



Department for  
Business, Energy  
& Industrial Strategy



Home Office

# **UNITED KINGDOM LABOUR MARKET ENFORCEMENT STRATEGY 2018/19**

Government response

December 2018

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## Government response

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## Ministerial Foreword – Business Secretary



The UK's Industrial Strategy, published in November 2017, set out a long-term plan to boost the productivity and earning power of people throughout the UK by focusing on the five foundations of productivity: Ideas, People, Infrastructure, Business Environment and Places. The Government's Good Work Plan is a vital part of the Industrial Strategy, the long-term plan to build a Britain fit for the future by helping businesses create better, higher-paying jobs in every part of the UK.

Ensuring we have the right mechanisms in place for individuals to enforce their employment rights is important for this Government. The Government recognises that the vast majority of employers treat their employees well and pay them fairly. However, when things go wrong it is right that we have robust mechanisms to handle this. In the UK this is split between individual enforcement through employment tribunals and state enforcement, predominately through three main enforcement bodies. These are the Employment Agency Standards Inspectorate, Her Majesty's Revenue and Customs National Minimum and Living Wage team and the Gangmasters and Labour Abuse Authority.

The Government has made clear its commitment to crack down on worker exploitation across all sectors of the labour market. The creation of the role of Director of Labour Market Enforcement was an important part of fulfilling that commitment. That is also why my Department continues to invest heavily in minimum wage enforcement, having doubled the budget to £26.3 million for 2018/19, up from £13 million in 2015/16.

The Director of Labour Market Enforcement is responsible for producing an annual strategy setting the strategic direction of the three existing labour market enforcement bodies to ensure that enforcement efforts are coordinated and targeted. Professor Sir David Metcalf CBE was appointed as the Director on 1 January 2017. Sir David's introductory labour market enforcement strategy was published in July 2017 and his second strategy was published in May 2018.

We have also committed to a wider range of labour market reforms following the Taylor Review of Modern Working Practices (the Taylor review). The Government response and consultations to implement the review were published earlier this year. The review made some recommendations on enforcement which compliment Sir David's strategy and I am pleased that this Government response builds on the Good Work Plan. We have accepted the case for the state taking responsibility for enforcing a basic set of core rights (including holiday pay) for the most vulnerable workers. We will also be better protecting agency workers by extending the remit of the Employment Agency Standards Inspectorate to include umbrella companies and repealing the Swedish derogation.

Given these additional areas of enforcement, and recent increases in resource, we believe now is the time to review the existing enforcement landscape and how it could be simplified. We will consider the case for a single enforcement body to make it easier for vulnerable workers to enforce their rights, and to ensure employers are better supported to comply. Sir David and his team's expertise will be central in reaching a decision on the future of labour market enforcement.

I would like to thank Sir David and his team for the hard work that has gone into his second strategy. It provides a valuable assessment of the existing scale of labour exploitation and makes 37 recommendations on labour market enforcement and raising awareness of employment rights.

I am pleased that the Government has accepted the majority of recommendations. I look forward to working with Sir David as the Government seeks to implement the recommendations we have accepted as he prepares to set clear strategic priorities in the 2019/2020 labour market enforcement strategy and to shape the future of the enforcement landscape.

A handwritten signature in black ink that reads "Greg Clark". The signature is written in a cursive style with a large, looped 'G' and 'C'.

**Rt Hon Greg Clark MP**

Secretary of State for Business, Energy and Industrial Strategy

## Ministerial Foreword – Home Secretary



The majority of employers treat their workers and employees fairly. However, we know that there are unscrupulous people who break the law by trafficking people to the UK or luring them here on the promise of decent work. They force people to work in the most appalling and sometimes dangerous conditions with little or no pay, threatening them or their families with abuse, denying them basic human rights, all for their own personal profit.

The Government has made clear its commitment to tackle illegal working, to protect workers from insidious abuse and to crack down hard on employers who exploit vulnerable people across all labour sectors.

That is why, in 2015, we introduced the world-leading Modern Slavery Act to tackle modern slavery, including forced and compulsory labour. The Act gives law enforcement agencies the tools to deal with offenders and provides enhanced protection for victims.

Building on the success of the Modern Slavery Act, the Government strengthened its approach to labour market enforcement in the Immigration Act 2016, creating the role of the Director of Labour Market Enforcement, reforming the Gangmasters and Labour Abuse Authority (GLAA), giving it a wider remit and stronger powers and providing new tools for the three enforcement bodies to tackle persistent and serious offending.

We have increased the resources to support the GLAA to deliver in its expanded remit and powers, providing an additional £4.5million over two years in 2017/18 and 2018/19. The GLAA is making good use of its new powers since they came into force in April last year. Leading over 190 investigations to clamp down on worker exploitation, they have arrested over 140 people on suspicion of committing serious labour market offences as a result, while supporting potential victims of modern slavery to enter the National Referral Mechanism process.

However, we know that the criminal networks and unscrupulous employers that recruit and control victims of labour exploitation continue to adapt and develop new ways to exploit victims. That is why, the Government commissioned an independent review of the Modern Slavery Act to ensure our legislation is flexible enough to respond to the changing nature of the threat.

I welcome the Director's strategy for 2018/19 and I am grateful to Sir David Metcalf and his team for all their hard work over the last year to engage stakeholders. The strategy provides a valuable overview of the spectrum of labour market enforcement and analysis of the scale of non-compliance. Sir David has made a number of important

recommendations that will strengthen the Government's work to prevent abuse and tackle exploitation. I am pleased that the Government has accepted the majority of Sir David's recommendations.

I look forward to working with Sir David on his next strategy for 2019/20 as he seeks to drive greater strategic focus and coordination between the three main enforcement bodies. I am confident that together we can create an environment where unscrupulous employers can no longer prosper at the expense of the vulnerable.

A handwritten signature in black ink, appearing to read 'S. Javid', with a small comma at the end.

**Rt Hon Sajid Javid MP**  
Home Secretary

# Introduction

1. The enforcement of employment rights in the UK is split between individual and state enforcement. The majority of employment rights are enforced by individuals taking their employer, or former employer, to an employment tribunal where attempts to resolve the dispute within the workplace have not succeeded. The Government aims to prevent disputes escalating where they can, including through funding early conciliation services through Acas. Other employment rights may be enforced with direct support from the state.
2. There are three main enforcement bodies that use a range of sanctions and powers to enforce specific employment rights. These are:
  - The Employment Agency Standards Inspectorate (EAS);
  - Her Majesty's Revenue and Customs National Minimum and Living Wage enforcement team (HMRC NMW/NLW team); and
  - The Gangmasters and Labour Abuse Authority (GLAA).
3. The Director of Labour Market Enforcement's role was created through the Immigration Act 2016 (the Act) as part of the Government's reforms to tackle labour market exploitation. The Director's role is designed to bring better focus and strategic co-ordination to the enforcement of labour market legislation by the three enforcement bodies. The Director reports jointly to the Home Secretary and the Secretary of State for the Department for Business, Energy and Industrial Strategy (BEIS).
4. Professor Sir David Metcalf CBE was appointed as the first Director on 1 January 2017. The Director is required by the Act to prepare an annual labour market enforcement strategy, which assesses the scale and nature of non-compliance in the labour market and set priorities for future enforcement by the three enforcement bodies and the allocation of resources needed to deliver those priorities.
5. The Employment Agency Standards Inspectorate (EAS) enforces the domestic regulations relating to employment agencies. EAS works with recruitment agencies, hirers and work seekers to ensure that the regulatory framework for employment rights is complied with and that anyone who uses the services of a private recruitment agency to find work is treated fairly. This includes investigating breaches where an agency has placed false advertisements for jobs, failed to pay wages and holiday pay and charged work seekers a fee for finding work before



providing any work services. The Government has recently consulted on expanding the remit of EAS and has responded in the Good Work Plan.

