holiday pay for vulnerable workers

It is in the context of this additional support for vulnerable workers that we are now considering the need for a single labour market enforcement body.

## The existing enforcement landscape

The majority of employment rights are enforced by the individual through an employment tribunal. There are some exceptions where enforcement bodies take a role to protect particularly vulnerable workers in the workplace (set out in the table below). Each of these bodies has a vital role ensuring vulnerable workers are protected. They respond to complaints, either made directly to the enforcement bodies, through GOV.UK or transferred through the Acas helpline and the National Modern Slavery helpline. They also undertake targeted proactive investigations. Each has a range of tools to tackle non-compliance, from warning letters to labour market enforcement undertakings and orders and prosecution.

**Table 1: State enforcement of employment rights landscape and geographical coverage**

| Enforcement Body  | Areas of Enforcement   | Geographical Coverage  |
|---|--|--|
| HM Revenue and Customs (HMRC)<br>(on behalf of the Department for Business Energy and Industrial Strategy (BEIS)) | National Minimum and National Living Wages   | UK wide  |
| Gangmasters and Labour Abuse Authority (GLAA)<br>(sponsored by the Home Office)                                   | Labour Exploitation and modern slavery related to worker exploitation  | England and Wales  |
|   | Gangmasters licensing scheme for suppliers of labour in high risk sectors in agriculture and the fresh food supply chain | UK wide  |
| Employment Agency Standards Inspectorate (EAS)<br>(part of BEIS)  | Employment agencies and employment businesses  | England, Wales and Scotland  |
| Health and Safety Executive (HSE)<br>(sponsored by the Department for Work and Pensions (DWP))                    | Health and safety at work (higher risk sectors)  | England, Wales and Scotland (HSE NI covers Northern Ireland)                 |
| Local Authorities   | Health and safety at work (lower risk sectors)   | UK wide  |
| HM Revenue and Customs Statutory Payments Dispute team<br>(on behalf of DWP)                                      | Statutory payments (including statutory sick pay and maternity pay)  | UK wide  |
| Equality and Human Rights Commission<br>(sponsored by GEO)  | Discriminatory practices in recruitment and employment   | England, Wales and Scotland (Equality Commission NI covers Northern Ireland) |

## Director of Labour Market Enforcement and recent reforms

While each of these bodies do important work to protect vulnerable workers, it can be a difficult landscape for both workers and employers to navigate. The areas of enforcement have developed piecemeal over time, often in response to specific incidents.

The Immigration Act 2016 established the role of Director of Labour Market Enforcement in order to set the strategic direction for the core employment rights enforcement bodies, and provide a more joined up approach. The first chair, Professor Sir David Metcalf, was appointed on 1 January 2017. The areas under the Director's remit are:

- Employment Agency Standards Inspectorate (EAS)
- Gangmasters and Labour Abuse Authority (GLAA)
- HMRC National Minimum Wage team (HMRC-NMW)

The Director of Labour Market Enforcement has a number of statutory duties:

- To set the strategic direction of the enforcement bodies through an annual strategy;
- To publish an annual report, assessing the impact of the previous strategy; and
- To develop an intelligence hub, to provide a single view of risk and priorities across the spectrum of non-compliance.

Alongside the creation of the Director's role, the Act introduced reforms that enable investigation of employment rights across multiple agencies. These included expanding the role of the then Gangmasters Licensing Authority to create the Gangmasters and Labour Abuse Authority – with responsibility and new powers to tackle labour exploitation, including modern slavery offences across all sectors of the economy. It also introduced a new regime of Labour Market Enforcement Undertakings and Orders (LMEUs and LMEOs) designed to complement existing sanctions and to be used to tackle deliberate and persistent non-compliance across all areas of state enforcement.

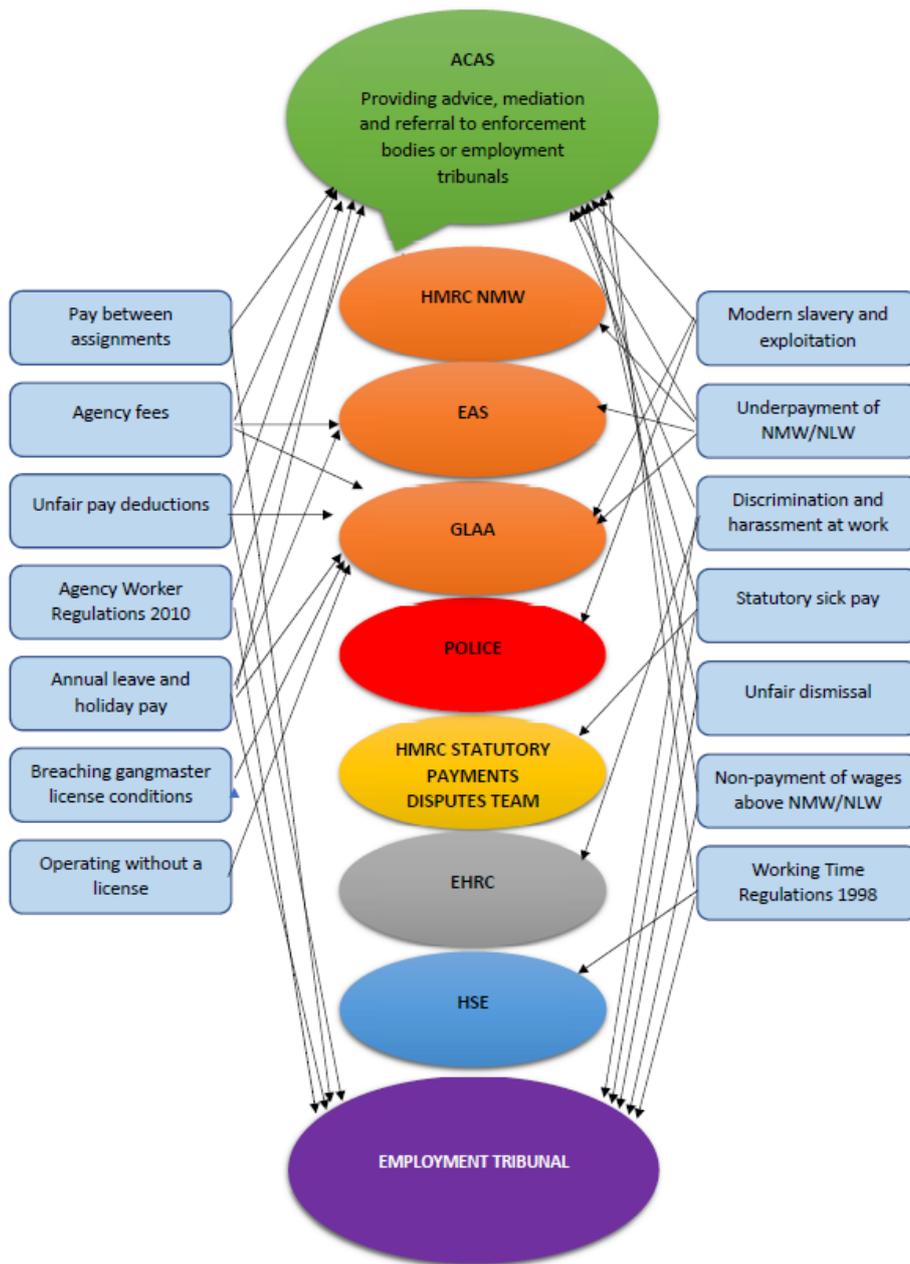
# 1. Reforming the current system

*The Good Work Plan and Industrial Strategy recognised that advances in technology and shifts in social trends lead to changes in how we work. We are reforming the framework of employment law to keep pace with these changes – but we also need to modernise our approach to enforcement to ensure workers continue to be protected.*

The Director's work has made significant progress in developing the understanding of labour market enforcement in its current form, improving the coordination of the three bodies' response to non-compliance and identifying enforcement gaps, by:

- **Employing a multi-agency approach**, working extensively with the three bodies, the sponsoring departments and a wide range of stakeholders (including trade unions, trade associations, employers, charities and academics) to draw upon expertise across multiple perspectives and promote and facilitate joint working, in terms of information sharing and joint operations on the ground.
- **Setting the strategic direction** and refining the focus of the three bodies to better target enforcement efforts and protect vulnerable workers across the labour market.
- **Establishing the Information Hub** to better understand the scale and nature of non-compliance. The Information Hub gathers and processes intelligence to identify key trends and issues across the labour market, allowing the Director to make an assessment of both strategic priorities and the effectiveness of the bodies' interventions and use of resources in tackling labour exploitation.
- **Commissioning an extensive programme of independent research** to help fill gaps in the evidence base. This has included projects to complement the work of the Information Hub, such as on how to best measure the scale and nature of non-compliance, how one might evaluate the impact of labour market enforcement, and assessing non-compliance within a number of at-risk sectors identified by the Director's Strategic Intelligence Assessment.

**Figure 1: State enforcement of employment rights landscape**



However the enforcement landscape is still deeply fragmented. This presents a number of problems:

- **It makes it difficult for both workers and employers to know where to go for help.** In his introductory strategy, the Director highlighted this issue, ‘the number and diversity of channels may lead to some confusion and the role of the different bodies may not be clear to all workers.’ Stakeholders such as the CIPD and Citizens Advice have also raised this issue.
- **It limits the visibility of the work of the bodies.** The Director has again raised this issue, particularly in relation to guidance and publicising enforcement activity, which can act as an effective deterrent.

