



Department for  
Business, Energy  
& Industrial Strategy

# UK Labour Market Enforcement Strategy 2019/20

Government Response

October 2020



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# Ministerial foreword - Business Secretary

The Government is committed to making the UK the best place in the world to work and to run a business. An integral part of this is to ensure fair competition by protecting the majority of businesses who strive to do the right thing by their workers from being undercut by the small minority who seek to avoid their responsibilities.

We have already implemented a number of recommendations from the Taylor Review, and as announced in the Queens' Speech, we will be bringing forward an Employment Bill to deliver the greatest reform of workers' rights in over 20 years. This legislation will make workplaces fairer and will ensure employers and workers equally benefit from a flexible labour market.

This legislation will allow for the creation of a single enforcement body, which will bring together the Employment Agency Standards Inspectorate, Her Majesty's Revenue and Customs National Minimum and Living Wage team and the Gangmasters and Labour Abuse Authority. This ambitious reform will build on the work already undertaken by the Director of Labour Market Enforcement to lead to more joint working and information sharing to improve enforcement outcomes, as well as simplifying the enforcement landscape for businesses who want support to comply, and for workers seeking to enforce their rights.

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 first Director of Labour Market Enforcement on 1 January 2017. He retired in June 2019, after submitting this Strategy. As Director, Sir David published three Strategies and made a significant impact in shaping the role and transforming the enforcement landscape. I would like to thank Sir David and his team for his work in delivering this strategy, and for his service throughout his tenure. I wish him well in his retirement.

Matthew Taylor was appointed as his interim replacement in August 2019. I look forward to working with him as the Government seeks to implement the recommendations we have accepted, and to take forward his Strategy for 2020-21. My officials will be working closely with him during the design process of the single enforcement body.

I see the work of the Director and the implementation of the recommendations that we have accepted as an important part of bringing the enforcement bodies closer together ahead of the creation of the single enforcement body. It is testament to the value of the recommendations made by Sir David that the Government has accepted the vast majority of them.

As we respond to the Covid-19 pandemic, it is important that we continue to protect workers and support businesses to be compliant in these unsettling times. The Director's role in bringing focus and strategic direction to enforcement is now more important than ever and I know that Matthew and his office will continue to work closely with the enforcement bodies as

they seek to navigate the new challenges that we face. I look forward to working with the Director on his strategic priorities for 2020/2021.

A handwritten signature in blue ink, appearing to read 'Paul Scully', is centered on the page.

**Paul Scully MP**

**Parliamentary Under-Secretary of State for Small Business, Consumers and Labour Markets**

# Ministerial Foreword - Home Secretary

The recent appalling allegations of exploitation in clothes factories in Leicester demonstrate the urgent need to end the scourge of slave labour. I refuse to stand by while innocent people are forced into a life of exploitation by callous criminals for their own commercial gain.

Those who prey on vulnerable people and force them to work for a pittance, in atrocious conditions, or against their will, are not just bad bosses - they are ruthless criminals. They are trying to dodge the law, but we are coming after them. The National Crime Agency is investigating the horrific allegations about the textile industry, and I have launched a cross Government taskforce, led by the Gangmasters and Labour Abuse Authority, which will be on the ground asking the difficult questions of all institutions and organisations across Leicester.

The Coronavirus pandemic has highlighted further vulnerabilities for workers. I am grateful for all those who have continued to provide vital goods and services during this period, and they – like everyone working hard to contribute to this country - deserve our full protection.

This Government is determined to do more to end this terrible form of exploitation, which is why one of our key manifesto commitments was the creation of a new Single Enforcement Body. Pooling the expertise of our enforcement bodies can only strengthen our response to protect the vulnerable, end exploitation, and crack down on the criminals responsible.

The Director of Labour Market Enforcement sits at the heart of our mission to ensure that all those who profit from modern slavery have nowhere left to hide. The Gangmasters Labour Abuse Authority are also central, and this Government has increased our support for their vital work. Over the last year, they have conducted over 220 investigations to disrupt and deter criminal activity and driven work to ensure employers operate within the law. Working closely with industry they have built our understanding of the most high-risk sectors, such as hand car washes, and helped prevent and identify more exploitation.