6. The Gangmasters and Labour Abuse Authority (GLAA) operates a licensing regime for businesses that supply temporary labour in high risk sectors in the agricultural, shellfish gathering and food processing and packaging sectors. A business operating in the specified sectors needs a licence from the GLAA. A licence is issued based on the business meeting certain conditions under the GLAA's licensing standards, which include compliance with employment and other relevant law. GLAA officers also have powers under the Police and Criminal Evidence Act 1984, to investigate serious cases of worker exploitation across the entire economy, including cases of modern slavery related to forced labour.
7. HMRC are responsible for enforcing the National Minimum Wage and National Living Wage (NMW/NLW) on behalf of BEIS. Workers who are concerned they are being underpaid the NMW or NLW may make a complaint to HMRC. HMRC responds to 100% of such complaints and investigates employers to ensure they are compliant with minimum wage rules. When they are not, HMRC requires employers to repay arrears of wages to their workers and may levy a financial penalty. BEIS also considers employers for 'public naming'.
8. Sir David's introductory labour market enforcement strategy was published in July 2017 and the second strategy was published in May 2018.<sup>1</sup> The strategy makes 37 recommendations which aim to build on the good work of the three enforcement bodies.
9. In October 2016 the Prime Minister commissioned Matthew Taylor (Chief Executive of the Royal Society of the Arts) to conduct an independent review into modern working practices, focused on assessing how employment practices might need to change in order to keep pace with modern business models. In July 2017 the Review of Modern Working Practices (the review) was published, which included 53 recommendations.<sup>2</sup> The review made some recommendations on enforcement which complement Sir David's strategy. The Government response and consultations to implement the review were published earlier this year.<sup>3</sup> Following on from this, the Good Work Plan, published alongside this document, sets out the Government's ambitious plans to implement the review.
10. The Government has considered the Director's recommendations and this response sets out the steps that the Government will take forward over the next

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<sup>1</sup> <https://www.gov.uk/Government/publications/labour-market-enforcement-strategy-2018-to-2019>

<sup>2</sup> <https://www.gov.uk/Government/publications/good-work-the-taylor-review-of-modern-working-practices>

<sup>3</sup> <https://www.gov.uk/government/publications/government-response-to-the-taylor-review-of-modern-working-practices>

year to raise awareness of employment rights, improve intelligence and joint working and strengthen enforcement resources and tools. A summary of the recommendations and the Government's response can be found at Annex A. Given these new commitments on enforcement and recent increases in resources available to enforce employment law, the Government believes it is time to consider the case for a single enforcement body. The Director will have a key role to play in determining the future of the enforcement landscape.

11. Any changes to the structure of the enforcement bodies would take time to implement. The Director has set out his work plan for 2018/19 and the Government looks forward to continued engagement with the Director as he develops strategic priorities for the three enforcement bodies in his strategy for 2019/20.

## Raising awareness

12. The Government believes employers and individuals should know what their rights and responsibilities are at work, and what to do when these are breached. Most employment protections are enforced through employment tribunals, but the state has a role in protecting those who are most vulnerable in the labour market. The Director makes a number of recommendations on how Government can increase the awareness of employment rights and the enforcement bodies, work with businesses to increase compliance with the National Minimum Wage and provide greater information to workers, for example, through payslips.

### Supporting good employers (recommendations 1 and 2)

13. The Government believes it is important to support good employers and to help them understand and meet their responsibilities. The Director makes two recommendations on how the Government can support employers to be compliant with National Minimum Wage (NMW) legislation.
14. The Government **accepts** the recommendation that BEIS/HMRC should review the guidance around NMW in collaboration with stakeholders to identify and improve problem areas such as pay averaging and salary sacrifice.
15. The Government is committed to the National Minimum Wage and National Living Wage and ensuring that workers are paid fairly. The Government continues to take robust enforcement action against employers who flout these laws. We have listened to concerns raised by employers over the practical operation of some parts of NMW law. Our aim is to ensure these laws continue to protect workers and that employers are able to understand their responsibilities under them. We will consult on Salaried Hours Work and salary sacrifice schemes and updating guidance to ensure NMW law remains as effective as possible in meeting these aims.
16. The Government also **accepts** the recommendation that the HMRC NMW/NLW team should develop a more supportive approach when companies ask for advice in order to be compliant. HMRC remain committed to promoting compliance with the law and have recently launched self-review products for employers who are unsure whether their pay structures are correct. They also continue to send email nudges out to employers deemed at risk of underpaying the NMW and are widening the scope and coverage of public-facing webinars and e-learnings on the Gov.uk website. Work is now being taken forward in partnership with Acas to improve the quality of service offered to employers who call in asking for tailored advice.

### Statement of rights (recommendation 3)

17. The Government **accepts** the recommendation that a statement of rights should be made mandatory for all workers from within week one of employment commencing and is going even further.
18. The Taylor review recommended that the Government should extend the right to a written statement to 'dependent contractors' (workers) as well as employees. In the Government's response to the review the Government agreed to extend this right to workers and consulted on what information to include in a written statement earlier this year.
19. The Government will extend the right to a written statement from day 1 for both workers and employees in order to improve clarity and understanding of the employment relationship. In order to strike the right balance between greater clarity for workers and avoiding unnecessary burdens on employers we will update the mandatory elements of the principal statement (information required on day 1 of starting a job) and the information that can be provided within 2 months of starting a job. As we are making certain the information required in the mandatory principal statement so that all employers provide the same information in a single document, we want employers to have the freedom to present that information in a format they see fit.

### More information on employment protections (recommendation 4)

20. The Government **accepts** the recommendation that clear and accessible information on employment rights should be provided to workers through a number of channels. The Government believes that improved awareness raising and accessibility of information provides increased opportunities for workers to gain a better understanding of their rights, what they can expect from their employers and how they can raise concerns and seek help when necessary.
21. The three enforcement bodies are already using their online presence to raise awareness of employers' responsibilities and labour exploitation issues. For example, BEIS and HMRC run an ongoing awareness campaign to promote minimum wage rights and enforcement action undertaken by HMRC. The campaign includes online, radio and out of home advertising, as well as identifying moments to engage media. HMRC have published public-facing webinars and e-learning on the Gov.UK website and completed mass text message campaigns, including sending over 1.6 million texts to low paid workers to inform them of their minimum wage entitlement and to encourage them to check their pay.
22. The GLAA utilises its Twitter Facebook, YouTube channel and website to publish infographics and videos to raise awareness of labour exploitation. Additionally, EAS works with BEIS as well as local authorities and key partner organisations to raise awareness of its role and to identify opportunities for social media campaigns targeted at agency workers.

23. The Government recognises that information about state enforcement could be better aligned and more accessible. The Government will continue to support the enforcement bodies to raise the profile of state enforcement and their work in raising awareness of employment rights through digital channels. Government will also help to ensure online materials are aligned and share best practice on how guidance and information can best reach workers and employers.
24. The Government is keen to ensure that workers are fully informed regarding their employment rights. We have therefore invested £1.5 million on a campaign to generate awareness amongst workers and employers about their rights and responsibilities respectively. Through this and other channels, we actively recommend that all workers check their pay and, if they have been underpaid, call Acas on 0300 123 1100 (or use the automated 24-hour online helpline) for free and confidential advice.<sup>4</sup>
25. The Government also recognises the importance of raising the awareness of employment protections to those about to enter the UK labour market. HMRC's past experience of enforcing NMW suggests that migrant workers are at a high risk of NMW underpayment. Indeed, some migrant workers are likely to experience a language barrier with their employer and may be less familiar with the legal framework underpinning UK employment rights. That is why the Government is exploring the introduction of information covering employment rights and how to enforce them for the National Insurance number notification letters issued by DWP (normally to foreign nationals when they are allocated a National Insurance number in the UK). This is likely to include links to Gov.uk pages providing information on NMW rates and wider employment rights, available in over 100 languages.
26. Additionally, the current school curriculum is designed to provide children and young people the knowledge they need to succeed as adults in the modern world, including finding out about their rights alongside their responsibilities. Aspects of this are covered in a number of subjects, notably Personal, Social, Health and Economic education (PSHE) but is covered in more detail within Citizenship. The Citizenship programme for study sets out that teaching should develop pupils' understanding of the rights and responsibilities of citizens, including an understanding of the nature of rules and laws and the justice system, including the role of the police and the operation of courts and tribunals.
27. The Department for Education (DfE) works closely with other Government departments to ensure that the Citizenship programme includes the relevant information and a good example of this work are the key stage 4 lesson plans

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<sup>4</sup> <http://www.acas.org.uk/index.aspx?articleid=4489>

focused on employment rights, “Starting Out”, which were developed with BEIS and are freely available to all schools on the Gov.uk website.<sup>5</sup> DfE will continue to work with BEIS to determine what resources can be developed in this area.