- **It makes it harder to have a single clear intelligence picture across the labour market.** While data and intelligence sharing has improved since the creation of the information hub, there are still some barriers inherent in having separate bodies.

Whilst the introduction of the Director's role has resulted in considerable progress Sir David Metcalf, is of the view that if one were to start from scratch, it is unlikely that we would design state labour market enforcement along its current lines.

We have the opportunity not only to address these issues, but to create a new approach to enforcement that is able to respond more effectively to the changing nature of work.

## 1.1 A single enforcement body

We want to retain the benefits of the reforms that were made through the Immigration Act 2016. We believe the next logical step to ensure the state can effectively protect vulnerable workers both now and in the future, is to explore the case for creating a new single labour market enforcement body to deliver:

- **extended state enforcement**, delivering our commitments to enforce holiday pay for vulnerable workers and regulate umbrella companies
- a **strong, recognisable single brand** so individuals know where to go for help. In a single organisation we could improve the user journey, making it easier for individuals to raise a complaint and to tackle cases that might currently be handled by a different organisation
- **better support for businesses** who want to comply with the rules, including coordinated guidance and communications campaigns – updated on a regular basis to address emerging issues in the labour market and a more easily navigable and proportionate approach to enforcement
- **pooled intelligence** to provide a more comprehensive picture of the labour market as a whole, enabling both a more responsive approach to identifying emerging risks due to the changing nature of work, and better targeting of proactive enforcement activity to tackle serious breaches
- **more effective use of resources** with the ability to flex resource across a single large workforce to respond to shifting priorities and greater opportunities for combined enforcement activity
- **coordinated enforcement action**, with new powers and sanctions to tackle the spectrum of non-compliance, from minor breaches to forced labour and increased focus on high harm cases to disrupt serious, repeat offending
- **closer working with other enforcement partners**, including the police, immigration enforcement, benefit fraud, health and safety, the Pensions Regulator, and wider local authority enforcement

This could benefit both workers and good employers.

**Figure 2: Benefits of establishing a Single Enforcement Body for workers and businesses**



This consolidation would mirror other recent organisational transformations:

The National Crime Agency was created in 2013 to provide a single view of the national and police force threats from serious and organised crime. It was designed to address the fragmented approach to tackling crime that had resulted from a proliferation of specialist organisations.

The Competition and Markets Authority was created in 2014 and brought together the functions of the Competition Commission and the Office of Fair Trading. It provides a single powerful voice to advocate competition.

Many other countries have taken steps towards more streamlined labour inspectorates. The International Labour Organisation (ILO) advocates the model of a single enforcement body. Article 4 of the ILO Labour Inspection Convention No. 81, which the UK has ratified, states that 'labour inspection shall be placed under the supervision and control of a central authority'.

### **International case studies**

In Ireland the Workplace Relations Commission (WRC) leads on the provision of information and guidance; conciliation and mediation; inspection and adjudication. This is combined with a separate Labour Court for appeal purposes. The WRC includes around 200 staff, including over 30 adjudication officers, and in 2017 conducted almost 5,000 inspections.

In France the Labour Inspectorate covers all employment and health and safety legislation and regulations for private sector employers, whilst public sector employers are dealt with through a separate court system. With a budget of nearly €200m, over 1500 labour inspectors conduct a mix of reactive and proactive investigations and have a wide range of powers to deal with the spectrum of non-compliance. In 2016 they made over 250,000 interventions.

In Ontario, Canada the Ministry of Labour has responsibility for the enforcement of a wide range of employment rights at state level, including rules around health and safety. The state currently does not have an equivalent to our employment tribunal system. All enforcement is therefore through the Ministry of Labour's Employment Standards Officers, who responded to almost 15,000 complaints and conducted 3,500 proactive investigations in 2017/18. There is a commitment to inspect 1 in 10 employers every year.

Considering options to establish our own single enforcement body clearly presents great opportunities. However, we are under no illusion that it is without some risks, including losing the benefits of the specialisation and expertise built up in the existing bodies. The government wants to ensure our strong record on enforcement is at least maintained in any transition period and enhanced once a new body is fully operational. We would put in place measures to minimise the risk of disruption, such as the early establishment of a shadow body depending on the type of model agreed.

A proposal to establish a new central government arm's length body would be subject to the usual, separate, government approval process, based on a business case.

## 1.2 Core remit

The focus of any new body should be on protecting the most vulnerable workers' employment rights. If created, government proposes that a new Single Enforcement Body would as a minimum have responsibility for those areas that sit under the Director of Labour Market Enforcement's remit, as well as the additional areas where government has committed to state enforcement.

**Table 2: Proposed core remit of a Single Enforcement Body**

| Area of the law   | Currently enforced by   |
|---|---|
| National Minimum Wage (NMW) and National Living Wage (NLW)  | HM Revenue and Custom (HMRC)  |
| Domestic regulations relating to employment agencies  | Employment Agency Standard Inspectorate (EAS)   |
| Umbrella companies  | Not currently enforced but government has committed to legislate to give the state a role |
| Licenses to supply temporary labour in high risk sectors in agriculture and the fresh food supply chain | Gangmasters and Labour Abuse Authority (GLAA)   |
| Labour exploitation and modern slavery related to worker exploitation                                   | Gangmasters and Labour Abuse Authority (GLAA)   |
| Holiday pay for vulnerable workers  | Not currently enforced but government has committed to legislate to give the state a role |

It would also take on the strategy and information hub functions currently within the Office of the Director of Labour Market Enforcement.

This would bring together the core employment rights where the state takes an enforcement role within one body with the ability to tackle the full range of non-compliance from minor breaches right up to modern slavery offences. There are already synergies between the work of these existing enforcement bodies. The three bodies conducted 57 joint operations during 2017/18, covering 4,689 workers just through these operations. The issues of non-compliance faced by each are linked by the association with low-paid, low-skilled jobs, something noted by the DLME, with this in turn spanning the different levels of severity of non-compliance. There is also evidence from the three bodies that there can be duplication in operational activity. For example, areas are often identified as high risk across more than one area, such as hospitality, warehousing and social care. These have been identified as high risk for NMW, EAS as well as the GLAA with their new powers.

We recognise there are some other areas, in relation to the workplace, where the state can take a role, such as statutory sick pay, and health and safety. [Chapter 2](#) sets out our proposed approach to these.

## 1.3 Extension of the licensing scheme and other regulatory approaches

Having the right tools in place to drive up standards and tackle non-compliance across multiple sectors can be complex – no single approach is appropriate for all sectors.

We are aware that some stakeholders have called for the GLAA's licensing approach to be extended to other sectors such as care, construction and contract cleaners. The Director of Labour Market Enforcement recommended the introduction of a compulsory pilot licensing scheme for hand car washes and nail bars in his 2018/19 Strategy. The government response promoted a voluntary approach over a compulsory one as the best way to build the evidence base and to help to better understand the issues in hand car washes and to determine an appropriate regulatory approach. The Responsible Car Wash Scheme is a voluntary pilot, led by industry and supported by the GLAA, HMRC-NMW, and the Environment Agency. The scheme is underpinned by a code of practice, to help drive up standards and practices. Local authority licensing for nail bars already exists in some parts of the country – we are exploring how this works, including how issues of labour exploitation are tackled to help develop the evidence base.

We want to explore whether there are other sectors where a licensing or other regulatory approach could drive up standards and so better protect vulnerable workers. This includes looking at whether existing regulations could be strengthened to help improve compliance.

Under the Gangmasters (Licensing) Act (GLA) 2004, the GLAA licenses gangmasters (those who supply or use labour to provide a service) in agriculture, horticulture, food processing and packaging and the shellfish industry sectors. It also investigates the activities of unlicensed gangmasters and those using their services. A labour provider must have a GLAA licence to work in the regulated sectors. It is a criminal offence to supply workers without a licence or be in possession of false documents with the intention of acting as a licensed gangmaster or to use an unlicensed labour provider.

The GLAA's licensing scheme has historically worked in partnership with business, labour users and labour providers to drive up standards of employment, in particular in areas of seasonal and temporary labour. This enables business to operate on a level playing field whilst reducing opportunities for workers to be exploited.

All new applicants undergo an application process that includes checks with other government departments and receive a physical inspection by a GLAA officer to make sure they meet the licensing standards. The standards are all requirements to protect workers from poor treatment and exploitation. They cover issues such as working hours, training, terms and conditions, the national minimum wage and transport to ensure labour providers meet the basic safety and welfare standards. There are also conditions attached to the licence holder and Principal Authority to check they are 'fit and proper' to hold a licence.