I would like to thank Sir David Metcalf for this Strategy and for all of his important work throughout his tenure. A great deal has been achieved. Indeed, thanks to the concerns raised in his 2018/19 report, a pilot was launched to crack down on the garment trade, leading to a surge in enforcement action in Leicester, and over 300 investigations in the last 18 months.

The Government has accepted the vast majority of his latest recommendations in full, which will help us to better understand and to crack down on this abhorrent abuse. I look forward to working with Matthew Taylor, as the interim Director, to take forward these recommendations.

My message is clear: I will not tolerate the despicable exploitation and abuse of innocent people, and I will not stop until this terrible crime is consigned to the history books.

A handwritten signature in blue ink, appearing to be 'P. Patel', with a stylized flourish at the end.

**Priti Patel, Home Secretary**

# Introduction

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, and reports jointly to the Home Secretary and the Secretary of State for the Department for Business, Energy and Industrial Strategy (BEIS). 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 which are responsible for state enforcement of specific employment rights:

- 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).

Professor Sir David Metcalf CBE was appointed as the first Director on 1 January 2017. The Director is required under the Act to prepare an annual labour market enforcement strategy, which assesses the scale and nature of non-compliance in the labour market and sets priorities for future enforcement by the three enforcement bodies and the allocation of resources needed to deliver those priorities. Since the last Strategy, important changes have been made to the enforcement landscape that will improve the experiences of workers and employers. This includes the introduction of 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. This will make it significantly easier for such workers to understand how many hours they have been paid for and to challenge this when it is not the correct amount. The government also introduced legislation to repeal the Swedish derogation<sup>1</sup>, which will come into force in April 2020. The bodies have made significant improvements to joint working and intelligence sharing, leading to more collaborative working, which they will continue to build on through implementing the recommendations in this Strategy.

Sir David Metcalf published his 2019/20 Strategy in July 2019 before his retirement in August 2019. The Strategy makes 44 recommendations which aim to build on the progress made by the enforcement bodies in response to his introductory Strategy published in July 2017 and his 2018/19 Strategy published in May 2018.

The Government has considered Sir David's recommendations and will be accepting 35, partially accepting eight and rejecting one. This response sets out the steps that the Government is taking forward to protect vulnerable workers, support businesses to comply with the law and to improve joint working between the enforcement bodies. This work will build on

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<sup>1</sup> Under the Swedish derogation, the right of temporary workers to receive the wage as a permanent worker for the same job after 12 weeks (Agency Workers Regulations 2010) could be waived in lieu of "pay between assignments".

the progress made by the Government and the enforcement bodies in response to Sir David's 2018/19 Strategy.

The actions set out in this response represent an important stepping-stone to delivering on the manifesto commitment to establish a single labour market enforcement body which will bring together EAS; HMRC NMW/NLW team and the GLAA into a single organisation - bringing the enforcement bodies closer together and developing best practices ahead of this more fundamental reform of the enforcement landscape. In June 2019 the Government launched a public consultation on the proposals for a new single labour market enforcement body and will be formally responding to the consultation.

The Director of Labour Market Enforcement will have a key role to play in the transition to a new body, ensuring enforcement outcomes are maintained. The Government will work closely with the Director throughout the process to develop and implement plans for the new body.

Matthew Taylor was appointed the interim Director of Labour Market Enforcement in August 2019. The Government looks forward to continued engagement with the Director as he develops strategic priorities for the three enforcement bodies in his strategy for 2020/21. The Government will shortly begin the recruitment process for a permanent Director.

# Prioritisation of enforcement resources to protect the most vulnerable workers

Sir David highlighted the need to better understand the scale and nature of non-compliance in the labour market, to enable effective prioritisation of enforcement resources and to fully evaluate the impact of enforcement activity. The Government agrees that it is important that resources and interventions are targeted in the most effective way to reduce employer non-compliance and protect workers and welcomes the recommendations in this area.