### More information to workers through payslips (recommendations 5,6,7)

28. The Government recognises the importance of payslips in assisting low-paid workers in identifying and addressing cases of underpayment. The Director makes three recommendations on the right to receive a payslip, information included on a payslip and data provided in Real Time Information returns to HMRC.
29. The Government **accepts** the recommendation of the right to a payslip should be extended to all workers. The Government also **accepts** the recommendation that for hourly paid workers, there should be mandatory inclusion of total hours worked and hourly rate of pay on payslips. The Government has already introduced legislation to extend the right to receive a payslip to all workers, and to require that employers state the hours being paid for on the payslips of time-paid workers. As a result of these changes **up to 300,000 workers**, who are currently not receiving a payslip, will now receive one and **up to 1.6 million employees**, who are not receiving hours on their pay slip, will now receive this information. These changes are due to come into force in April 2019.
30. However, employers do not need to include the hourly rate of pay. This is because providing a breakdown of hours according to different rates of pay would have only a minimal impact in driving National Minimum Wage compliance. An employer is required to be compliant over the overall course of a pay reference period (e.g. week or month); therefore, a further breakdown would be of limited value in helping a worker to identify possible underpayment. We also do not consider there is yet a case to include information on employment rights on payslips and payroll software that justifies the cost of doing so.
31. The Government **rejects** the recommendation that in the longer-term hours and hourly earnings should be captured in Real Time Information data returns to HMRC. Real Time Information is a tax data-collection system, enabling employers to submit tax data to HMRC. The number of hours worked is not required for the correct administration of HMRC’s Pay-As-You-Earn system. Having explored the feasibility of including additional fields on hours and hourly earnings, our assessment is that such a change to this tax-data collection system is not justifiable. However, the Government will continue to ensure that our enforcement activity is as best informed as possible and will continue to explore alternative options to improve our measures of National Minimum Wage non-compliance.

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<sup>5</sup> <https://www.gov.uk/Government/publications/employment-rights-lesson-plans-for-key-stage-4>

### Clearer information on how to enforce (recommendation 8)

32. The Government **accepts** the recommendation to simplify the entry channels to seek help on employment rights and how to seek redress. The enforcement bodies receive complaints from multiple channels including directly to each enforcement body, through individuals contacting Acas and the enforcement bodies passing on complaints to the appropriate body. Over the last two years the enforcement bodies have built strong working relationships and increasingly share intelligence and pass on complaints where appropriate. However, the Government recognises that it can be confusing for individuals to know where to direct their complaint and so we will:
- Work with the enforcement bodies to improve their existing websites and how they can best ensure complaints are handled effectively between operational teams; and
  - Explore with EAS the feasibility of designing a webpage to raise their profile.

### Role of Acas (recommendations 8 and 9)

33. Acas is the first point of contact for individuals and employers seeking further information on employment protections and enforcement mechanisms. They play a vital role in triaging calls and complaints to the enforcement bodies. The Director makes two recommendations on the role of Acas in raising awareness of employment rights and passing appropriate complaints to the enforcement bodies.
34. The Government **accepts** the recommendation that Acas should review their communications and marketing promoting their service, and ensure it is accessible to workers. The Government will support Acas in this review and believes it is important that they are able to retain their position of neutrality regarding workers and businesses. Therefore, the Government believes Acas' review should focus on both information to workers and businesses, reviewing how their service is communicated and promoted by all stakeholders.
35. The Government also **accepts** the recommendation that Acas should build on the links with the three enforcement bodies to ensure that staff training, referral processes and data sharing are promoting their service to maximise access to workers. Acas have already started working with the enforcement bodies on this and further training of Acas' advisers has helped increase referrals. The Government supports Acas continuing to build these relationships with the enforcement bodies and to explore what further improvements can be made.

## Intelligence and enforcement approaches

36. The Government believes that better information sharing across agencies is crucial to crack down on labour market exploitation and that is why we created a legal obligation for the Director to gather, store, process, analyse and disseminate information relating to non-compliance in the labour market.<sup>6</sup> The Director has established an information hub to meet this obligation. The Government looks forward to the information hub becoming fully operational and so informing the next labour market enforcement strategy.<sup>7</sup>
37. The Government also recognises the importance of different enforcement approaches to tackle the spectrum of non-compliance. The Government welcomes the work of the Strategic Coordination Group since it was established in October 2016 in bringing together the enforcement bodies and identifying potential joint enforcement operations. The Director makes four recommendations on how the enforcement bodies can build their intelligence pictures and on new enforcement approaches – all of which we have accepted.

### **Working with the Insolvency Service (recommendation 19)**

38. The Government accepts the recommendation that the three enforcement bodies should work with the Insolvency Service to crack down on “phoenixing” by directors seeking to avoid labour market penalties. The Government recognises the importance of relationships between the enforcement bodies and the Insolvency Service, particularly in tackling those employers who seek to avoid their responsibilities by declaring themselves insolvent. The enforcement bodies have already developed a strong partnership with the Insolvency Service and will go further to continually improve the information sharing gateways to better enable identification and share intelligence of potential sharp practice where appropriate.
39. The Government has recently completed two consultation exercises which may offer further insight into how we crack down on irresponsible directors. BEIS and the Insolvency Service sought views on improvements to corporate governance within companies which are in or are approaching insolvency<sup>8</sup>. The consultation was in response to a number of recent corporate failures where the conduct of those responsible has come under close scrutiny.
40. The consultation closed on 11 June and its response was published on 26 August 2018.

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<sup>6</sup> Immigration Act 2016, s8 (1).

<sup>7</sup> <https://www.gov.uk/Government/publications/labour-market-enforcement-strategy-2018-to-2019> p70, 71

<sup>8</sup> <https://www.gov.uk/government/consultations/insolvency-and-corporate-governance>



41. The Government Response announced a number of measures to improve the UK's insolvency framework, including setting out a full response to their consultation "Review of the Corporate Insolvency Framework" held in 2016<sup>9</sup>.
42. These include:
  - Legislating to enhance existing recovery powers to ensure all creditors are treated fairly when monies have been removed from a company prior to insolvency;
  - Legislating to give the Insolvency Service the necessary powers to investigate directors of dissolved companies when they are suspected to have acted in breach of their legal obligations;
43. These measures represent a significant step in taking action against irresponsible directors using phoenix companies to avoid labour market penalties and will improve the chances of workers receiving what they are owed.

### **Proactive and reactive enforcement (recommendation 20)**

44. The Government **accepts** the recommendation that state enforcement should continue to shift to more proactive enforcement methods. The Government is supportive of the three enforcement bodies using more proactive methods for enforcement to complement their existing enforcement approaches and we are pleased with the progress the bodies have already made in this area. Each of the three bodies have an approach which reflects the nature and seriousness of breaches that they enforce. The Government also believes it is important that any changes to enforcement approaches should be considered in terms of what is appropriate for the non-compliance identified.
45. EAS has made a significant shift towards conducting an increased volume of proactive risk-based operations into identified areas of potential harm whilst still investigating every valid complaint made. Furthermore, EAS continues to work proactively in partnership with the other enforcement bodies to deliver joint operations.
46. The GLAA also takes a proactive approach to its enforcement operations. Using the National Intelligence Model, it triages its intelligence to ensure cases with the highest risk, hot spots areas or problem sectors are identified, and its enforcement resources are deployed effectively. GLAA's proactive approaches include

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<sup>9</sup><https://www.gov.uk/government/consultations/insolvency-and-corporate-governance>

prevention and examining how best to engage industries to find innovative approaches to reduce the risk of exploitation.