The licensing standards cover the following subject areas:

- Fit and Proper Test
- Pay and Tax matters
- Prevention of Forced Labour and Mistreatment of Workers
- Accommodation

- Working conditions
- Health and Safety
- Recruiting Workers and Contractual Arrangements
- Sub-Contracting and Using Other Labour Providers

Labour providers must continue to comply with the licensing standards to keep their licence. The GLAA licensing approach is supported by a dedicated compliance team, whose responsibility it is to undertake application inspections, and inspections of those who hold a licence when allegations of non-compliance with the licensing standards are received. Inspections occur after the initial assessment by the GLAA's intelligence teams drawing on information from a range of sources including other government departments, under their information sharing powers. This type of inspection activity may lead to licences being suspended, revoked or conditions being added to the licence. GLAA can also make referrals to the CPS for criminal prosecution in serious cases where labour providers have operated without a licence or obstructed officers, or where labour users have used an unlicensed gangmaster.

Following amendments to the Gangmasters (Licensing) Act 2004, statutory provisions are in place to allow other high-risk sectors to be included or excluded under the current gangmasters licensing regime. However, we have clearly set out that any changes to the licensing regime should be informed by evidence that licensing is the appropriate approach to tackle non-compliance. The current framework for licensing is designed to apply to labour providers and so any changes to the scope of the regime need to be considered in that context.

Regulations setting out the legal requirements that are expected from employers in respect of workers and the workplace are already in place in some areas. For example, in employment, health and safety and environmental regulations. However, because some business operations cut across multiple areas, often beyond labour market enforcement legislation there will be instances where more than one set of regulations will apply to a business to ensure it meets the requisite legal requirements to run in a fully compliant way (e.g. hand car washes). In these circumstances, it may not always be clear to employers whether the standards or regulations apply to all elements of their business.

We are committed to supporting employers to help them meet their responsibilities and understand that information for employers could be better aligned and more accessible.

We want to explore whether there are gaps in existing regulations that need to be addressed - including where the coordination of enforcement action between statutory agencies could be improved to help better enforce the law. Effective engagement with industry champions could also lead to opportunities to support industry to develop preventative approaches to non-compliance. Examples of where similar steps are being taken, include the Responsible Car Wash Scheme set out above.

## Questions

1. **Is the current system effective in enforcing the rights of vulnerable workers?**  
*Y/N, please explain your answer.*
2. **Would a single enforcement body would be more effective than the current system?**  
*Y/N, please explain your answer.*
3. **What do you think would be the benefits, if any, of a single enforcement body?**
4. **What do you think would be the risks, if any, of a single enforcement body?**
5. **Do you think the current licensing scheme (for supply or use of labour) should be expanded to other sectors at risk of exploitation by gangmasters?**  
*Y/N, please explain your answer.*
6. **Are there any at risk sectors where you think enforcement of existing regulations could be strengthened to drive up compliance in place of licensing?**  
*Y/N, if Y please provide examples.*

## 2. Relationship with other areas of enforcement

*In addition to the core remit set out at above, we recognise that there are wider areas of enforcement related to the workplace, where a new single enforcement body could play a role. We are interested in gathering views on the interaction with these areas.*

There are likely to be synergies with other labour market rights enforcement where the state has a role. The closer the synergy the more likely the value of sharing intelligence and cooperating on investigations. However, combining too many functions in one body might also dilute and reduce focus on certain aspects of enforcement. The government would like to seek further information on the following areas about whether improvements can be made by either closer working with existing labour market enforcement functions or by becoming part of the new body.

### 2.1 Statutory Sick pay

At present, HMRC run a dispute resolution process through its statutory payments dispute team for individuals who believe they have been wrongly denied statutory sick pay. An individual can contact HMRC's Statutory Payments Dispute Team if they believe their employer has not paid them statutory sick pay that they are entitled to. HMRC can then check whether the individual is entitled to statutory sick pay. If they are found to be eligible, HMRC will write to the employer to resolve the dispute. In the event that an employer refuses to pay, HMRC will, once the appeals process has been exhausted, make a payment of any outstanding amount due to the individual and can impose a penalty on the employer. Appeals can be made to the Tax Tribunal. The process generally has a high success rate in dealing with disputes, with 90% of complaints resolved following a letter from HMRC. However, it is entirely reliant on an individual being aware that they are entitled to statutory sick pay, and that they can go to HMRC to raise a dispute. There is no proactive enforcement.

DWP, who are responsible for policy on statutory sick pay, are considering reforms, including options to strengthen enforcement. In this case, a new single enforcement body may be better placed to take on this role.

### 2.2. Discrimination and harassment in the workplace

The Equality and Human Rights Commission (EHRC) has responsibility for encouraging equality and diversity, eliminating unlawful discrimination, and protecting and promoting the human rights of everyone in Britain. The Commission has a range of powers, including providing advice and guidance to individuals, employers and other organisations and reviewing the effectiveness of the law. It also has enforcement powers to protect people against discrimination, harassment and victimisation and to promote awareness and understanding of equality and human rights law. The Commission's formal enforcement action includes:

- Inquiries
- Investigations

- Unlawful act notices
- Agreements
- Assessments
- Compliance notices

The Commission's remit goes far beyond the workplace, covering other areas such as the provision of goods and services.

Specifically in relation to issues in the workplace, we are interested in exploring whether there are gaps in the existing enforcement tools and approach available to the EHRC, and whether a new Single Enforcement Body would provide a route to address these gaps.

## 2.3 Enforcement of Employment Tribunal Awards

The main route to enforce employment rights is by an individual taking a claim to an employment tribunal. If an employment tribunal (ET) finds that an individual has had their employment rights breached, it can order the respondent (the employer) to pay a financial award to the claimant (the employee/worker). In common with other court and tribunal jurisdictions, the ET award is a judgment debt that the individual must recover if the respondent does not pay. Tribunals have no enforcement powers.

There are currently three enforcement routes for claimants to enforce Employment Tribunal awards. These are through the Fast Track scheme (which involves using a High Court Enforcement Officer (a private bailiff)), using the enforcement methods that are available in the County Court or the BEIS ET penalty scheme (which involves the government fining the respondent for late payment). The Fast Track scheme and County Court enforcement methods incur fees. The BEIS penalty scheme is free.

If a new single enforcement body is created, we propose moving the existing BEIS penalty scheme to be run by the new body. We are also interested in views about whether the new body should have any further role in unpaid awards.

## 2.4 Health and Safety

Enforcement of Health and Safety is split between the Health and Safety Executive (HSE) and local authorities. HSE broadly cover inspection and enforcement of higher risk sectors, with local authorities having responsibility for low risk workplaces, such as most offices, shops and restaurants.

HSE itself is a large and established organisation, employing over 2,500 people with a budget of over £200m. Unlike the enforcement bodies under the Director's remit, it has a significant role in setting the regulatory framework and publishing statutory codes of practice.

Given how established the health and safety regime is, and the fact that HSE has a much broader role than the other enforcement bodies we are considering here, we do not propose incorporating health and safety within the remit of a new labour market enforcement body. Inclusion is unlikely to make any tangible improvement to the effectiveness of health and safety enforcement. While there may be some cross over in non-compliance between health and safety and areas of employment law, handling for example of chemicals is likely to be a less accurate indicator of non-compliance with NMW, than underpayment of holiday pay for

example. Given the size of HSE, and the focus on high harm incidents, incorporating HSE into a new body may lead to a shift in priorities, resulting in less activity to tackle other types of breaches, such as underpayment of National Minimum Wage.

Instead, we would concentrate on developing stronger links between HSE and the new body - ensuring there was effective sharing of intelligence and more joint operations as appropriate. Links with local authorities would also be important, given their role enforcing health and safety in lower risk sectors.

There is one element of health and safety legislation that the new body would have a role in however. HSE, local authorities and some other bodies such as the Civil Aviation Authority and Office of Rail and Road currently enforce some aspects of the Working Time Regulations 1998:

- Maximum weekly working time
- Night work limits
- Special conditions night work
- Health assessments
- Transfer night to day
- Adequacy of rest breaks
- Record keeping

They do not enforce time off or annual leave however. Government has committed to introduce state enforcement of holiday pay for vulnerable workers. Entitlement to paid annual leave comes from the Working Time Regulations 1998, an element not currently enforced by HSE. We propose that the new single enforcement body would have the power to enforce those specific elements relating to annual leave for vulnerable workers. HSE's role in enforcing the Working Time Regulations would remain unchanged.