## Prioritising resources and understanding threats (recommendation 1)

The Government agrees that a better understanding of the scale and nature of non-compliance is vital to ensure effective prioritisation of resourcing. The Government and the enforcement bodies recognise the need to continuously review the allocation and prioritisation of resources to adapt as appropriate to a changing landscape. Each of the enforcement bodies have mechanisms in place to do this, in line with the recommendations. The creation of a new single labour market enforcement body will provide an opportunity to create a more comprehensive picture across the piece, allowing us to more effectively prioritise resource across areas of enforcement.

The Government is supportive of the DLME proposals to conduct research into the scale and nature of non-compliance in the labour market and **accepts** the recommendation to provide the necessary funding. The Government recognises the difficulties in reaching some workers given the hidden nature of labour exploitation, and that one method of research may not be suitable for all sectors. BEIS and the Home Office will continue to work with the DLME's office to identify appropriate research tools and methods to capture the full spectrum of non-compliance, and to ensure funding for the project.

The Government **accepts** the recommendation that HMRC focus their efforts on serious cases. HMRC deploy NMW resources to meet the priorities and commitments set out in the service level agreement with BEIS. As part of the NMW strategy – based on Promote Prevent Respond – HMRC are taking a differentiated approach to tackling identified risks. This ensures the efficient use of resources and maximises the scope and coverage of the enforcement programme. Under this approach enforcement activity is concentrated on gathering intelligence and focussing interventions on sectors where exploitation may exist. Action to tackle serious non-compliance has been widened to include Scotland and Northern Ireland and new teams have been created in Bradford and Nottingham. HMRC Serious Non-Compliance teams (SNC) have conducted 166 joint working operations. Operations have taken place in sectors that have been identified by the Director as being high risk, including car washes, nail bars, textiles and construction. In all cases the intelligence received has pointed to National Minimum Wage risks existing alongside a range of other labour market abuse risks,

including modern slavery and people trafficking, and so 95% of these operations have been with external partners including Police, GLAA, Home Office Immigration Enforcement (HOIE), Health and Safety Executive (HSE), EAS and local authorities.

The Government **accepts** the recommendation that HMRC review the role of its strategic intelligence functions and already does this on a continuous basis. The NMW Risk Strategic Report assessment includes complaints and intelligence analysis and these form part of the monthly review at the Risk Governance Board. The Risk Intelligence Service (RIS) Analytical report includes analysis into the relevant sector or risk area and is derived from Risk Model information, Complaints and Intelligence Analysis. This is used as part of each sector and risk area review throughout the year. The NMW Risk Strategic annual report makes clear links to the assessment of intelligence information. When planning and evaluating each project/sector that features in the NMW Target Enforcement Plan HMRC reviews the intelligence analysis. They will continue to keep its strategic intelligence functions under review as a matter of course.

The Employment Agency Standards Inspectorate regularly assesses emerging threats to labour hire compliance, and already works closely with SaferJobs to do this. As highlighted by Sir David, online and app-based recruitment represents an emerging challenge for enforcement. The Government **accepts** the recommendation to examine the specific issue of online and app-based recruitment. Subject to its findings, the Government will consider what further steps, if any, are required and will continue to work closely with the Director of Labour Market Enforcement and his office on this issue.

The Gangmasters and Labour Abuse Authority (GLAA) recognises the high-risk nature of shellfish gathering and work in other agricultural sectors. The GLAA continues to conduct an annual strategic intelligence assessment across these sectors, as well as other high-risk sectors, to help better understand current threats and to identify any emerging issues. The Government **accepts** the recommendation that the GLAA provides stronger evidence of managing risk in the shellfish and agriculture sectors. The GLAA is committed to ensuring that sectors under its licencing scheme are effectively regulated and will consider what further work is required to improve its risk management process, including reviewing licence holders and further communication with industry sectors.