47. HMRCs enforcement approach is based on three key elements:
  - a) **Promote:** helping employers to get it right first time and informing workers of their rights under the law;
  - b) **Prevent:** helping employers identify risks as they arise and giving them the opportunity to correct their mistakes; and
  - c) **Respond:** tailoring activity when intervening to ensure it is proportionate, 'joined up' and effective.
48. HMRC has dedicated teams specifically geared to carrying out proactive risk-based investigations to identify the worst cases of non-compliance, including exploitation, and identifying cases for prosecution and non-compliance in large and complex organisations. HMRC ensures the efficient deployment of investigation resources through a suite of different risk-based interventions ranging from a "nudge" letter requesting self-correction by the employer to more robust face to face interviews with employers and examination of business records.
49. HMRC carries out a programme of risk-based interventions across the UK based on identified high risks established by the NMW Risk Model and intelligence from a range of sources, as well as responding to every compliant.

### **Joint working and better intelligence (recommendation 21)**

50. The Government **accepts** the recommendation that the three enforcement bodies should continue to work positively with the Director's information hub and the Strategic Coordination Group to build on the good progress made over the past 12 months.
51. The SCG is chaired by the Director's office and brings together the operational and strategic expertise from the enforcement bodies to identify potential joint enforcement operations. The Government supports the work of the SCG and believes it plays a critical role in identifying information on non-compliance and worker exploitation by bringing together the right partners, information sharing protocols and intelligence systems in one place. The work of the information hub is also integral to the Director's obligations to assess the scale and nature of non-compliance and how resources should be allocated to ensure that they are directed where they are needed the most.
52. The three enforcement bodies are keen to continue working with the SCG and information hub to ensure that the appropriate intelligence systems and information sharing protocols are in place. The bodies will also support the information hub as it improves these processes and builds stronger networks.

53. The Director's strategy encourages the enforcement bodies to continue to build relationships with other enforcement bodies outside the Director's remit (such as the Health and Safety Executive and Immigration Enforcement) and build partnerships with industry stakeholders. The strategy also encourages the operational teams to learn from shared experiences to establish best practice for future multi-disciplinary operations. The Government believes that the SCG would be best placed to facilitate these as the established coordinating and central function between the teams. The enforcement bodies already adopt a lesson learnt approach to joint operations by providing feedback on what has worked well and what could have been improved, through the SCG. This presents an opportunity for front line staff to identify areas of success and areas of potential improvement for future working. Therefore, the Government will work with the Director to understand his vision for the role of the information hub and the SCG to understand how to build on this further.
54. The Director also highlights the importance of the enforcement bodies providing feedback to those that submit intelligence to them. The enforcement bodies decide what feedback is provided on a case by case basis. This will not usually be provided to third parties or in circumstances which could compromise the information source or ongoing or future investigations. Where there are cross cutting opportunities to share information of mutual interest the enforcement bodies will consider what practical steps can be taken to achieve this in a more systematic and efficient manner. The enforcement bodies already share the outcomes of sector-based operations and, where relevant, share intelligence gathered during these operations.

### Partnership working (recommendation 22)

55. The Government **accepts** the recommendation that different forms of partnership working should be piloted and evaluated. The Director recommends that this should primarily be through supporting London Borough of Newham's proposal to target NMW/NLW underpayment and Leicester City Council's proposal to target the garment trade through focused, highly visible joint enforcement. The Government and the enforcement bodies are supportive of these two proposals.
56. BEIS and the HMRC NMW/ NLW team have been working with London Borough of Newham officials to develop a proposal for greater joint-working between the Borough and HMRC enforcement teams. The aim is to explore combining data and intelligence gathered at the local level with that gathered by HMRC, and the feasibility of joined up operational activity in the light of that intelligence.
57. Additionally, the enforcement bodies are also keen to build on the partnerships they developed whilst working in geographical locations such as Leicester, both with the local Government and with the garment industry. The enforcement bodies look forward to developing these relationships further, whilst also encouraging the

industry to share its knowledge regarding potential exploitation in the sector with them so they can continue to undertake joint enforcement action.

58. As a key step in building these relationships, the enforcement bodies alongside other agencies have signed a textiles protocol, *The Apparel and General Merchandise Public and Private Protocol*, with industry partners, including, the British Retail Consortium, UK Fashion and Textile Association, and auditing system Fast Forward. The protocol commits its signatories to work together to eradicate slavery and exploitation in textile supply chains, with a pledge to raise awareness to prevent worker exploitation, protect vulnerable and exploited workers and disrupt exploitative practices to help bring criminals to justice.

## Reforming current enforcement tools

59. The Government believes strong action should be taken against employers who ignore their responsibilities and breach employment protections. The three enforcement bodies have a range of enforcement tools to tackle the wide spectrum of non-compliance. This spectrum which the Director refers to in his strategy is from low-level non-compliance to serious criminality. The Government believes that it is right that there should be a range of enforcement sanctions to tackle this spectrum and the Director makes a number of recommendations as to how existing enforcement tools could be reformed.

### Financial penalties (recommendations 13 and 14)

60. The Government believes financial penalties play a crucial role in punishing and deterring employers from breaching employment protections. That is why the Government raised the National Minimum Wage penalty multiplier to 200% of the value of the National Minimum Wage arrears. The Director makes two recommendations about financial penalties for National Minimum Wage enforcement.

61. The Government **rejects** the recommendation that the NMW penalty multiplier is reviewed and increased again to a level that would ensure that there is an incentive to comply with the legislation. The current multiplier is 200% of the value of the National Minimum Wage arrears. This was increased from 100% for arrears prior to April 2016. Enforcement statistics for 2017-18 show that the value of penalties increased to **£14 million** compared **with £3.9 million** the previous year for a comparable number of penalties. The recent increase to 200% is therefore having a significant impact on the value of penalties and reflects HMRC's robust enforcement approach. The Government, therefore, does not believe there is sufficient evidence to justify a higher penalty, given the high penalty levels already now in operation.

62. The Government **accepts** the recommendation that the revenue should be recycled into the enforcement system as additional resource. The budget for National Minimum Wage Enforcement activities has more than doubled over the past four years, producing record identification and repayments of arrears to workers. Meanwhile, the revenues collected from the higher penalty percentage charged to employers responsible for underpayment is returned to the Treasury who finance this budget.

### Naming scheme for underpayment of National Minimum Wage (recommendations 15 and 16)

63. In 2010 the Government announced a scheme to name employers who fail to pay the National Minimum Wage, and since October 2013 has operated a revised

naming scheme. The Director makes two recommendations on the existing naming scheme.

64. The Government **accepts** the recommendation of evaluating the National Minimum Wage Naming Scheme to assess its impact. BEIS continually monitors the effectiveness of the scheme, looking at the impact of communications campaigns and reach of media coverage. We will continue to assess its impact, looking to identify ways in which it can be improved in the future, and will look to commission external research to this effect.
65. The Government **accepts** that further information is provided within the naming scheme to highlight the average arrears per worker, that case studies are provided to increase both the deterrence and compliance effect, and that opportunities are taken to engage with specific sectors to educate other employers on potential areas on non-compliance.
66. To date, the National Minimum Wage Naming Scheme has named **over 1,900 employers** for underpaying around **90,000 workers** by an average of **£120 per worker**. Our latest round (July 2018) set a new record for the number of workers repaid. In each round we publish employers' company name and trading name, the local authority in which they are located, sector information and the start and end date of arrears incurred. We have recently expanded this further to include the average arrears per worker and the most common reasons for underpayment. Both HMRC and BEIS also continue to engage with and educate sectors that indicate high levels of non-compliance.

### **Labour market enforcement undertakings and orders (recommendation 17)**

67. Labour market enforcement legislation provides the enforcement bodies with the tools to tackle non-compliance. Where an enforcement body identifies criminal offences, it will consider and pursue prosecutions to deal with serious and persistent offenders where cases meet the prosecution threshold. In October 2018 a man and woman convicted of supplying illegal workers to food factories were served with the UK's first ever use of Labour Market Enforcement Orders , in force for two years.
68. The Government **accepts** the recommendation that there should be greater use of – and publicity for – prosecutions and undertakings and orders to help increase the deterrent effect. The Government recognises that publicity surrounding the use of sanctions and prosecutions can act as a deterrent to would be offenders. However, this must be carefully considered to ensure that it does not prejudice on-going cases and is within the statutory constraints on the enforcement bodies' ability to publicise.
69. Labour market enforcement (LME) undertakings and orders were introduced under the Immigration Act 2016 to bring a harder edge to enforcement of labour market

offences where these are committed deliberately or recklessly. It also means that for the first time, a prison sentence can ultimately result from key labour market offences, which previously would have only attracted a civil penalty or criminal fine. The new system was designed to complement existing sanctions already available to the enforcement bodies, to be used where appropriate to prevent further labour market offences.

