



HM Government

Call for Evidence: UK Labour Market Enforcement Strategy 2019/20

**Director of Labour Market Enforcement
David Metcalf**

July 2018

Introduction

This call for evidence sets out the issues on which the Director of Labour Market Enforcement would like to receive evidence to inform his Strategy for 2019/20 (due for publication in 2019). Stakeholders will find it useful to read the Director's 2018/19 Strategy (published May 2018 and available [here](#)) before responding to this call for evidence, as it sets out the Director's most recent analysis of labour market non-compliance and enforcement, and informs 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 views and evidence from stakeholders directly.

The Director's preferred format for meetings this year is multi-stakeholder roundtable discussions, focused on particular issues or sectors in order to encourage informed discussion and debate. Follow-up bilateral meetings may also be held individually with organisations as appropriate. The Director and his team are again keen to meet with stakeholders and organisations across the United Kingdom.

This call for evidence will run for 10 weeks. The closing date for submitting evidence is Friday 28 September.

To organise a meeting with the Director or members of his team, or to submit evidence, please email directorsoffice@beis.gov.uk

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) and Employment Agency Standards (EAS).

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

- setting the strategic direction of the enforcement bodies in an **annual strategy**;
- publishing an **annual report** assessing whether the objectives and priorities within the previous year's Strategy have been met and the impact on the scale and nature of non-compliance; 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 Director's first full Strategy (2018/19) sets out a detailed analysis of the labour market, including non-compliance and enforcement by the different enforcement bodies. Although for the most part 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.

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 the state bodies discussed above.

Beyond the bodies within the Director's remit, other bodies play an important role too. These include the Health and Safety Executive (HSE), the Insolvency Service and local authorities, and the three labour market enforcement bodies should be working in partnership with these where appropriate. The extension of GLAA powers in 2017 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 Matthew Taylor's Review of Modern Working Practices.

Changes to the Labour Market

The current trends and levels of non-compliance and exploitation within the Labour Market have been facilitated by some profound changes that have occurred in the last four decades; the employment relationship has fissured, workplace size has shrunk, the composition of the workforce has altered, trade union membership and collective bargaining coverage has plummeted, labour's share in national income has dropped sharply, and the proportion of the workplace born outside of the UK has more than doubled.

What is effective enforcement?

The main aim of the Director's strategy is to ensure that enforcement activity is as effective and efficient as possible in dealing with and preventing non-compliance in the labour market. Recognising the changes in the workplace outlined above, 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.

Areas for consultation

The Director has identified the following areas and questions on which he would appreciate stakeholder feedback, evidence and views:

I. Sector-Specific Focus:

Since its creation the Information Hub has captured and aggregated intelligence across the labour market from enforcement and stakeholder bodies. From the information received threats have been identified, catalogued, and then assessed using the Measurement of Risk in Law Enforcement (MoRiLE) strategic matrix. This has provided a strategic view from the centre regarding the key labour market threats posed.

These assessments have identified several priority sectors where there is a key risk of non-compliance with labour market regulations. A number of these sectors have already been identified in some detail in the Director's first Full Labour Market Enforcement strategy for 2018/19 (garment sector, nail bars, hand car washes), along with recommendations for work to tackle non-compliance in these areas. Several other sectors are already within the scope of the Director's Strategy for 2019/20 by virtue of falling within the GLAA's licensing remit (shellfish gathering, agriculture, poultry and eggs). To help inform his 2019/20 Strategy the Director is therefore seeking evidence and views on the following sectors:

- a. Hotels;**
- b. Restaurants and food services; and**
- c. Warehousing**

II. Cross-cutting labour market enforcement issues:

Building upon the last iteration of the Strategy, the Director is also seeking views on several cross-cutting issues spanning the labour market as a whole:

- a. Use of the Enforcement Bodies' additional resources and impact;**
- b. Use of compliance approaches to enforcement; and**
- c. Joint working between the state enforcement bodies**

Each of these topics is considered in more detail below, outlining the specific consultation questions for response.