The Government recognises the impact that unannounced visits can have on tackling non-compliance. The GLAA is an intelligence led organisation and where it receives information about unlicensed activity it will assess the circumstances and take the necessary action, including whether any contact should be unannounced or announced. The Government **accepts** the recommendation that the GLAA should undertake more unannounced visits of labour providers across the regulated sectors where this may identify unlicensed operators. Where it is appropriate and driven by intelligence analysis, the GLAA will continue to consider undertaking unannounced visits. Any action will be proportionate to the GLAA's assessment of alleged issues, and will have regard to the Regulator's Code, and burdens on compliant businesses.

## Understanding the impact of enforcement bodies' actions on non-compliance (recommendation 2)

The Government **accepts** the recommendation to evaluate the impact of compliance and enforcement interventions. The three bodies already evaluate the impact of specific compliance and enforcement interventions and share the findings in order to learn lessons. They are keen to build on their existing evaluative work and will work together to clarify their approaches in joint working situations and develop appropriate measures for effective evaluation of operations.

The GLAA has recently revised its performance pack, which is focused on outcomes, and is undertaking further evaluation of its interventions during 2019/20. The GLAA is also subject to annual inspection by Her Majesty's Inspectorate of Constabulary and Fire and Rescue Services and the Investigatory Powers commissioner's Office. These inspections consider the use and effectiveness of the GLAA's investigative powers under the Police and Criminal Evidence Act 1984, and its use of surveillance powers respectively.

EAS publishes an annual report which details its performance in the previous calendar year. In addition to this EAS remains committed to improving its service to the public. To do this EAS regularly reviews its activity and impact to ensure the highest possible outcomes for both the public and the recruitment sector.

HMRC undertake a number of targeted, sector specific enforcement projects throughout the year. Each project is allocated a project lead who evaluates outcomes and feeds back through the Risk Governance Board. The Serious Non-Compliance team (SNC) have developed protocols to capture data on all joint working operations. This includes work with external partners and tax colleagues. This data is used to review and evaluate the success of joint working operations and which agencies participated. HMRC has also established a governance process for the issue and monitoring of Labour Market Enforcement Undertakings & Orders, which is used to monitor the effectiveness of these measures, identify changes in behavioural trends and subsequently adapt and improve measures. HMRC share any changes in operational approach with enforcement colleagues through the Strategic Coordination Group (SCG).

The Government accepts the importance of understanding the effect of the current NMW penalty multiplier. As HMRC enforces breaches that are up to 6 years old, it will take around 6 years from the date that the new rate was set in 2016 for its full effect to take hold. We will evaluate the effect of the multiplier once the full cycle of cases have taken place under the current level and so the Government **rejects** the recommendation to undertake an evaluation at this time. BEIS work with HMRC to continuously monitor the impact of the enforcement regime, including penalties, and will continue to do so.

## Resourcing (Recommendation 3)

The Government recognises the vital role the enforcement bodies play in protecting vulnerable workers, and the need to ensure they are appropriately resourced to carry out this important work.

The Government **accepts** the recommendation to increase EAS resourcing. EAS has seen its funding increase year on year from £0.5m in 2016/17 to £0.725m in 2018/19 and £1.125m in 2019/20. This latest increase in funding allowed the recruitment of additional front-line staff to meet the DLMEs recommendation and an extended remit from April 2020.

The Government **partially accepts** the recommendation that the GLAA should achieve financial self-sufficiency for its licensing scheme by the end of 2022. The GLAA will undertake work to review its licencing fees structure, working with relevant partners to explore options for potential changes to work towards self-sufficiency. The GLAA's resource budget for 2019/20 was £6.55m and reflects an increase in line with previous years' funding to support its expanded remit and powers. This increase is higher than the rate of inflation.

Government **accepts** the recommendation to increase HMRCs funding for NMW in 2019/20 in line with inflation and to demonstrate the cost effectiveness of its suite of triaging interventions. The 2019/20 compliance and enforcement budget for the NMW and NLW was £27.4 million, going beyond Sir David's recommendation. Since 2015/16 the budget has more than doubled from £13.2million.

In November 2018 HMRC reviewed its triage process. Changes have been made to the process and HMRC will look to evaluate the impact. HMRC sources regular feedback from Compliance Officers on any individual cases and the Triage decision and run monthly reports on rejected cases. This information is used to identify lessons learnt and opportunities for improvement which are built into the triage process and accompanying guidance.