70. The enforcement bodies are expected to consider on a case by case basis which sanction is most appropriate to use in the circumstances. They are making good progress in utilising LME undertakings and continue to actively look for appropriate cases where undertakings and orders can be used. A total of 17 undertakings have been issued to individuals and businesses. Where a business is found to be non-compliant with an undertaking then the enforcement bodies can pursue an order if it is considered appropriate to do so.
71. A pilot has been agreed and is in place with Nottingham Magistrates Court to test the court processes for securing LME orders on application in England and Wales. The enforcement bodies continue to look for appropriate cases to test the process and we expect that the learning from these cases will be shared before the process is rolled out more widely across the country.
72. The Government also recognises the importance of these measures being enforced in Scotland. The Scottish Civil Justice Council and the Scottish Criminal Court Rules Council will need to consider and agree rules of court to implement the provisions before the measures can be brought into force. We expect the measures in Scotland to be implemented in due course.
73. Due to the nature of undertakings it will not always be appropriate to publicise details while one is in place. However, where a case is already in the public domain and an order is attained, the enforcement bodies will consider how these can be best publicised. The Government will continue to support the enforcement bodies in this.

### **Public procurement (recommendations 25 and 26)**

74. The Welsh Government **accepts and has responded separately** on the recommendation for an assessment to be made of the effectiveness of the Welsh Government's new Code of Practice, to determine whether national roll out would be beneficial.
75. The Welsh Government is committed to ensuring fairer employment practices in Wales and its supply chains throughout the world, sending a clear message to suppliers that it only wants to deal with ethical and responsible businesses that treat their workers fairly and with respect.

76. The Code of Practice was developed and launched in 2017 in response to the transparency in supply chains provisions in the Modern Slavery Act 2015 and the belief that the public sector has a responsibility to address the issue through its commercial sector.
77. The Welsh Government intends to carry out a formal review of the Code of Practice after it has been in place for two years, in spring 2019.
78. The Government **rejects** the recommendation that procurement templates should be amended to explicitly compel compliance with labour market regulations in public contracts.
79. The implementation of Government policy through contractual forms is under continuous review with each iteration of the Model Services Contract.<sup>10</sup> Particular attention is given to ensuring that, as further obligations are added to the requirements on suppliers, the overall balance of the contract is maintained so as to sustain it as a model which is appropriate for its market, and to ensure clarity of interpretation.
80. The Model Services Contract for Government contains standard terms requiring suppliers to comply with all aspects of domestic legislation, including those relating to labour standards. The Government believes that explicitly compelling compliance of labour standards could unfairly promote compliance over other legislation when we expect compliance with all relevant legislation.

### Licensing conditions (recommendation 27)

81. The Government recognises that licensing can be a valuable tool in tackling non-compliance and labour exploitation. The GLAA licensing scheme aims to ensure a level playing field is provided for those who supply labour to the sectors covered by the Gangmasters (Licensing) Act 2004 and to protect workers from exploitation. The scheme is underpinned by licensing standards which uses a points-based system to score labour suppliers to determine whether they meet the employment and other standards required by law. The standards cover a range of areas including, the NMW, health and safety, tax and national insurance, forced labour, accommodation, sick and holiday pay.
82. The Government **accepts** the recommendation that the 2012 GLAA licensing standards should be reviewed to ensure they reflect current worker rights and employer obligations. The GLAA recently conducted a review of its licensing standards to bring them in line with the International Labour Organisation standards and changes to the Conduct of Employment Agencies and Employment

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<sup>10</sup> <https://www.gov.uk/Government/publications/model-services-contract>



Businesses Regulations. The GLAA ran a stakeholder consultation setting out the proposed changes from 22 May to 3 July 2018 and as part of this process hosted two roundtable events to gather stakeholder's views. As a result the GLAA has published updated standards, which came into force on 1 October 2018.

### Evaluating impact (recommendations 29 and 30)

83. The Government **accepts** the Director's recommendation that the three bodies should further develop and embed an evaluative approach to their own processes and systems, making best use of data and information to assess their performance and impact, ensuring they align with strategic enforcement principles, especially in terms of increasing the deterrence effect.
84. The three enforcement bodies already have individual evaluative approaches and have taken action to further develop these. The Government will work with the enforcement bodies to support them in further developing these evaluative approaches:
- The GLAA has a new performance and insight pack which reports on its performance in all areas and completes an annual intelligence assessment. The GLAA also publishes its Annual Report and Accounts, which provides an assessment of its delivery against its objectives;
  - HMRC enforce the NMW/NLW on behalf of BEIS through a service level agreement which sets out the annual Ministerial priorities and performance measures. HMRC reports its delivery against these measures each month and as part of the annual evidence BEIS present to the Low Pay Commission, BEIS publishes evidence on national minimum wage enforcement; and
  - EAS produce an annual report which provides an evaluative approach to its activity, including how its activity has aligned with the strategic enforcement principles.
85. The Government also **accepts** the recommendation that an independent evaluation should be undertaken, by independent academics or consultants, to investigate the overall impact of the three bodies on tackling labour market non-compliance. The Government believes it will important for this research to take account of the different enforcement approaches and the different objectives of the bodies. The Government understands that the Director will be commissioning this research this year and looks forward to seeing the outcomes of it.

### Non-record keeping offences (recommendation 37)

86. The Government **accepts** the recommendation that HMRC should take advantage of the recent change in policy guidance and pursue more prosecutions for standalone non-record keeping offences. HMRC is now making use of the new

guidance and is referring cases to the Crown Prosecution Service for approval where the threshold is met.

## New labour market enforcement tools

87. The Government has made clear its commitment to crack down on worker exploitation across all sectors of the labour market. As part of this commitment the Government recognises that new enforcement tools should be introduced, where appropriate, to tackle this exploitation. The Director recommends a number of new enforcement tools for the Government to consider.

### Tools and resource for EAS (recommendations 10 and 11)

88. The Government is committed to providing effective protections to those using the services provided by employment agencies and to help ensure agency workers get the employment rights to which they are entitled.
89. The Government **accepts** the recommendation of an increase in resources for EAS, both to promote their ability to enforce current regulations and to the proposal to expand its remit. BEIS has recently approved an additional 5 EAS front-line inspectors, a 50% increase. EAS are currently recruiting for these additional members of staff and are also looking at the resourcing implications of any changes to the role of EAS, following the Matthew Taylor Review of Modern Working Practices and commitments within the Good Work Plan.
90. The Government also **accepts** the recommendation that BEIS and EAS should investigate the potential for EAS being given the powers to impose civil penalties on non-compliant employment agencies as an alternative to prosecution. The Government recognises that there is a potential gap for EAS between issuing a warning notice for minor breaches and imposing a labour market enforcement undertaking (and if breached, an order) and/or prosecution or prohibition proceedings for the most serious breaches. Therefore, the Government will shortly publish a consultation looking at when EAS could impose civil penalties and the appropriate level.

### Charging a fee for enforcement (recommendation 12)

91. The Government follows the guidelines on charging fees for services set out in Managing Public Money published by HM Treasury. The *Regulatory Futures Review* in 2017 recommended that regulators seek additional opportunities for charging for elements of their enforcement activity.<sup>11</sup>
92. The Government **will not be taking forward at this time** the recommendation that, where appropriate, employers found to be non-compliant should be charged a fee for intervention to allow the enforcement bodies to recover some of their enforcement costs but will keep this under review.