## Questions

- 7. Should a single enforcement body take on enforcement of statutory sick pay if this process is strengthened?**  
*Y/N, please explain your answer.*
- 8. Should a single enforcement body have a role in relation to discrimination and harassment in the workplace?**  
*Y/N, please explain your answer.*
- 9. What role should a single enforcement body play in enforcement of employment tribunal awards?**
- 10. Do you believe a new body should have a role in any of the other areas?**  
*If yes, please explain your answer.*
- 11. What synergies, if any, are there between breaches in areas of the 'core remit' and the other areas referenced above?**

## 3. The approach to enforcement

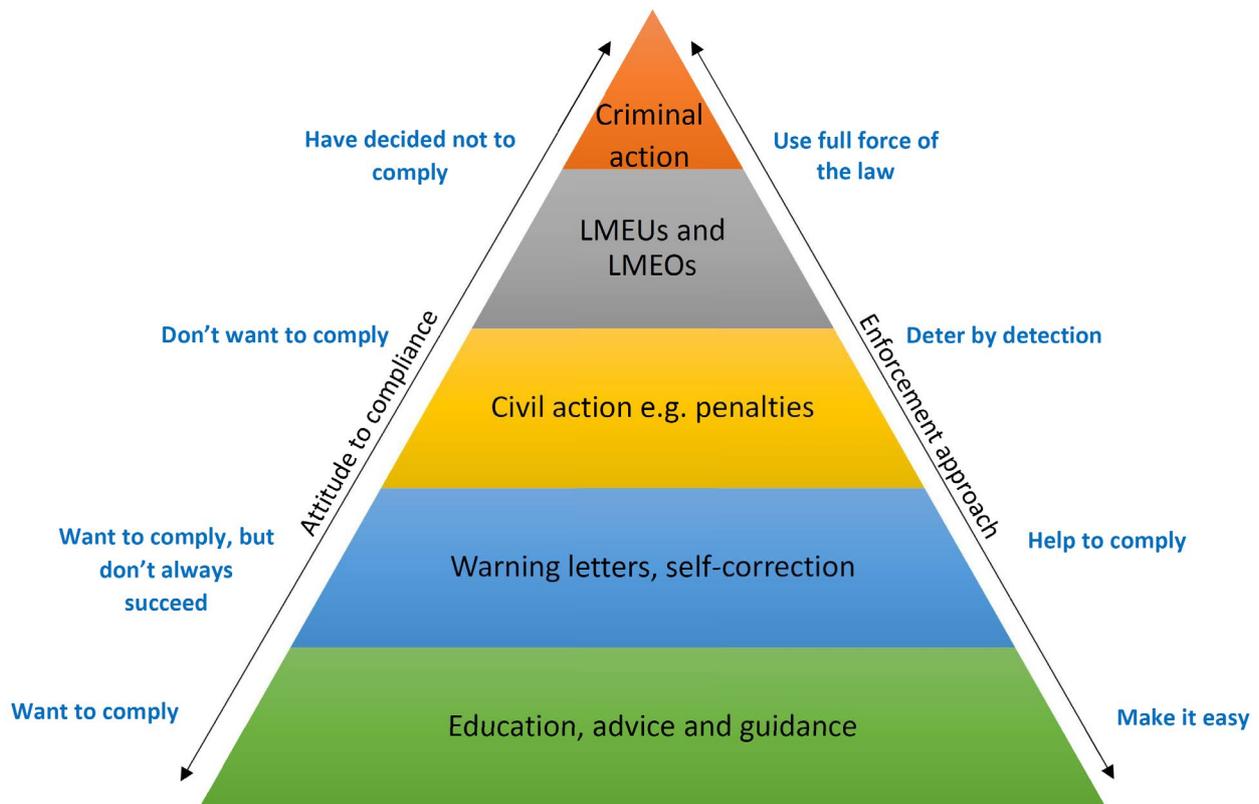
*The creation of a new single enforcement body would be an opportunity not just for structural changes, but to review enforcement across all areas and establish a consistent approach, designed to respond effectively to the full spectrum of non-compliance, from minor breaches to forced labour.*

The Director of Labour Market Enforcement in his 2018/19 Strategy advocated an approach to enforcement that mixes two theories – compliance and deterrence. Government supports this approach. The different enforcement bodies all take slightly different approaches to enforcement, mixing compliance and deterrence to different degrees, and with different emphasis.

Fundamentally, the majority of employers want to do the right thing and comply with the law. We recognise that some areas of the law can be complex and we should do more to support employers -particularly small businesses - to comply. A greater focus on compliance is good for workers too – it means they are less likely to experience an issue in the first place and may feel more empowered to raise issues with their employer directly. Minor or accidental breaches can be rectified more quickly without a full, formal investigation that can take time – so workers get a speedier resolution.

For those businesses that deliberate try to avoid their legal responsibilities or are negligent in their approach, we want firm enforcement action to ensure individuals are protected and to deter further breaches. This will help to create a level playing field for those businesses trying to do the right thing – ensuring they are not undercut by competitors who are not meeting their legal obligations. Those found to have committed serious breaches, such as offences under the Modern Slavery Act 2015, which can involve individuals trafficked to and within the UK, forced to work for little or no pay while living in squalid conditions and subject to threats and abuse – must continue to be subject to firm and decisive action, including criminal prosecution.

**Figure 3: Approach to enforcement**



\* LMEU/O: Labour Market Enforcement Undertaking/Order (please refer to p.32 for further information)

## 3.1 Supporting compliance

A Single Enforcement Body could support compliance by:

- **increasing awareness** of employment rights and how employers should comply with the law by providing coordinated guidance and support across all areas enforced by the state
- **taking a more consistent, proportionate approach to breaches at the 'lower harm' end of the spectrum** – with a focus on education and 'nudge' techniques such as warning letters, rather than penalties or formal enforcement action for minor first offences

### Increasing awareness

Knowledge and awareness of employment rights is fundamental to improving compliance. We are already taking a number of steps as part of the Good Work Plan to ensure workers are aware of their rights, including extending the right to a written statement of employment rights to all workers.

Advice and guidance is currently available to both workers and employers through GOV.UK and also through Acas (Advisory, Conciliation and Arbitration Service) who provide free and impartial information and advice to employers and employees on all aspects of workplace relations and employment law. It runs an impartial helpline, through which complaints can be transferred to the relevant enforcement body and it also provides conciliation to resolve

workplace problems. Each of the enforcement bodies also provide a level of support and guidance.

However, improvement to support and guidance continues to be raised by stakeholders. The Director of Labour Enforcement has made some recommendations in this area, including a review of the NMW guidance and advocating the creation of a new web portal linking all enforcement agencies.

A new single enforcement body could significantly improve the provision and accessibility of support and guidance. The creation of a strong, recognisable single brand would make it easier for individuals to know where to go for help. The type of advice and support on offer should complement Acas’s offering and that of the Modern Slavery Helpline. Specifically, a new body could build on the work of the existing enforcement bodies, providing more technical guidance and targeted outreach to high risk sectors and vulnerable groups – driven by intelligence and data.

**Table 3: provision of guidance and advice**

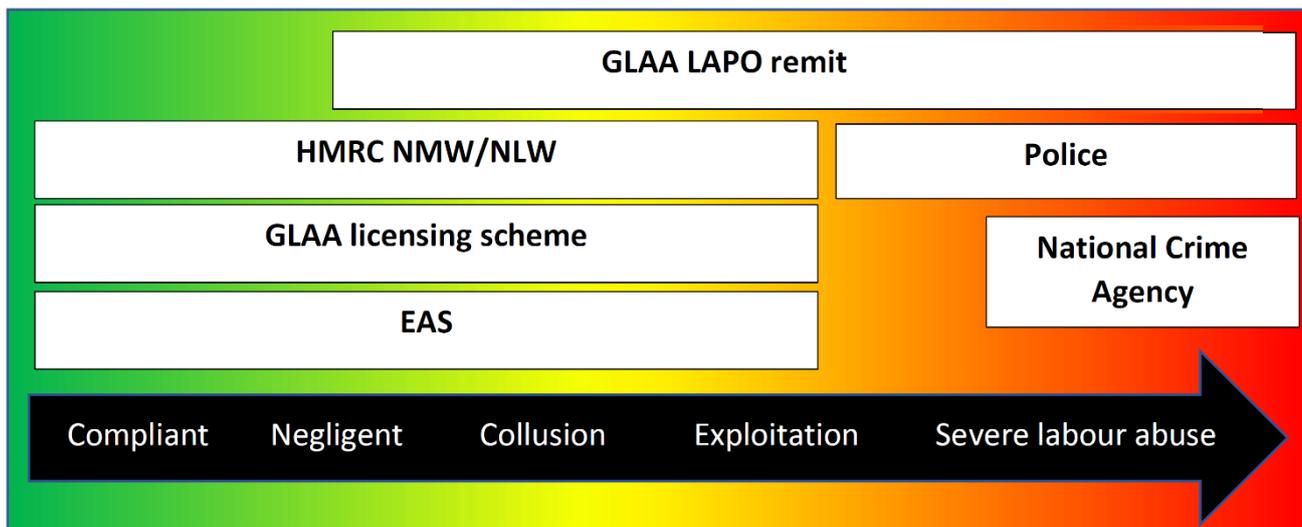
|                        | <b>GOV.UK</b>                        | <b>Acas</b>  | <b>Single enforcement body</b>                              |
|------------------------|--------------------------------------|--|---|
| <b>Audience</b>        | Employers and workers in all sectors | Employers and workers in all sectors   | Targeted to higher risk sectors                             |
| <b>Areas covered</b>   | All areas of employment law          | All areas of employment law  | Specific areas under the body’s remit                       |
| <b>Type of support</b> | High level online guidance           | High level online guidance<br>Helpline providing tailored advice, training courses and workshops | Technical guidance, tailored training courses and workshops |

Communications campaigns could also be better coordinated across the areas of enforcement. The Director has made progress with increasing coordination, but a single body would be better placed to achieve this join up.

### Consistent, proportionate approach to ‘lower harm’ breaches

The spectrum of non-compliance ranges from a basic lack of understanding and application of labour rights to criminal labour exploitation and modern slavery. Figure 4 below shows how the existing enforcement bodies operate across this spectrum.