## Improving awareness of workers' rights (Recommendation 4)

The Government and the enforcement bodies understand the importance of ensuring that those who are most at risk of labour exploitation know their rights and how to seek help and **accept** the recommendation to raise awareness of employment rights across a wide audience. To this end, the Government has legislated to make the provision of a day one written statement of rights mandatory for all workers and a key information document must be given to all agency workers registering with an employment business. These changes both come into force in April 2020 and should improve clarity and awareness of employment rights and reduce the scope for non-compliance through misinformation. Additionally, the Government ran a publicity campaign to raise awareness of workers' holiday pay rights, which has been identified as an area of significant non-compliance. The Advisory, Conciliation and Arbitration Service continues to provide free and impartial guidance and advice to both workers and employers and plays a vital role in making all parties aware of workplace rights and best practice.

The Government **accepts** the recommendation that the three bodies further develop strategies to improve awareness of employment rights. The three enforcement bodies already provide a range of information on employment rights, available in different languages and formats to meet the diverse needs of workers. They will continue to review and develop strategies to reach out to vulnerable workers and raise awareness of the employment rights they enforce. The GLAA will be working on a project supported by the University of Nottingham, to enhance awareness and access to information on rights, which will be shared with EAS and HMRC NMW. The enforcement bodies will also explore how the DLME's communications group could be utilised to co-ordinate work and to determine if there are additional routes to target under-represented groups or groups where awareness is particularly low.

The Government **partially accepts** the recommendation to establish a third-party information sharing protocol. We recognise the value that third-party intelligence adds to NMW enforcement and the importance of ensuring that people are able to make third-party complaints. The best way to do that is to publicise the existence of the channels that already exist for doing so. Individuals or third parties can make complaints anonymously through HMRC public facing web pages and online forms. Acas already signpost to HMRC's complaints procedure on their website, which makes it clear that you can report issues about yourself or in connection with someone else/an employer. BEIS and HMRC run a yearly National Minimum Wage publicity campaign. This campaign is supported by a web page [Check Your Pay](#) which highlights how to complain. The BEIS guidance also includes a section about how to take forward NMW Wage complaints. BEIS and HMRC regularly engage with the Trade Unions and attend Trade Union Congress Enforcement Group quarterly and will use this engagement to highlight the channels to provide third party intelligence.

BEIS **accepts** the recommendation to work with ACAS and stakeholders to consider the issue of collective grievances and the implications of including guidance in the Code of Practice on disciplinary and grievance procedures, which currently provides practical advice on handling individual grievances in the workplace.

# Helping employers get it right

## Improving guidance and educating employers (Recommendations 5 and 8)

The Government recognises that the majority of employers want to do the right thing and comply with the law. We understand that some areas of the law can be complex, and so it is important to support employers and to provide clear guidance so that they can understand how to comply with the relevant legislation.

A significant programme of work to review and update the enforcement bodies' guidance is currently being undertaken. As part of this work the enforcement bodies will consider other good practice approaches and explore whether additional guidance resources are necessary.

BEIS and EAS have published guidance on the changes to AWR (Agency Workers Regulations) made by the removal of the Swedish derogation, as well a guidance on the introduction of the Key Information Document. EAS has published in hard copy, an agency worker's leaflet to advise work seekers on their rights and simplified guidance for employment business on how to ensure they are complying with the law, both documents will be made available on EAS website as soon as possible.

The Government is undertaking a comprehensive review of the existing public facing NMW guidance, with the aim of driving compliance with NMW legislation, as well as preventing non-compliance resulting from accidental breaches by more clearly communicating to employers their legal obligations. The Government will improve NMW guidance available on gov.uk, making it more accessible and easier to navigate. These changes have been informed by stakeholder feedback and ongoing HMRC enforcement work.

The Government **partially accepts** the recommendation to produce supplementary advice booklets. We will publish new thematic guides on topics where breaches are common, e.g. deductions including uniforms; apprentices; and unpaid working time. This is to ensure that employers from all sectors can find relevant guidance. Thematic guides, rather than sector-specific guides, avoid duplication, as several issues are relevant to many sectors. We have convened a Guidance Readership Panel, comprising both business and worker representatives, to review these products.