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<sup>11</sup> <https://www.gov.uk/Government/publications/regulatory-futures-review>

93. It is not clear that charging a fee for enforcement activity would work alongside each of the three bodies' existing enforcement approaches. EAS operate a compliance-based model (working with businesses to address non-compliance) and have already committed to exploring the possibility of introducing a regime of civil penalties. HMRC already imposes financial penalties upon non-compliant employers (of 200% of the arrears found), and the GLAA operate an established licensing regime, which includes an application and inspection fee. The GLAA also has wider enforcement powers to tackle non-compliance across other labour market sectors where fees are not charged.
94. While there might be areas where a fee for intervention would provide additional support for these approaches, the Government believes that it should not put at risk the integrity of the enforcement bodies, which is vital for their success. Charging a fee for enforcement must be implemented in such a way that it does not create perverse incentives (real or perceived) for the bodies concerned to focus their efforts on areas or sectors based on fee revenue, to the detriment of following up complaints and targeting investigations based on risk.
95. The GLAA will shortly undertake a review of its licensing fees framework in an effort to work towards the recovery of additional costs, and as part of this review will explore the feasibility of charging a fee for intervention.
96. The Government will continue to monitor this position with the three bodies and does not rule out the possible introduction of fees for intervention in the future.

### Labour Abuse Prevention Officers (recommendation 18)

97. The Government's goal in strengthening the role of the GLAA and extending its remit was to enable the authority to build on its good work and use its expertise across wider labour sectors. Giving specialised trained GLAA officers powers under the Police and Criminal Evidence Act (PACE) 1984 allows the GLAA to play a key role in tackling serious worker exploitation by extending its reach.
98. The Government **accepts** the recommendation that Home Office and GLAA should work to explore and clarify the role and powers of Labour Abuse Prevention Officers (LAPOs) within the overarching framework of labour market enforcement. The three enforcement bodies have developed a memorandum of understanding which sets out the protocol for the circumstances in which the GLAA can tackle broader offending and when a case should be referred to the relevant body to pursue. However, the Home Office will work with the enforcement bodies to review and update the document to ensure that clear information about the role of LAPOs, including the types of labour market offences where LAPOs can take action is included.
99. The GLAA have made good progress utilising their PACE powers to investigate serious cases of labour exploitation in the first year of operation. 36 LAPOs have

received specialist training and are now in place. From May 2017 to March 2018, the GLAA conducted over 180 operations, 107 of which were conducted under their PACE powers, with more than 80 of those across sectors outside of the traditional agricultural sector. As a result, the GLAA arrested over 100 people for suspected labour market offences. As a first responder, the GLAA has also supported over 50 potential victims of modern slavery through the National Referral Mechanism (NRM) process and over 80 through other protective services and identified a further 1335 workers suffering some form of labour abuse. It has also recovered over £94,000 cash for workers.

100. Between April and November 2018, the GLAA conducted a further 131 operations, 117 of which were conducted using their PACE powers, and as a result arrested 36 people on suspicion of labour market offences. The GLAA has also referred 50 potential victims of modern slavery to the NRM process and 39 through other protective services as well as recovering over £85,000 cash for workers. In this period an additional 1848 workers were identified to have suffered some form of labour abuse.

### **Non-compliance in supply chains (recommendations 23 and 24)**

101. The Government believes that it is good practice for businesses to work with their suppliers to address labour exploitation and non-compliance with employment law. The Director makes two recommendations, which are intended to ensure accountability through the supply chain.
102. The first recommendation suggests that joint responsibility measures should be introduced where the brand name (at the top of the chain) bears responsibility for non-compliance found further down its own supply chain.
103. The Government agrees that businesses at the top of the supply chain need to work with their suppliers to take corrective action when non-compliance is identified. It will be important for any enforcement mechanisms to incentivise suppliers to be open and transparent about instances of non-compliance identified and action taken to remedy this. However, the Government recognises that identifying and preventing non-compliance further down a supply chain is not easy, even for the most proactive and resourceful businesses and so we want to ensure that this could be implemented in a proportionate way.
104. Where non-compliance is identified in a supply chain, the Government envisages an approach whereby the enforcement body could privately notify both the supplier and the head of the chain. This could enable the head of the chain to work with the supplier to take corrective action. The Government will consult on this and how to address non-compliance in supply chains, working with business, trade unions and the enforcement bodies before responding to this recommendation.

105. Another crucial component of tackling exploitation in supply chains is through the Modern Slavery Act 2015. The Government introduced section 54 of the Modern Slavery Act 2015 to encourage larger businesses to use their influence to address modern slavery in their supply chains. Section 54 of the Modern Slavery Act 2015 requires commercial organisations in the UK (with a turnover above £36m) to produce an annual slavery and human trafficking statement, detailing the steps they have taken to prevent modern slavery in their supply chains.
106. The Government's guidance to the Act ([‘Transparency in Supply Chains etc.: A Practical Guide’](#)) specifically encourages large businesses to work with their suppliers to address modern slavery risks in supply chains. The Government will update the guidance this year to provide more helpful advice and resources on how businesses can conduct effective due diligence to address risks of exploitation in their supply chains. The Government is also working in partnership with 13 multi-national corporations through the Business Against Slavery Forum to share best practice and look at how the Government and large businesses can support smaller companies that have less capacity and fewer resources to address labour exploitation in their supply chains. Several Forum members have held training workshops and created guidance for businesses in their sector to help raise standards amongst businesses of various sizes. The Government will continue to work with Forum members and other businesses to improve the capacity of businesses in the UK to prevent labour exploitation.
107. The section 54 legislation has led to thousands of statements being published with many examples of best practice emerging. However, the Government is committed to ensuring that our approach to tackling modern slavery in supply chains is as effective as possible and is taking forward a package of measures to improve compliance. To coincide with Anti-Slavery Day, the Government wrote directly to the CEOs of 17,000 UK businesses in scope of the legislation with clear instructions to ensure effective reporting. The Government has also committed to carry out an audit of statements at the end of March 2019. Further to this audit, the Government intends to publish a list of non-compliant companies. The Government has commissioned an Independent Review of the Modern Slavery Act 2015, which will provide an opportunity to look at the implementation of section 54, including considering whether any additional measures are needed to strengthen its effectiveness.
108. The second recommendation focused on supply chains suggests that provisions should be made to enable the temporary embargo of “hot goods” to disrupt supply chain activity where significant non-compliance is found. The Government notes the findings of the Director in relation to parts on supply chains in the clothing industry where there have been concerns about responsible business being undermined by those that flout labour rules. Any provision that embargoes hot goods in supply chains must be proportionate to the severity of the offence

committed. Therefore, we will consult to understand whether this could be implemented in a proportionate way.

### **Pilot Licensing Schemes (recommendation 28)**

109. The Government recognises the evolving nature of exploitation and that in order to identify workers who may be vulnerable to exploitation in this changing landscape there is a need to ensure that we are equipped with the right tools. We must ensure these enable us to respond to the plight of victims and to pre-empt the risks of exploitation; and to make it harder for unscrupulous employers who are adept at identifying opportunities and weaknesses of labour market systems to exploit workers.
110. In 2015, the Government consulted on the potential for extending the GLAA licensing scheme to other high-risk sectors.<sup>12</sup> There were strong views that an extension of licensing to other sectors should be backed up by evidence to demonstrate licensing was appropriate and proportionate to address the problem. As a result, the Government amended the Gangmasters Licensing Act 2004 to allow sectors to be included or excluded from the remit of the Gangmasters and Labour Abuse Authority work so that the licensing regime can be flexible in meeting the changing nature of labour exploitation.
111. The Government believes that changes to the licensing regime should be informed by an understanding of the threat of exploitation in different sectors and the full range of options to tackle it. The Director's role plays a key part in assessing the risk of exploitation in different sectors and gathering evidence to demonstrate whether the use of licensing is the appropriate regulatory tool.
112. The Government **partially accepts** the recommendation that two pilot schemes should be run and evaluated to test the feasibility and impact of GLAA licensing of businesses in different sectors, these should be done on a geographically limited basis and cover hand car washes and nail bars.
113. While the Government understands the intention of the proposal for pilot licensing in hand car washes there is a need to further explore and identify the issues within this sector to enable the development of a robust evidence base that will help to determine the most appropriate regulatory approach and enforcement body. The Government believes that this can be better achieved by a voluntary pilot approach over a compulsory pilot licensing scheme.
114. Labour exploitation in hand car washes has been the focus of increased law enforcement activity over the last 18 months and more recently has gained the

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<sup>12</sup> <https://www.gov.uk/Government/consultations/labour-market-exploitation-improving-enforcement>

interest of Parliament and religious institutions, with the Environmental Audit Committee launching an Inquiry and the Clewer Initiative launching a safe car wash app.<sup>1314</sup> In recognition of the multiple risk factors associated with the provision of this service, from health and safety and environmental issues to compliance with employment law, law enforcement operations are conducted in partnership with a number of agencies, including Immigration Enforcement, HMRC and local authorities. The GLAA has played a greater role in leading operations since it acquired its PACE powers in April 2017.

