



HM Government

Informing Labour Market Enforcement Strategy 2018/19: Summary of Issues

Director of Labour Market Enforcement

David Metcalf

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Introduction

This document sets out the issues on which the Director of Labour Market Enforcement would like to receive evidence to inform his Strategy for 2018/19. Stakeholders will find it useful to read the Director's introductory strategy before responding as it sets out an initial analysis of the labour market non-compliance and enforcement, and explains the background to the questions being asked in this document.

The Director would welcome evidence from stakeholders via two channels:

- written feedback on these questions and any relevant evidence that you may wish to bring to our attention.
- meetings to hear from stakeholders directly. The Director and his team are keen to meet with as many people and organisations as possible from across the United Kingdom. These meetings can either be multi-stakeholder roundtable discussions (e.g. sector-focused) or bilateral with organisations individually. If you wish to host a group discussion with relevant partners, this would be also welcomed.

The closing date for submitting evidence is 13th October 2017.

To organise a meeting with the Director or members of his team, or to submit evidence, please email directorsoffice@lme.gsi.gov.uk or call **0207 215 8865**.

Role of Director of Labour Market Enforcement

In January 2017, Sir David Metcalf CBE was appointed as the Director of Labour Market Enforcement.

The role of Director of Labour Market Enforcement was created under the Immigration Act 2016 (the Act), jointly sponsored by Home Office (HO) and Department for Business, Energy and Industrial Strategy (BEIS), to bring better focus and co-ordination to the enforcement of labour market legislation. The Director has overarching responsibility for setting the strategic direction of the three labour market enforcement bodies – HMRC National Minimum Wage/National Living Wage (NMW/NLW), Gangmasters and Labour Abuse Authority (GLAA), Employment Agency Standards Inspectorate (EAS).

The Act states that the Director has a number of responsibilities namely:

- setting the strategic direction of the enforcement bodies with an **annual strategy**;
- publishing an **annual report** assessing the success of action in meeting the objectives and priorities in the previous year's plan; and
- developing an **Intelligence Hub**, with information drawn from the enforcement bodies and beyond, to provide a single view of risk and priorities across the spectrum of non-compliance – from accidental payroll errors to serious criminality.

Context

The introductory strategy sets out a detailed analysis of the labour market, including non-compliance, and enforcement by the different enforcement bodies. Although on the whole, employers comply with employment regulations and the law, there remain some problem areas where minimum standards in the labour market are not fully applied or enforced.

Additionally, in the past 30 years the challenge of enforcing the relevant regulations and laws, has become more complex due to the major labour market changes, notably:

- **The fissuring of employment relationships:** the relationships between worker and employer have become increasingly complex as employers have contracted out, outsourced, sub-contracted and devolved many functions that were once done in-house.
- **The decline in union membership:** unionisation in the private sector is in single figures outside ex-public industries, and the coverage of collective bargaining is only around one third of late 1970s figure.
- **Changing composition:** the increase in part-time working, self-employment and the gig economy have been particularly significant in the last decade, along with a hollowing out of the labour market with fewer middle skill jobs, and the expansion of low and high skill jobs. The distinction between employees, workers and self-employed people is being increasingly blurred, impacting on clarity around rights and enforcement of these. The recent Matthew Taylor Review considered the issues around employment status in fuller detail.

There are two principal routes to enforce employment rights. One route is via employment tribunals where the enforcement of employment rights can be pursued on an individual basis, for example, in cases of unfair dismissal, discrimination and redundancy.

The second route - and the Director's primary focus - involves rights being enforced directly via a number of state bodies including the three which fall under the strategic remit of the Director of LME:

- HMRC: enforce National Minimum Wage/National Living Wage (NMW/NLW) (on behalf of BEIS);
- Employment Agency Standards (EAS): enforce employment agency law;
- Gangmasters and Labour Abuse Authority (GLAA): enforce the licensing of gangmasters in agriculture, horticulture, shellfish gathering and food processing, and have recently been given police-type powers to investigate across all areas of labour market abuse.

Beyond these, other bodies play an important role too. These include the Health and Safety Executive, the Insolvency Service and local authorities, and the three bodies listed above should be working in partnership with these where appropriate. Recent extension of GLAA powers means the entire spectrum of non-compliance across the labour market in the UK now falls within the Director's remit; from unintentional errors to modern slavery.

There are clear links too between the work of the enforcement bodies and that of the Independent Anti-Slavery Commissioner, as well as with the recently published Review of Modern Working Practices by Matthew Taylor.

What is effective enforcement?

The main aim of the Director's strategy will be to ensure enforcement activity is as effective and efficient as possible in dealing with and preventing non-compliance in the labour market. The Director is clear that in order to achieve this, the activities of the enforcement bodies must be built around the following principles:

- **Prioritisation:** action from enforcement bodies needs to be informed by an understanding of the probable severity of problem across sectors; both frequency and level of harm.
- **Deterrence effect:** the threat of investigation and enforcement must act as a deterrent to employers to proactively spur change in compliance more widely than only those directly inspected. This relies on both the perceived probability of investigation and the expected level of penalty. Increased labour market enforcement presence should deter rogue employers and encourage a more level playing field for the compliant businesses.
- **Sustainability:** enforcement must have a long term effect on employer behaviours and leading to low rates of recidivism and lasting compliance
- **System-wide impacts:** influencing the behaviour of firms through each layer of their industry, to improve overall compliance including, where necessary, using sector specific levers.