**Figure 4: spectrum of compliance**



Often, breaches at the lower end of the scale have been committed accidentally, due to a misunderstanding of technical rules. They may not even cause any detriment to the worker. In these situations, rather than taking formal enforcement action we want to support employers to rectify the breach. We already do this in a number of areas, for example EAS takes a compliance focused approach. HMRC also issue ‘nudge’ letters as an initial step to resolve minor issues quickly and the GLAA seek informal resolutions with some employers in the first instance. We are currently taking steps to address areas that stakeholders have raised as problematic, for example, we recently consulted on how we can improve compliance with NMW in relation to salaried hours work and salary sacrifice. This looked at a range of issues, including how we can tackle aspects of the regulations that employers are finding difficult to comply with (particularly where there is no worker detriment).

A single enforcement body would be a chance to build on this work, and develop a consistent approach to ‘lower harm’ breaches that is focused on rectifying the breach and supporting future compliance, without necessarily taking formal enforcement action. This would include further work to determine how we define minor or lower harm breaches in this context – recognising that it can be difficult to establish whether a breach has been accidental or deliberate. Factors such as whether there was detriment to the worker, or whether the employer has committed other breaches could also be taken into consideration.

### 3.2 A greater deterrence

While most employers want to do the right thing, we also know that some deliberately flout the law, exploiting their workers and undercutting other compliant businesses. Some labour providers fail to take simple steps to prevent exploitation of their workers by others. This activity ranges from the more serious, deliberate attempts to under-pay NMW, or flout employment agency standards, all the way to offences under the Modern Slavery Act 2015. Between the existing bodies, there are a range of enforcement powers to tackle this spectrum of behaviour, discussed in [Chapter 4](#). Having the tools in place to tackle the full range of non-compliance is vital, but ultimately we want to deter rogue employers from breaching the law in the first place.

A single enforcement body could deter this behaviour more effectively by:

- **Making it easier to raise a complaint** by improving the ‘user journey’ - increasing the likelihood of non-compliance being reported and addressed
- **Improving the ability to identify non-compliance** through a single pool of resource that could be used more flexibly to respond to changing priorities and greater sharing of intelligence to improve the effectiveness of proactive enforcement
- **Publicising breaches more effectively**, through a consistent and more targeted approach

## Making it easier to raise a complaint

There are currently two main routes to raise a complaint:

- through the Acas helpline
- directly with the relevant enforcement body

Acas transfer calls from their helpline to the relevant enforcement body, where they believe an issue raised falls under the remit of state enforcement. If a single enforcement body was created, we envisage Acas retaining this important role. Cases can also be referred to the GLAA through the National Modern Slavery Helpline, and again, we would want to ensure this route remains available. However, we recognise that complaints are increasingly being raised directly with an enforcement body. Creating a single enforcement body could make this process simpler and make it easier to know where to go for help – particularly where the remits of the existing enforcement bodies overlap. A single enforcement body would have a more visible and recognisable presence, and could offer a triage function ensuring that complaints were handled correctly.

## Improving the ability to identify non-compliance

We have already invested significantly in labour market enforcement in recent years and we want to build on this to crack down on rogue employers and increase the risk of being caught.

By bringing together the resources of the existing bodies in one place, under one organisation, we would have more flexibility to be able to move resource as required, which would help to tackle emerging risks and priorities more efficiently than the current system.

Whilst the existing bodies share intelligence to an extent now, bringing the bodies together would mean one single information hub, with intelligence shared much more easily across different areas. We would expect this to improve the targeting of proactive enforcement.

## Publicising breaches more effectively

Naming, or publicising non-compliant activity has been found to be effective at deterring non-compliant activity, as employers worry about the impact on their reputation. It is a tool currently used to varying degrees by each of the enforcement bodies.

Under the National Minimum Wage Naming scheme, BEIS names all employers who have been issued with a Notice of Underpayment unless employers meet one of the exceptional criteria or have arrears of £100 or less.

The GLAA issues a press release where a prosecution has been successful, giving details of the case and what the breaches were. The GLAA also keep a list on their website of everyone who has been inspected and anyone who has had a license revoked. They also publish details of appeals that went to judgement to identify issues that led to the revocation.

Similarly, EAS issue a press notice where there has been a successful prosecution or prohibition. Naming has also been introduced for the BEIS ET awards penalty scheme – so where an employer fails to pay a penalty as a result of an unpaid award, they will be named on the BEIS website.

If a single enforcement body is created, it would make sense to develop a consistent approach to naming or publicising enforcement action.

Naming everyone subject to enforcement action could dilute the impact of naming. Focusing on more serious breaches, or where a business has failed to respond to enforcement action would also be consistent with an approach to support those businesses trying to comply, with tougher enforcement action for deliberate or persistent breaches. In line with this approach, we think that a new body should focus on publishing enforcement action involving:

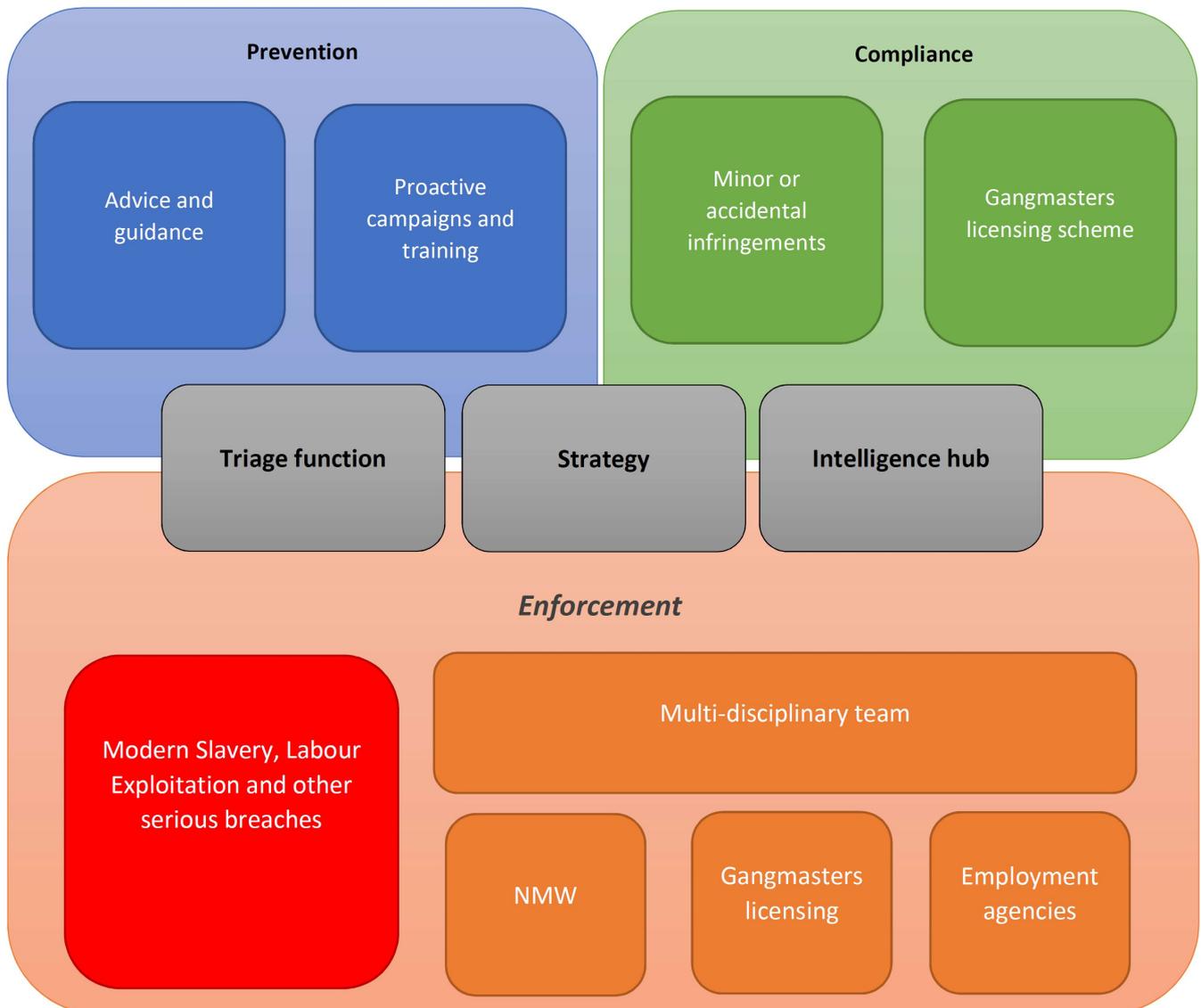
- More serious breaches e.g. prosecutions, revocations or prohibitions and larger underpayments
- Individuals who have failed to pay a civil penalty
- Persistent offenders

While this may lead to fewer employers being named, it would ensure a focus on the more serious breaches, which the Director of Labour Market Enforcement has previously advocated as a way to increase the deterrent impact of naming.

### 3.3 Supporting functions

To support the approach to compliance set out above, and ensure effective enforcement we would expect to carry out a range of functions to support compliance and undertake enforcement activity.

**Figure 5: Proposed supporting functions of a Single Enforcement Body**



As with any similar body, we would expect it to have a formal management structure with a Chief Executive and management accountable for delivering the body's strategy and objectives, and responsible for day to day management. The exact nature of the body agreed would determine the governance requirements in accordance with public guidelines around accountability and managing public money.