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. Accordingly, **please highlight whether any of the information you submit is of a sensitive nature or if you wish to remain anonymous.**

I. Sector-Specific Focus: Hotels, Restaurants and Warehousing

For the 2019/20 Strategy the Director of Labour Market Enforcement will be conducting a deep-dive into the following three sectors, identified as key risks by the LME Information Hub's most recent Strategic Intelligence Assessment:

- a. **Hotels** (including services involved in the day to day running of this sector such as cleaning, catering and security)
- b. **Restaurants and food service sector**
- c. **Warehousing** (specifically picking and packing in distribution centres and storage)

1. What **changes, if any, have you observed within these sectors in recent decades and what impact, if any, has this had on labour market enforcement?** i.e. the nature of employment relationships, use of outsourcing, franchising and supply chains.
2. How are workers **recruited** to these sectors (e.g. directly by employer, agency, online recruitment, personal connections etc.)?
3. What is the **extent and nature of non-compliance** with labour market regulations you have observed or have seen evidence of within these sectors? What are the key compliance issues that you have encountered?
4. What enforcement or compliance issues have you faced in these sectors as either:
 - a) a **worker**, in relation to your employment rights or treatment in the workplace
 - b) an **employer** in any of the above sectors
 - c) other **representative bodies**, such as trade unions and trade associations, operating within these sectors.
5. How **effective** do you think the enforcement bodies are at addressing non-compliance in these sectors?
6. Where might there be scope for **wider state regulators**, beyond the remit of the Director, to **collaborate** with the three enforcement bodies for a multi-agency approach to non-compliance in these sectors? (i.e. HMRC tax, HSE, Insolvency Service, Environment Agency, Local Authorities etc.)

7. Are there any **examples of best practice** within these sectors to address labour market non-compliance that you would like to highlight to the Director? Examples may also be drawn from across the regulatory landscape.

II. Cross cutting issues

The Director welcomes views on the following cross cutting issues:

- a. Enforcement Bodies' use of additional **resources and impact**;
- b. The use of **compliance approaches** to enforcement; and
- c. **Joint working** between the state enforcement bodies

Resources

The right level and distribution of resources is essential for an effective approach to labour market enforcement. The Director has a statutory duty to assess and provide strategic direction on how the funding available for labour market enforcement should be allocated, including for the education, training and research activities of the bodies.¹

For the 2019/20 Strategy, the Director has committed to assessing the use of enforcement resources and overall value for money, particularly in relation to the recent expansion of funds for HMRC and GLAA. To help inform this assessment, the Director is seeking views on the following questions:

8. What assessment do you make of the **use and effectiveness of the resource increases** received by each of the three enforcement bodies?
9. How, if at all, could enforcement resources be **allocated and deployed more effectively**?

¹ See section 2(3) Immigration Act 2016

Compliance

There will be a proportion of non-compliance within the labour market which does not represent deliberate and flagrant disregard for the law, but is rather the result of ignorance or incompetence on the part of the employer. In order to build an effective system of labour market enforcement there must therefore be a mix of both **compliance** and **deterrence** approaches, as enforcement relies as much on influencing decision making as it does on punishment. As such, the Director is seeking views on the following:

10. How can the enforcement bodies **better support employer compliance**?
11. In your experience, which areas of the labour market enforcement regulations have been the most **challenging** to implement/enforce?
12. What assessment do you make of the **support and guidance currently offered** by the enforcement bodies?
13. How, if at all, can the available support and guidance resources be **improved**?
14. Are there any **examples of good compliance approaches** that you have experienced, or examples of best practice, that you wish to highlight to the Director for consideration? These can be drawn from across the regulatory landscape.

Joint Working

A key part of the Director's remit is to facilitate greater joined-up working between the enforcement bodies, as well as with other organisations, to ensure that different types of evidence, information and intelligence are being used to maximum benefit. The Director's 'information hub', established by the Immigration Act 2016, collects and stores such intelligence to inform a strategic overview of non-compliance. The Director's Strategic Coordination Group (SCG) brings together operational and strategic expertise across the three enforcement bodies and wider partners to facilitate and coordinate joint operations. To build upon this work, the Director is seeking views on the following questions:

15. **How can the three enforcement bodies work more closely in partnership** to tackle non-compliance?
16. **Where should joint working efforts be directed** as a matter of priority? (i.e. on any specific cross-cutting issues, sectors, regions etc.) **Please provide evidence** to support your answer.
17. Where might there be scope for **wider state regulators**, beyond the remit of the Director, to **collaborate** with the three enforcement bodies for a multi-agency approach to non-compliance? (i.e. HMRC tax, HSE, Insolvency Service, Environment Agency, Local Authorities etc.)
18. Are there any examples of **joint working best practice** in labour market enforcement that you wish to highlight to the Director? Examples may also be drawn from across the regulatory landscape.
19. Are there any **gaps in current labour market intelligence which could be addressed through engagement with third parties?** (i.e. beyond the state enforcement bodies). If so, please detail how such an approach could work in practice.

If you have additional evidence or intelligence relating to the specific issues raised in the Director's first full Strategy for 2018/19, please bring this to our attention as supplementary evidence.

Deadline for responses: Friday 28 September 2018

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