HMRC already undertake a series of employer-oriented webinars, e-learning, online forum, and campaign letters and emails to help educate employers to get it right. This work continually evolves to address emerging issues and stakeholder feedback. HMRC has also recently started proactively visiting selected new, small businesses to educate them about NMW and support them in getting their practices right from the start.

The Government **accepts** the recommendation to coordinate guidance and messaging with trade associations and unions. The enforcement bodies already routinely develop their

guidance in collaboration with relevant trade associations and trade unions and will continue to do so.

Existing guidance provides information to employers and businesses in a series of formats to meet the range of user needs. The GLAA has recently updated its website with [industry profiles to identify particular labour exploitation risks](#) in specific sectors, and the type of information that assists operational activity.

The Government **partially accepts** the recommendation to focus on sector specific NMW naming rounds coupled with an education campaign to maximise the impact of naming and to raise awareness. Sir David recommended undertaking a review into the effectiveness of the naming scheme in his 18/19 strategy, and so the naming scheme has been on hold while this review takes place. Having conducted this review, the Government will resume naming in 2020. The Government accepts the importance of maximising the impact of naming and will publish quarterly educational bulletins to encourage compliance. Sir David also recommended a threshold for naming, set at average arrears in excess of £500 per worker per employer in order to focus on more serious cases. The Government agrees that a threshold is helpful to ensure a focus on the serious cases. The threshold will be set at arrears in excess of £500 per **employer** to focus on the most serious cases (repeat breachers will be subject to a lower threshold of more than £100 per employer), and we will aim to name more frequently than quarterly. We will continue to name a range of sectors in each round, rather than having sector-specific rounds, demonstrating that all employers and all sectors are responsible for NMW compliance. We will also publish more contextual information, such as the reason for each breach, to increase awareness.

## Interpretation and application of NMW regulations (Recommendation 6)

The Government agrees that it is important that enforcement staff are consistent in their interpretation and application of regulations so that employers have clarity on how to comply with the law.

HMRC is committed to ensuring that its NMW enforcement staff are fully trained and have access to clear operational guidance to ensure that the regulations are applied correctly and consistently and so **accepts** the recommendations to provide additional training and to improve guidance.

HMRC continually reviews the current training materials and guidance and looks to make improvements where appropriate. For example, this year a number of operational guidance notes have been issued including one on uniforms. These notes provide HMRC enforcement officers with detailed guidance on how to investigate NMW risks including the details of the type of evidence required. The issue of the guidance notes is followed up with national telephone workshops, led by operational advisers to discuss the guidance and ensure a consistent understanding across the business. External employer guidance is the responsibility

of BEIS and is undergoing a refresh, as referenced in the response to recommendations 5 and 8.

The Government **partially accepts** the recommendation to conduct independent audits of NMW enforcement activity, as audits already take place routinely and will continue to do so. The Professionalism, Learning and Guidance team (PLG) carry out quarterly quality reviews and provide quarterly and annual reports on the outcomes of the reviews. There is a mandatory referral process for investigations where an employer/accountant challenges the investigating officers' interpretation of the regulations. These cases are reviewed by the operational adviser team in PLG and where appropriate a full technical review is carried out by an independent technical team (Status and Employment Rights Technical Team (SERT)). The NMW programme is subject to oversight from Individuals & Small Business Compliance (ISBC) Professionalism within HMRC, which includes independent audits. The results of these audits are used to inform and improve the work done by the NMW team. The NMW team constantly review their professionalism standards, working closely with ISBC colleagues, and will continue to do so.

HMRC **accepts** the recommendation to assign caseloads by specialism and this is already underway. Cases involving similar investigative specialisms are managed through the NMW Targeted Enforcement project support process. Targeted enforcement cases within sectors are monitored by the Project Lead. NMW Project Leads produce guidance, share lessons learnt and best practice for our NMW projects/sectors that feature in the Target Enforcement plan. They also run regular conference calls on all projects to share guidance and best practice with caseworkers. They carry out quality checks on cases and provide feedback to ensure consistency of our NMW investigations within the project/sector.