We also want to make sure that a new enforcement body is well equipped to respond to the changing nature of the labour market. Key to this is getting input from social partners, including employees and employer groups, on strategic direction and objectives on a regular basis.

This could for instance be facilitated through one or a combination of the following options:

- having representatives of social partners appointed to the Board
- a council made up of employer, employee and independent members, to contribute to the strategic direction
- a statutory duty to consult social partners to inform the creation of strategic plans

## Questions

**12. Should enforcement focus on both compliance and deterrence?**

*Y/N, please explain your answer.*

**13. As a worker, where would you go now for help if you had a problem with an employment relationship?**

*Acas, TU, CAB, GOV.UK, HMRC, EAS, GLAA, other, I wouldn't know where to go.*

**14. As a worker, how would you like to access help?**

*Through a single body, through a specialist body, through Acas, TU, CAB, GOV.UK, other.*

**15. As an employer, where would you go now for support on how to comply with employment law?**

*Acas, GOV.UK, HMRC, EAS, GLAA, Business Association, consultant, lawyer, other, I wouldn't know where to go.*

**16. As an employer, how would you like to access help?**

*Through a single body, through a specialist body, through Acas, TU, CAB, GOV.UK, other.*

**17. Is there enough guidance and support available for workers/employers?**

*Y/N, how could it be improved.*

**18. Should a new single enforcement body have a role in providing advice?**

**19. Would having a single enforcement body make it easier to raise a complaint?**

*Y/N, please explain your answer.*

**20. Would a single enforcement body improve the ability to identify the full spectrum of non-compliance, from minor breaches to forced labour?**

*Y/N, please explain your answer.*

**21. What sort of breaches should be considered 'lower harm'? Should these be dealt with through a compliance approach?**

**22. Which breaches should be publicised?**

*None, only prosecutions, more serious breaches above a specified threshold, all.*

## 4. Powers and sanctions

*In order to support the approach to enforcement set out at in the previous sections and to ensure a single enforcement body has a consistent approach, we need to consider the powers and sanctions available to that body. We would anticipate it having access to all of those currently available to the three enforcement bodies, but this chapter considers some changes or additions to these.*

### 4.1 Existing sanctions

There are currently a wide range of powers available to the existing enforcement bodies, powers are specific to each enforcement regime.

#### HMRC NMW

- **Prosecution** – where an employer refuses or wilfully neglects to pay NMW, fails to keep records to prove NMW has been paid, produces false records or obstructs HMRC.
- **Penalties** - Where an employer has underpaid NMW, HMRC issue a notice of underpayment for the unpaid arrears, with a penalty of 200% of arrears. Penalties are a minimum of £100 and maximum of £20,000 per worker

#### GLAA

- **Prosecution** – where a gangmaster has operated without a licence, is in possession of false documents with the intention of acting as a licensed gangmaster, where an unlicensed gangmaster has been used, or for obstructing GLAA officers. GLAA can also undertake criminal investigations into other labour market offences, as defined in sections 3(3) of the Immigration Act 2016, including modern slavery offences related to worker exploitation using its wider enforcement powers under the Policy and Criminal Evidence Act 1984.
- **Slavery and Trafficking Prevention Orders and Risk Orders** – Prevention orders are used to prevent slavery and human trafficking offences being committed by someone who has already committed such offences. It may impose any restriction on the defendant that the Court deems necessary for the purpose of protecting the public from harm. Risk orders can be made by a Court in respect of an individual who has not been convicted of a slavery or trafficking offence where the Court is satisfied that there is a risk that the defendant may commit such an offence and that the order is necessary to prevent serious harm to the public.
- **Refusal, suspension or revocation of a licence** – used under the gangmasters licensing scheme where a gangmaster has not complied with the licensing conditions or a statutory requirement.

#### EAS

- **Prosecution** – for failure to comply with a prohibition order
- **Prohibition** – used to prevent an individual from running an employment business for up to 10 years due to misconduct or unsuitability.

In addition to these powers, each of the bodies can name employers found in breach or publicise enforcement activity to different degrees.

## Labour Market Enforcement Undertakings and Orders

These powers have been supplemented by the power to apply Labour Market Enforcement Undertakings (LMEU) and Orders (LMEO), which were introduced in the Immigration Act 2016 and are available in England, Scotland and Wales. Where there is a reasonable belief that a trigger labour market offence has been, or is being, committed (such as using an unlicensed gangmaster), the enforcement bodies can request a business enter an undertaking to take steps to prevent further offending. When an undertaking is refused or not complied with the enforcement bodies may seek an LME order from the courts. An order can also be granted on conviction for a trigger offence. Breach of an order can lead to a prison term of up to two years and/or an unlimited fine.

These undertakings and orders are intended to tackle the middle ground of non-compliance and are an additional tool in more serious and persistent cases, where the enforcing authority is of the view that existing civil sanctions will not prevent or stop the non-compliance and prosecution is not yet proportionate

Each of the enforcement bodies has the power to use these undertakings and orders for breaches within their own remit. Using its wider enforcement powers, the GLAA can pursue combined undertakings and orders where a trigger offence has been committed across two or more areas/remits. For example, where a trigger offence has been committed under both NMW and employment agencies legislation.

## Labour Abuse Prevention Officers

The Immigration Act 2016, also reformed the role of what was formerly the Gangmaster Licensing Authority – creating the Gangmasters and Labour Abuse Authority (GLAA). The GLAA was also given new powers under the Police and Criminal Evidence Act 1984 to investigate serious labour market offences, including modern slavery offences across all labour sectors. The new enforcement powers are used by specially trained officers, known as Labour Abuse Prevention Officers (LAPOs).

Given the nature of the LAPO powers and the desire to focus on compliance, we would not expect all officers of the body to be trained as LAPOs. Instead there would be a specially trained team of LAPOs used where there is intelligence of serious worker exploitation. This would give the body the ability to respond to breaches across the whole spectrum of non-compliance, across all areas of employment law enforced by the state.

LAPO powers are only available for use in England and Wales. We do not propose changing the territorial extent of these powers at this stage.

## 4.2 Civil penalties

As the table below indicates, each enforcement body has a range of tools they can use depending on the nature of non-compliance. One concern has been whether in some areas there is a sufficient range of tools to deal with deliberate breaches which do not warrant prosecution or preventing the employer from operating.

**Figure 6: spectrum of compliance**

|             |                      |                          |                 |             |
|-------------|----------------------|--------------------------|-----------------|-------------|
| <b>GLAA</b> | Licensing conditions | Revoke or refuse license | LMEUs and LMEOs | Prosecution |
| <b>HMRC</b> | Nudge letters        |                          | LMEUs and LMEOs | Prosecution |
| <b>NMW</b>  | Self correction      |                          |                 |             |
|             | Civil penalties      |                          |                 |             |
| <b>EAS</b>  | Warning letters      | Prohibition              | LMEUs and LMEOs | Prosecution |

This is particularly an issue in relation to the gangmasters licensing regime and employment agencies.

In his 2018/19 Strategy, the Director of Labour Market Enforcement recommended that the Employment Agency Standards (EAS) Inspectorate be given additional powers to impose civil penalties in order to fill an identified gap in the enforcement regime:

*“EAS enforcement action escalates at present from a formal warning letter, to the use of the new undertakings and orders regime in appropriate cases, and finally to prosecution and prohibition... This is a rather polarised approach and, with only the most serious breaches warranting prosecution and prohibition, little punitive action can be taken further down the spectrum of offending”.*

The government accepted the recommendation, and we propose that a new civil penalties regime is introduced – whether for EAS to use or a new single enforcement body. This would support the approach to compliance set out in this consultation and address concerns from the Director of Labour Market Enforcement that the middle ground of non-compliance requires further attention.

If a single enforcement body is created, we could go further and introduced civil penalties of a similar level to those current used in enforcing NMW, across other areas of enforcement.

## Proposed approach

Under the NMW regime, where an employer has been found to have underpaid NMW or NLW, they can be issued with a notice of underpayment which will contain a penalty. The penalty is calculated based on a percentage of the total underpayment (currently 200% of arrears) – with a minimum penalty of £100 and a maximum of £20,000 per worker. To incentivise prompt payment, where unpaid wages and penalties are paid in full within 14 days, the employer is permitted to only pay half the penalty.

Both the GLAA and EAS regimes include requirements for businesses to comply with certain aspects of pay. Introducing a civil penalties regime to cover these instances would have a number of benefits. It would:

- provide a more consistent approach across all areas of enforcement where wages have been withheld or underpaid;
- support a more flexible, efficient and responsive enforcement regime - allowing non-compliant agencies and non-compliant practices to be dealt with by a range of sanctions rather than merely sanctions under the compliance route or criminal prosecution;
- increase the deterrent effect leading to a larger number of agencies and labour suppliers following the statutory or licensing regime; and
- eliminate any financial gain or benefit from non-compliance.

We propose introducing the ability to impose civil penalties under both the gangmasters licensing and employment agency standards regimes where arrears of wages are involved. The penalties would be set at the same level as the NMW penalties – 200% of arrears – with a minimum penalty of £100 and maximum of £20,000 per workers. As with NMW, there would be a 50% reduction where arrears and penalties are paid within 14 days.