115. As part of the GLAA's expanded remit to tackle labour market abuse, it is supporting an industry led pilot scheme. The pilot, launched on 22 October 2018 by the Downstream Fuel Association brings together a range of industry partners, as well as the Police, the Health and Safety Executive, Her Majesty's Revenue and Customs, the Environment Agency and the Car Wash Association. It uses a code of practice to help raise standards and compliance with existing environmental and health and safety regulatory standards and other labour market offences that cut across the operation of hand car washes. The scheme is currently focused on hand car washes operating on five of the major supermarket forecourts across the Midlands. It will be evaluated to allow us to more thoroughly test existing regulations and legislation in order to understand where the gaps are to help inform future decisions and to consider the scope for rolling the scheme out more widely.
116. In relation to nail bars, licensing powers for local authorities are already in place in parts of the country. Provisions under the London Local Authorities Act 1991<sup>15</sup> provide local authorities in London with powers to grant special treatment licences to premises established for special treatment. Special treatment covers a range of beauty services, including manicures. A special treatment establishment is unable to operate unless it has a licence from the local authority. The licence can be in place for up to 18 months and is subject to certain terms and conditions, including, health and safety, hygiene, qualifications and business hours of operation.
117. The GLAA is also part funding, with the Clewer Initiative and Project Challenger from Greater Manchester, a scoping exercise across two boroughs in Greater Manchester, to measure the scale, nature and threat of modern slavery in the nail bar industry. This exercise will help to provide us with improved statistical information about the extent of the issues in these two boroughs.

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<sup>13</sup> <https://www.parliament.uk/business/committees/committees-a-z/commons-select/environmental-audit-committee/inquiries/parliament-2017/hand-car-washes-17-19/>

<sup>14</sup> <https://www.theclewerinitiative.org/safecarwash/>

<sup>15</sup> <http://www.legislation.gov.uk/ukla/1991/13/contents/enacted>



118. The Government intends to explore how local authority licensing of nail bars in London operates to identify any gaps. It believes that further work is required to build the evidence base to better understand the issues associated with nail bars in London and across the rest of the country.

### **Enforcement of holiday pay (recommendations 31 and 32)**

119. Both the Taylor review and the Director recommended that the state should have a role in enforcing holiday pay. The Government **accepts** that the state should take responsibility for enforcing holiday pay for the most vulnerable workers. This will ensure support is targeted at those who need it most through a process similar to that for minimum wage enforcement. All workers will still have the option to enforce their right to holiday pay through an employment tribunal. We have now consulted and plan to legislate to take this forward.
120. The Government also **accepts** the Director's recommendation that EAS and GLAA should make use of their existing enforcement frameworks to investigate non-payment of holiday pay as a matter of priority. Both enforcement bodies have now taken measures to strengthen and prioritise their enforcement of holiday pay.
121. EAS already investigates all complaints associated with holiday pay and new guidance has been produced for enforcement officers that establishes non-payment as a mainstream consideration when investigating possible Regulation 12 breaches. Complaints associated with holiday pay are now being recorded so trends can be tracked over time. EAS will also share findings with HMRC or the GLAA where non-payment of holiday pay is identified as having not been paid in accordance with statutory provisions
122. The GLAA examines entitlement to holiday pay as wages theft under its licensing standards. As of October 2018, following public consultation, the GLAA's updated Licensing Standards provide further clarity that a licence holder must not prevent a worker from taking paid annual leave and that workers must be paid outstanding holiday pay when they leave their job. Failure to meet this licensing condition will lead to the licence being revoked with immediate effect.

### **Regulating intermediaries and umbrella companies (recommendations 33,34 and 35)**

123. The Director also makes recommendations on extending EAS' remit to include umbrella companies and intermediaries, the enforcement involved in this, and on the Swedish derogation. As part of our response to the Taylor Review of Modern Working Practices the Government committed to extending the remit of EAS to include umbrella companies. The Government has also carried out a consultation on agency workers to seek views, in part, on how best this can best be done. It also sought views and evidence on use of agency pay between assignment contracts. The Government response to the consultation was published as part of the Government's Good Work Plan.

124. The Government **accepts** EAS current powers should be expanded to include intermediaries to enable them to follow up on cases of worker exploitation as they would employment agencies. In response to the Taylor review, the Government agreed to expand the remit of EAS to include intermediaries subject to the Director's recommendations. As the main detriments identified are from umbrella companies, the expansion of EAS's remit will be focused on these companies.
125. We will introduce legislation that will allow EAS to investigate complaints against umbrella companies and regulate them under similar terms to employment businesses. This will principally allow EAS to follow up on cases where a worker has not received adequate payment from an umbrella company. We will also keep EAS's resources under review as its responsibilities increase.
126. The Government **accepts** the recommendation that the GLAA, EAS and HMRC NMW/NLW team should work closely with the other relevant HMRC tax enforcement teams to share information on non-compliant intermediaries that they identify through their enforcement work.
127. The enforcement bodies recognise their operational activity will highlight areas of wider strategic concern, be it identification of criminal activity, identification of potential tax avoidance systems, identification of potential Health and Safety breaches or offenses covered by partners in the Trading Standards. Where potential offenses are identified, the enforcement bodies continue to work in partnership with the appropriate organisation by sharing information or conducting joint operational activity.
128. The enforcement bodies have an on-going dialogue with HMRC tax enforcement teams regarding systems or models of activity that fall into either EAS, GLAA's or HMRC NMW statutory remit.
129. The Government **accepts** the recommendation that EAS and HMRC should work together to develop the options for enforcing regulations around intermediaries, assessing the likely impact, costs and benefits of each.
130. The detriments caused by umbrella companies can go further than the pay concerns that expanding EAS's remit will help tackle. As the Director's strategy identifies, these include lack of clarity over employment rights, coercion into using an umbrella company, and tax evasion. EAS enforcement and inspection of umbrella companies, alongside continuing engagement with stakeholders, should help build our intelligence and understanding of this sector. EAS already work closely with HMRC, and GLAA, to share intelligence and respond to emerging issues, such as umbrella companies. They will continue do so, and also work to identify what further enforcement or regulation will be needed to fully tackle the detriments that can be caused by umbrella companies.

### The Swedish derogation (recommendation 36)

131. The Director also makes a recommendation on the Swedish derogation. The Swedish derogation allows agency workers to opt out of their right, under the Agency Worker Regulations 2010, to equal pay with permanent workers after 12 weeks in the same assignment. In return, they must receive a contract which pays them when they are between assignments. The Agency Worker Regulations are currently individually enforced by workers themselves through employment tribunals.
132. The Government **partially accepts** the recommendation that the Swedish derogation should be properly enforced or abolished and EAS remit should be extended to cover enforcement of compliance with the Agency Worker Regulations (including the Swedish derogation), with the additional necessary resource to do this.
133. The Government remains concerned that the Swedish derogation is being used to cut costs at the expense of agency workers' rights to equal pay when they are on long term assignments. There is evidence of abuse where workers never receive pay between assignments, or employers have used schemes to minimise their liability for it. Further regulation or enforcement of the Swedish derogation will similarly open to abuse. We will therefore repeal the Swedish derogation.
134. The Government is concerned that expanding EAS's remit to cover the Agency Worker Regulations 2010 (AWR) would represent an unreasonable expansion of its role. EAS are currently focused on employment businesses and agencies (and will have their role expanded to cover umbrella companies). They are able to take effective compliance and enforcement action in this sector. Expanding their remit to the AWR would bring every business in Great Britain that uses agency workers within their scope for investigation and require them to encompass a much broader set of employment rights. This would be a radical shift in their operating model which would risk their ability to take effective action. We will therefore not expand EAS's remit to include enforcement of the Agency Worker Regulations.