Overview of Issues

The Director has identified a number of areas and questions on which he would appreciate stakeholder feedback, evidence and views around:

- I. Development of the intelligence hub;
- II. Approach to enforcement: issues common to all enforcement bodies; and
- III. Issues specific to each enforcement body.

As this is the first full strategy, the Director is keen to get a broad understanding of compliance and enforcement issues across sectors, therefore **if there are additional issues to which you would also like to bring to our attention please do so.**

Please note that stakeholders are not expected to answer every question.

We may wish to quote evidence received in the published strategy to support its conclusions and recommendations, and will attribute these to the individual or organisation that supplied it, unless we are explicitly asked not to do so. In view of this, **please highlight if any of the information you submit is of a sensitive nature or if you wish to remain anonymous.**

I. Development of the intelligence hub

The purpose of the intelligence hub is to bring together information from the various enforcement bodies (including but not limited to HMRC, GLAA and EAS) and other types of information such as academic studies, reports from research organisations, unions, trade bodies, charities etc., analysis of national statistical information, as well as potentially receiving direct reports of non-compliance. The layering of these different sources of information will provide an overview of the labour market and inform the priorities within the strategy. This is currently under development.

1. What information is available from your sector or organisation that might usefully be fed into the intelligence hub?

II. Approach to enforcement: issues common to all the enforcement bodies

The scale and complexity of enforcing rules and laws around the labour market is increasing. For instance the Low Pay Commission (LPC) estimates that the projected changes in NLW to £9.00 an hour by 2020 would raise coverage from around 5 per cent of the labour force in 2015 to around 14 per cent by 2020, with significant implications for the enforcement task for HMRC NMW/NLW team. The new powers within the Immigration Act also mean an increase in the enforcement remit for GLAA and EAS. Consequently the activities of enforcement bodies must be strategically targeted and prioritised to maximise their impact.

2. How can we more effectively promote **awareness of rights and responsibilities** – of both workers and employers? Should reporting non-compliance (especially of one's own employer) be made easier?
3. Given finite resources, how should the enforcement bodies balance enforcement activity that is **reactive** to individual complaints and that which is **proactive** based on information and intelligence indicating the likelihood of non-compliance?
4. **Effective use of the spectrum of enforcement tools:** the enforcement bodies have a variety of tools that they can use, from fines and repayment of wages owed, to public naming of organisations caught being non-compliant, to the new Labour Market Enforcement Orders and Undertakings, potentially leading to up to two year prison sentences.
 - a. What evidence is there on the effectiveness of different penalties at achieving redress for workers and changing the behaviour of employers?
 - b. How can the enforcement bodies target their different enforcement tools to greatest impact, both addressing non-compliant behaviour and supporting compliant businesses?
 - c. Are there additional tools or powers that enforcement bodies could use to change employer behaviour?
5. **Joint working:** how and when can agencies benefit from working together and sharing information, and what other organisations should they be working with, both nationally and at a local level?
6. **Size and distribution of resources:** Overall, is the enforcement resource adequate? Are the resources provided to the enforcement agencies proportionate to their roles? If these were to be altered, on what type of activities should the agencies focus their resource?

7. **Long supply chains** are clearly an issue in some sectors, for example retail, construction and the garment industry. While the firm at the head of the chain is normally compliant, this is not always the case further down the chain. There are number of options used in other parts of the world or in other contexts that could be used to address this problem:

- Certification of suppliers could be used to set standards in each sector, enabling lead firms to only sub-contract to organisations that have demonstrated they comply with the rules. If this did not have the desired effect, then a stronger regime of licensing could be implemented, supported by monitoring and enforcement.
- Joint liability could be introduced to ensure that lead firms bear some responsibility for their supply chain (possibly to be waived if they use certified or licensed providers).
- The purchasing power of public procurement could be used to stronger effect to enforce compliance in the private sector.
- A limit on the number of layers in the supply chain could be introduced.
- The goods from non-compliant producers could be embargoed (so called 'hot goods'), creating pressure on the ultimate purchaser to only use reputable contractors and suppliers.

How would each of these work in your sectors? Do you have suggestions as to how else this problem could be tackled?

8. **Sector specific solutions:** What additional measures could be brought in to sanction industries with relatively high levels of non-compliance? How would we ensure compliant businesses were not over-burdened?

III. Issues specific to each enforcement body

HMRC

9. What systemic employment issues facilitate or are linked to the failure to pay NMW/NLW? For example: the lack of payslips for workers; non-payment of holiday pay or sick pay; payment of travel/sleep time in certain sectors. How could these be addressed?

10. The proportion of the labour force covered by the NLW is predicted to increase to 14 per cent by 2020, inevitably leading to an increase in the number of complaints to HMRC about correct payment of wages. How should HMRC balance responding to individual complaints against proactive, risk-based enforcement?

11. Should the remit of the NMW/NLW team within HMRC be extended to cover other types of non-payment of wages?

GLAA

12. How can the GLAA most effectively use its extended remit and resources to enforce non-compliance?
13. Is there a case for extending licensing into new sectors such as construction, care, or cleaning? What might this look like for different sectors?

EAS

14. Should EAS remit be extended to cover:
 - a. regulation of umbrella companies and other intermediaries in the supply chain;
 - b. compliance under the Agency Workers Regulations (requiring employers to treat agency workers and permanent staff equally on certain contract terms)?
15. Should employment agencies be required to provide greater clarity on the information they provide workers, for example explaining all deductions and setting out the full amount workers will get paid in people's contracts?
16. How can EAS evolve to deal with the emergence of online platforms and apps which provide job finding service?

Deadline for responses: 13th October 2017

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