## Employment Agency Standards

Employment businesses and employment agencies must comply with the Conduct of Employment Agencies and Employment Businesses Regulations 2003. A number of these regulations involve requirements in relation to pay:

**Regulation 12** – prohibits withholding payments to work-seekers on certain grounds including when the employment business has not received payment from the client or because the workers cannot produce an authenticated timesheet.

**Regulation 25** – sets out specific requirements in relation to the entertainment and modelling industries. Money owed directly by the hirer to the work-seeker consisting of earnings in the entertainment or modelling industries must be held by the agency for the work-seeker in one or more client accounts but must not be held for more than 10 days (unless the work-seeker has previously requested a longer period).

We propose introducing civil penalties for use when arrears have arisen due to a breach of one of these regulations.

## Gangmasters Licensing

Paragraph 13 of the GLAA (licensing conditions) rules 2009 mirrors Regulations 12 of the Conduct of Employment Agencies and Employment Businesses Regulations 2003, detailed above.

We would therefore propose to introduce civil penalties for use when this condition has been breached.

## Appeals

As with NMW, there would be a right to appeal. An appeal could be lodged at an Employment Tribunal (or in Northern Ireland, an Industrial Tribunal) within 28 days from the service of the notice on the grounds of:

- the decision to serve the notice
- any requirement imposed by the notice to pay amounts outstanding to a worker
- any requirement imposed by the notice to pay a penalty

There would also be the right to appeal where a replacement notice has been issued, which relates to a worker not included in the original notice.

If a notice is appealed, the collection of the penalty would be suspended – and reinstated if the appeal is withdrawn or dismissed.

## 4.3 PACE Powers

The Immigration Act 2016, expanded the role of what was formerly the Gangmaster Licensing Authority – creating the Gangmasters and Labour Abuse Authority (GLAA). Certain GLAA officers can investigate labour market offences (as defined in section 3(3) of the Immigration Act 2016) in England and Wales, when they are acting for the purposes of the following:

- Gangmasters (Licensing) Act 2004;
- Employment Agencies Act 1973;
- National Minimum Wages Act 1998; and
- Parts 1 and 2 of the Modern Slavery Act 2015

The new enforcement powers are used by specially trained officers, known as Labour Abuse Prevention Officers (LAPOs). LAPOs are authorised by the Home Secretary to use certain investigatory powers under s.114B of the Police and Criminal Evidence Act 1984 (PACE) with appropriate modifications in England and Wales for the purposes of investigating criminal labour market offences (under the legislation listed above). LAPOs are able to take immediate and effective action against rogue employers operating in any sector. The PACE powers ensure LAPOs have the requisite investigative powers to deal effectively with serious cases of worker exploitation<sup>2</sup>. The powers enable LAPOs to:

- apply for a court search warrant to enter and search premises – where there are grounds to believe that evidence likely to be of substantial value to the investigation of a labour market offence will be found.
- search a person on premises when executing a court search warrant, where there are reasonable grounds for suspecting that the person may have concealed on them material which might be evidence in relation to a labour market offence.
- arrest and search a person suspected of committing a labour market offence.

The GLAA works closely with the Employment Agency Standards Inspectorate (EAS) and HMRC's National Minimum Wage teams, the police, National Crime Agency, and other regulatory and enforcement bodies.

Officers employed by the GLAA to act as LAPOs have received multi-disciplinary training so that they can also be deployed to conduct licensing activities, i.e. compliance inspections exercising powers under section 16 of the GLA 2004.

Her Majesty's Inspectorate of Constabulary and Fire & Rescue Services recently carried out an inspection of GLAA's use of their PACE powers and the report<sup>3</sup> concluded that the GLAA has done remarkably well in assembling and deploying its LAPOs effectively in a relatively short space of time. They did however identify issues raised by the GLAA in relation to the legislative framework that LAPOs operate under and recommended they be considered in the context of proposals for a single enforcement body.

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<sup>2</sup> See the 'Police and Criminal Evidence Act 1984 (Application to Labour Abuse Prevention Officers) Regulations 2017 (S.I. 2017/520)' and 'Police and Criminal Evidence Act 1984'.

<sup>3</sup> [www.justiceinspectors.gov.uk/hmicfrs/wp-content/uploads/an-inspection-of-the-use-of-investigative-powers-by-the-gangmasters-and-labour-abuse-authority.pdf](http://www.justiceinspectors.gov.uk/hmicfrs/wp-content/uploads/an-inspection-of-the-use-of-investigative-powers-by-the-gangmasters-and-labour-abuse-authority.pdf)

These include:

- LAPO trained officers carrying out licensing compliance or enforcement activity (using licensing powers rather than PACE powers) switching to use PACE powers when they come across evidence of wider criminal offending;
- A requirement for LAPOs investigating wider labour market offences to apply for warrants from a Crown Court when seeking to enter premises to seize employment records, which may be treated as special procedure material rather than a Magistrates Court, which GLAA officers utilising bespoke powers under the G(L)A 2004 to investigate gangmasters licensing offences would be able to do;
- The removal of national minimum wage and employment agencies investigative powers briefly held by GLAA officers under an interim arrangement to carry out investigations and seek LME undertakings and apply for LME orders in advance of GLAA officers PACE powers coming into force.

When officers are designated to exercise powers under PACE this comes with additional safeguards, including that officers have to follow the PACE codes to ensure the powers are used in accordance with the law.

The legislation purposefully made a distinction between the powers of officers' acting as LAPOs and those using bespoke enforcement powers, under the Employment Agencies Act 1973, the Gangmasters (Licensing) Act 2004 and the National Minimum Wage Act 1998 to ensure these safeguards are in place.

We have considered whether LAPO powers under PACE could be applied differently in a single enforcement body. It is vital that the existing safeguards are maintained and as a general rule LAPOs should be subject to the same level of checks and accountability as police officers. Therefore, we are not proposing to change the current PACE framework for LAPOs or the arrangements in place to ensure oversight of their use.

Whilst LAPOs can still use their powers under PACE to investigate offences and utilise LME undertakings and orders under EAA 1973 and NMWA 1998, the creation of a new single enforcement body could provide a way of addressing some of the issues raised above. It would enable the creation of multidisciplinary teams with powers to cover the spectrum of labour market enforcement breaches, which would include employment agencies and NMW investigations. This would free up LAPOs to focus on high harm and complex labour exploitation cases across all the enforcement areas.

## 4.4 Supply Chains

All responsible businesses should have an interest in protecting potentially vulnerable workers in their supply chains and ensuring that their suppliers comply with employment law. Where issues are identified, 2 businesses should work with their suppliers to address labour exploitation and non-compliance.

### Transparency in Supply Chains

Steps have already been taken to protect vulnerable workers in relation to modern slavery. The Modern Slavery Act 2015 introduced a requirement on commercial organisations, which carry on all or part of a business in the UK, supply goods and services and have an annual turnover of £36 million or more to produce a statement setting out the steps they have taken to address the risks of modern slavery in their business and supply chains. In July 2018, the government commissioned an [Independent Review of the Modern Slavery Act](#) to look at a number of areas, including the Transparency in Supply Chains legislation (section 54 of the Act).

The government published its [response to the Review of the Modern Slavery Act](#)<sup>4</sup> on the 9 July and has committed to strengthen its approach by:

- creating a new central reporting service for modern slavery statements
- requiring ministerial government departments to publish their own individual annual modern slavery statements from 2020/21 This builds on the Prime Minister's commitment that government will publish a modern slavery statement covering central government spend for the first time in 2019
- consulting on potential changes to the transparency in supply chains legislation in the Modern Slavery Act including: extending the reporting requirement to the public sector and requiring that organisations report on specific areas. This separate [consultation](#)<sup>5</sup> has also been launched today and interested stakeholders, including employers, are encouraged to respond separately

In addition to recommendations to improve transparency and the quality of reporting, the Review recommended that government should strengthen its approach to tackling non-compliance with section 54 of the Act and set up or assign an enforcement body to impose fines on organisations which fail to publish a modern slavery statement. Through this consultation, we want to consider whether any new single labour market enforcement body should play a role in enforcement, should a new civil penalty regime be introduced.

Currently, the Home Secretary may bring civil proceedings in the High Court for an injunction requiring an organisation to comply with the duty to produce a modern slavery statement. Through the parallel consultation, we are considering options recommended by the review to introduce a more gradual approach to enforcement – starting with warning letters and moving to civil penalties where non-compliance persists.

The Home Office currently has responsibility for enforcement of the transparency in supply chains provisions. The Review recommended that an enforcement body should be set up or

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<sup>4</sup> [www.gov.uk/government/publications/government-response-to-the-independent-review-of-the-modern-slavery-act](http://www.gov.uk/government/publications/government-response-to-the-independent-review-of-the-modern-slavery-act)

<sup>5</sup> [www.gov.uk/government/consultations/transparency-in-supply-chains](http://www.gov.uk/government/consultations/transparency-in-supply-chains)

assigned to impose these proposed new civil penalties. One option could be for a new single labour market enforcement body to take a role here.