# Annex A - Summary of recommendations

#	Recommendation	Response
1	BEIS/ HMRC should review the guidance around NMW in collaboration with stakeholders to identify and improve problem areas such as pay averaging and salary sacrifice.	Accept
2	HMRC NMW/NLW team should develop a more supportive approach when companies ask for advice in order to be compliant.	Accept
3	A statement of rights should be made mandatory for all workers from within week one of employment commencing. The Government should develop a template for the written statement of employment to ensure transparency in information provided, and to reduce the burden on business.	Accept
4	<p>Clear and accessible information on employment rights should be provided to workers opportunistically through a number of channels, including via:</p> <p>(a) Use of targeted social media campaigns;</p> <p>(b) Development of a web portal linking all enforcement agencies;</p> <p>(c) Workplace notices detailing rights and how to enforce them should be mandatory, similar to the Health and Safety notices.</p> <p>(d) Payslips, and payslip software and apps should include NMW/NLW rates guidance, information on the enforcement agencies and details of how to report a breach.</p> <p>(e) The education system should use opportunities and existing resources to inform young people of their rights as they prepare to enter employment.</p> <p>(f) Information should be included with National Insurance notification letters and other Government communication.</p>	Accept
5	The right to a payslip should be extended to all workers.	Accept

6	For hourly paid workers, there should be mandatory inclusion of total hours worked and hourly rate of pay on payslips.	Accept
7	In the longer term, hours and hourly earnings should be captured in Real Time Information data returns to HMRC.	Reject
8	<p>Simplify the entry channel to seek help on employment rights and how to seek redress. There needs to greater clarity on the internet about where to go for help and how to complain. In the next year:</p> <p>(a) The three agencies should improve their websites to make clearer what complaints to direct to them and how, and who to direct other types of complaints to. These should link with the web-portal recommendation.</p> <p>(b) EAS should raise its profile and have an easy to find webpage on Gov.UK with contact details for people to make complaints.</p> <p>(c) ACAS should review their communications and marketing promoting their service, and ensure it is accessible to workers.</p>	Accept
9	ACAS should build on the links with the three bodies to ensure that staff training, referral processes and data sharing are promoting their service to maximise access.	Accept
10	An increase in resources for EAS, both to promote their ability to enforce current regulations and due to the proposal to expand its remit. Will monitor efficiency of how resource for 3 bodies are used.	Accept
11	BEIS and EAS should investigate the potential for EAS being given the powers to impose civil penalties on non-compliant employment agencies as an alternative to prosecution.	Accept
12	Employers found to be non-compliant should also be charged a fee for intervention to allow the enforcement bodies to recover some of their enforcement costs.	Government will not be taking forward at this time
13	The use and imposition of much more severe financial penalties to act as a greater deterrent against non-compliance. The NMW penalty multiplier should be reviewed and increased again to a level that would ensure that there is an incentive to comply with the legislation.	Reject

14	The revenue from higher penalties should be recycled into the enforcement system as an additional resource.	Accept
15	Evaluation of the BEIS Naming and Shaming scheme to assess its impact.	Accept
16	Further information is provided within the Naming and Shaming Scheme to highlight the average arrears per worker, that case studies are provided to increase both the deterrence and compliance effect, and that opportunities are taken to engage with specific sectors to educate other employers on potential areas of non-compliance.	Accept
17	There should be greater use of – and publicity for – prosecutions and undertakings and orders to help increase the deterrent effect.	Accept
18	Home Office and GLAA should work to explore and clarify the role and powers of LAPOs within the overarching framework of LME.	Accept
19	The three enforcement bodies should work with the Insolvency Service to crack down on phoenixing by directors seeking to avoid labour market penalties.	Accept
20	The three bodies should continue to shift to more proactive enforcement methods. This will necessitate a more efficient way of responding reactively to complaints.	Accept
21	<p>The three enforcement bodies should continue to build on the good progress made over the past 12 months by:</p> <p>(a) Refining the systems and processes for intelligence-sharing, exploring all possible legal gateways and identifying any potential barriers, including developing the intelligence requirements to ensure the appropriate information is being collected;</p> <p>(b) Learning from shared experience to ascertain best practice for joint working, ensuring the best enforcement tools are applied to each case;</p> <p>(c) Continuing to build relationships with other enforcement agencies to facilitate more joint working where different powers and additional resources, or enforcement tools can be of benefit;</p> <p>(d) Looking to build partnerships with business, trade unions, trade</p>	Accept

	<p>bodies, and other industry experts so that these partners may feed in intelligence to the bodies in such a way that is actionable;</p> <p>(e) Operating a feedback loop with each other, with those that submit intelligence to them, and to their respective complainants.</p>	
22	<p>Different forms of partnership working should be piloted and evaluated, primarily through the support of:</p> <p>(a) Newham’s proposal to target NMW/NLW (testing joint working between HMRC and local authority); and</p> <p>(b) Leicester’s proposal to target the garment trade through high density, highly visible joint enforcement (testing partnerships with local agencies and businesses).</p>	Accept
23	<p>To help ensure compliance throughout supply chains, <b>joint responsibility</b> measures should be introduced where the brand name (at the top of the chain) bears joint responsibility for any non-compliance found further down its own supply chain. Where non-compliance is found, follow-up action by enforcement agencies in conjunction with the brand name and supplier would be undertaken in private to provide an opportunity to correct the infringements within a given timeframe. Failure to correct could result in public naming of both the brand name and the supplier.</p>	Government will return to this recommendation following consultation
24	<p>Provisions should also be made to enable temporary embargo of ‘hot goods’ to disrupt supply chain activity where non-compliance is found.</p>	Government will return to this recommendation following consultation
25	<p>An assessment should be made of the effectiveness of the Welsh Government’s new Code of Practice, to determine whether national roll-out would be beneficial.</p>	Accept
26	<p>Procurement templates should be amended to explicitly compel compliance with labour market regulations in public contracts.</p>	Reject
27	<p>The 2012 GLAA licensing standards should be reviewed to ensure they reflect current worker rights and employer obligations.</p>	Accept

28	<p>Two pilot schemes should be run and evaluated to test the feasibility and impact of GLAA licensing of businesses in different sectors. These should be done on a geographically limited basis and cover:</p> <p>(a) Hand car washes</p> <p>(b) Nail bars.</p>	Partially accept
29	<p>The three bodies should further develop and embed an evaluative approach to their own processes and systems, making best use of data and information to assess their performance and impact, ensuring they align with strategic enforcement principles, especially in terms of increasing the deterrence effect.</p>	Accept
30	<p>An independent evaluation should be undertaken, by an outside organisation, to investigate the overall impact of the three bodies on tackling labour market non-compliance.</p>	Accept
31	<p>HMRC, or another state body, should be provided with the powers and remit to take responsibility for the enforcement of holiday pay for all workers, including mechanisms to recover holiday pay arrears.</p>	Accepts for vulnerable workers
32	<p>In the interim EAS and GLAA should make use of their existing enforcement frameworks to investigate holiday pay as a matter of priority. The findings should be shared with HMRC-NMW as appropriate.</p>	Accept
33	<p>EAS current powers should be expanded to include intermediaries to enable them to follow up on cases of worker exploitation as they would for employment agencies. Their resources should be increased in line with the additional requirements to do this.</p>	Accept
34	<p>The GLAA, EAS and HMRC NMW/NLW team should work closely with the other relevant HMRC tax enforcement teams to share information of non-compliant intermediaries that they identify through their enforcement work. The relevant teams in HMRC should take effective action against such organisations, ensuring that successes are widely publicised to demonstrate that the enforcement environment is changing.</p>	Accept
35	<p>EAS and HMRC should work together to develop the options for enforcing regulations around intermediaries, assessing the likely</p>	Accept



	impact, costs and benefits of each.	
36	The Swedish derogation should be properly enforced or abolished. EAS remit should be extended to cover enforcement of compliance with the AWR (including the Swedish Derogation), with the additional necessary resource to do this.	Partially accept
37	HMRC to take advantage of the recent change in policy guidance and pursue more prosecutions for standalone non-record keeping offences.	Accept