It would be quite a different function to the other areas of enforcement proposed in this consultation, and we would need to consider the implications carefully. However, an effective business response to forced labour will include steps to address risks across the spectrum of labour exploitation, including modern slavery, so there may be some common outcomes.

## Director of Labour Market Enforcement's supply chain recommendations

In his 2018/19 Strategy, the Director of Labour Market Enforcement, Sir David Metcalf considered whether there were options for encouraging the top of the supply chain to take responsibility more broadly for labour market breaches. He made two recommendations intended to ensure accountability through the supply chain. We are seeking views on these recommendations.

We are considering the Director's recommendations specifically in the context of wider labour market breaches – and whether they could potentially act as additional tools to be used by a single enforcement body to deal with breaches within its remit.

### **Joint responsibility**

Where non-compliance is identified, Sir David recommended that the top of the supply chain should have joint responsibility to rectify the problem and risk being publicly named if they do not. The aim is to encourage a more active, responsible, ethical relationship between companies and their supply chains.

In practice this would mean that where a company is found to have breached employment law, the companies it supplies to are contacted and informed. The head(s) of the supply chain would then be expected to work with the supplier to rectify any outstanding issues of non-compliance over a set time period. If after this period the enforcement body found corrective action had not taken place, both the supplier and brand name at the head of the supply chain could be publicly named as jointly responsible for the breach. The assumption is that this would apply to UK registered companies for breaches that occur in the UK.

Government agrees with the principle that heads of the supply chain should take a role in ensuring their supply chain as a whole is compliant with employment law, and undertake targeted due diligence where risks are highest. It can be too easy for brand names to turn a blind eye to poor or unlawful practices further down the supply chain – particularly where they are benefiting from resulting lower costs. Stakeholders have raised issues around unintended consequences however, particularly the likelihood that brand names would push the additional burden of demonstrating compliance down the supply chain, or simply terminate the relationship if a breach was found. This could particularly disadvantage smaller businesses.

Given the often complex nature of supply chains, it may not always be simple to identify the top of the supply chain. In practice a business may supply to more than one company, leading to a large number of businesses at the top of the supply chain. We need to consider how joint responsibility would work in these situations. One option could be a threshold – so for a business at the top of the chain to be notified by the enforcement body they would need to do a certain amount of business with the employer who had committed the breach. This could either be a fixed monetary threshold, or determined by the proportion of the supplier's business that was with the head of the supply chain. We would also need to consider whether it would be fair

and proportionate to place responsibility on a brand for breaches in a company that it has no direct relationship because it is in the lower tier of their supply chains.

We also want to explore whether joint responsibility would work more effectively in some sectors than in others. For example, we are aware that in some sectors it is not uncommon for relationships with suppliers to go back more than 10 years. Given the investment in the relationship, they are more likely to take an active role to tackle non-compliance where it is found. In other sectors however, the typical relationship with a supplier may be 6-9 months. In these circumstances, given the limited investment in the relationship there may be less incentive to take action. It is just as vital, if not more so, to drive best practice in these sectors – so we want to consider whether there are alternative approaches that may be more effective.

### **Embargoing of Hot Goods**

The other recommendation made by Sir David was to enable the temporary embargo of ‘hot goods’ to disrupt supply chain activity where significant non-compliance is found. The Director particularly highlighted today’s business models in sectors such as fast-fashion, where businesses are responding to ever changing consumer demand and where delays in the supply chain could have a significant financial impact, and therefore act as a lever to encourage compliance.

Similar powers are in place in the US -some in relation to overseas goods, and some which can be used for goods moved inter-state. Generally, they seek to resolve breaches informally, requesting that employers voluntarily hold shipment of ‘hot goods’. Where this agreement is not given, they do have the option of a court order to prevent shipment of the goods. Since 2014 there have been restrictions on the use of some of these provisions in relation to perishable goods - the Agriculture Secretary and Labor Secretary must now be consulted on their use in relation to agricultural produce.

We are considering this recommendation in relation to domestic goods only – but this still raises questions as to whether the goods would need to be produced entirely in the UK. If introduced, we would need to consider carefully whether this would apply to all sectors (including perishable goods, where embargoing could lead to the goods no longer being fit for sale) or focused on sectors that we know to be at higher risk. It would also only apply to sectors dealing in goods, so would not tackle non-compliance across service sectors.

It is likely that this would be used as a last resort, but exercising these powers would also pose a number of logistical challenges such as where the goods would be stored while embargoed and how they would be transported.

## **Questions**

**23. Do the enforcement powers and sanctions currently available to the existing enforcement bodies provide the right range of tools to tackle the full spectrum of labour market non-compliance?**

*Y/N, please explain your answer.*

**24. Should civil penalties be introduced for the breaches under the gangmasters licensing and employment agency standards regimes that result in wage arrears?**

*Y/N please explain your answer.*

- 25. If Y, do you agree with the proposed levels set out in the consultation?**  
*Y/N, if no, what level should these be set at?*
- 26. Should a single enforcement body have a role in enforcing section 54 of the Modern Slavery Act?**  
*Y/N, Please explain your answer.*
- 27. Would introducing joint responsibility encourage the top of the supply chain to take an active role to tackle labour market breaches through the supply chain?**  
*Y/N, please explain your answer.*
- 28. Do you think it would be fair and proportionate to publicly name a company for failure to rectify labour market breaches in a separate entity that it has no direct relationship with?**  
*Y/N, please explain your answer.*
- 29. Should joint responsibility apply to all labour market breaches enforced by the state?**  
*Y/N, please explain your answer.*
- 30. Would it be effective in all sectors?**  
*Y/N, if no, which, if any sectors would they be effective in?*
- 31. Do you think there should be a threshold for the head of supply chain having a responsibility for breaches at the top of the chain?**  
*Y/N, please explain your answer.*
- 32. Do you think embargoing of hot goods would act as an effective deterrent for labour market breaches?**  
*Y/N, please explain your answer.*
- 33. Would it be effective in all sectors?**  
*Y/N, if no, which, if any sectors would they be effective in?*
- 34. Should embargoing of hot goods apply to all labour market breaches enforced by the state?**  
*Y/N, please explain your answer.*
- 35. Are there other measures that the state could take to encourage heads of the supply chain to take a more active role in tackling labour market breaches?**  
*Y/N, please explain your answer.*

## Consultation questions

- 1. Is the current system effective in enforcing the rights of vulnerable workers?**  
*Y/N, please explain your answer.*
- 2. Would a single enforcement body would be more effective than the current system?**  
*Y/N, please explain your answer.*
- 3. What do you think would be the benefits, if any, of a single enforcement body?**
- 4. What do you think would be the risks, if any, of a single enforcement body?**
- 5. Do you think the current licensing scheme (for supply or use of labour) should be expanded to other sectors at risk of exploitation by gangmasters?**  
*Y/N, please explain your answer.*
- 6. Are there any at risk sectors where you think enforcement of existing regulations could be strengthened to drive up compliance in place of licensing?**  
*Y/N, if Y please provide examples.*
- 7. Should a single enforcement body take on enforcement of statutory sick pay if this process is strengthened?**  
*Y/N, please explain your answer.*
- 8. Should a single enforcement body have a role in relation to discrimination and harassment in the workplace?**  
*Y/N, please explain your answer.*
- 9. What role should a single enforcement body play in enforcement of employment tribunal awards?**
- 10. Do you believe a new body should have a role in any of the other areas?**  
*If yes, please explain your answer.*
- 11. What synergies, if any, are there between breaches in areas of the 'core remit' and the other areas referenced above?**
- 12. Should enforcement focus on both compliance and deterrence?**  
*Y/N, please explain your answer.*
- 13. As a worker, where would you go now for help if you had a problem with an employment relationship?**  
*Acas, TU, CAB, GOV.UK, HMRC, EAS, GLAA, other, I wouldn't know where to go.*
- 14. As a worker, how would you like to access help?**  
*Through a single body, through a specialist body, through Acas, TU, CAB, GOV.UK, other.*

- 15. As an employer, where would you go now for support on how to comply with employment law?**  
*Acas, GOV.UK, HMRC, EAS, GLAA, Business Association, consultant, lawyer, other, I wouldn't know where to go.*
- 16. As an employer, how would you like to access help?**  
*Through a single body, through a specialist body, through Acas, TU, CAB, GOV.UK, other.*
- 17. Is there enough guidance and support available for workers/employers?**  
*Y/N, how could it be improved?*
- 18. Should a new single enforcement body have a role in providing advice?**
- 19. Would having a single enforcement body make it easier to raise a complaint?**  
*Y/N, please explain your answer.*
- 20. Would a single enforcement body improve the ability to identify the full spectrum of non-compliance, from minor breaches to forced labour?**
- 21. What sort of breaches should be considered 'lower harm'? Should these be dealt with through a compliance approach?**
- 22. Which breaches should be publicised?**  
*None, only prosecutions, more serious breaches above a specified threshold, all.*
- 23. Do the enforcement powers and sanctions currently available to the existing enforcement bodies provide the right range of tools to tackle the full spectrum of labour market non-compliance?**  
*Y/N, please explain your answer.*
- 24. Should civil penalties be introduced for the breaches under the gangmasters licensing and employment agency standards regimes that result in wage arrears?**  
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