## Reviewing NMW regulations (Recommendation 7)

The Government regularly review the NMW regulations to ensure they remain fit for purpose and **accepts** the recommendation to continue to do so.

The Government **partially accepts** the recommendation to review record-keeping requirements. The regulations currently set out that employers must keep NMW records for three years. The Government recognises that this is out of step with the period of liability for NMW, which is six years, and that this leaves firms vulnerable to being unable to prove their compliance for longer than the three years minimum. We will amend the regulations to extend the requirement to six years. The Government will continue to monitor whether setting out minimum requirements for sufficient record-keeping is appropriate.

The Government **partially accepts** the recommendation to review the regulations pertaining to deductions as we have already internally reviewed the regulations and are not minded to amend them. BEIS consulted on Salary Sacrifice schemes in 2019. The consultation responses indicated that changing the regulations could reduce worker protections. Although we will not be changing the legislation, the Government recognises that this is an area where breaches are common, and so we will be providing additional support to employers who

operate deduction or salary sacrifice schemes via a helpline. We will also waive financial penalties for employers for certain breaches of rules relating to salary sacrifice and pay deductions (subject to eligibility criteria). Under these limited circumstances, employers will also be exempt from the NMW Naming Scheme. Details of these exemptions are found in the [NMW enforcement policy document](#).

The Government **accepts** the recommendation to review the regulations on pay averaging. Through the consultation on Salaried Hours Work and Salary Sacrifice Schemes, BEIS has collected evidence on the circumstances under which employers can average pay. A response will be published shortly setting out any resulting changes to the NMW Regulations.

Following consultation, the Government has also reviewed the regulations on salaried workers and will make a number of amendments to the NMW regulations to ensure fairness while minimising burdens on employers. We will amend the NMW regulations to increase the range of compatible payment cycles to salaried hours workers (such as payments every two weeks or four weeks – currently only weekly or monthly payment cycles are compatible). The amended regulations will also enable employers to specify the ‘calculation year’ for their salaried workers (the reference point to identify when in a year a worker’s basic hours are exceeded). Currently, the calculation year is individual to the worker’s start date, creating difficulty for employers to monitor when annual basic hours are exceeded. It will also make premium payments to salaried hours workers compatible (such as for working on bank holidays), including where a salaried hours worker’s contract specifies a premium pay arrangement. The existing rules do not allow for premium payment arrangements in respect of the worker’s basic hours.

The Government **accepts** the recommendation to provide clarity on issues around uniform payments, working time and time recording, salary sacrifice and pension schemes and other technical issues through updating and producing new NMW guidance. See response to recommendations 5a-c.

# Using joint working to tackle more serious and persistent non-compliance in the labour market

The Government is committed to establishing a Single Enforcement Body which will merge the existing functions of HMRC NMW, EAS and GLAA. Joint working and information sharing, both internally and with external partners, will be at the heart of this organisation. In the interim period, the enforcement bodies will look to work together more closely in preparation for the transition to the new body.

## Intelligence sharing (Recommendation 9)

The Government appreciates the importance of intelligence sharing and joint operational activity between the enforcement bodies. Reviewing joint operations to learn lessons and strengthen procedures is a routine part of the enforcement bodies' work and government **accepts** the recommendation to continue to do this with a view to improving efficiency and effectiveness, while ensuring compliance with the data protection legislation..

The Government **accepts** the recommendation to review the joint Memorandum of Understanding (MoU), which sets out the conditions for joint working. The enforcement bodies have recently reviewed the MoU to consider whether any changes to processes are necessary and determined that the MoU still meets their operational requirements. However, the enforcement bodies will continue to keep it under review and any subsequent changes will be tested to ensure the intelligence flows and tasking processes operate effectively.

The GLAA and EAS already work closely together and share information where appropriate. They **accept** the recommendation to make improvements and will continue to learn lessons from cases and implement changes where necessary.

The Government **accepts** the recommendation to better identify relevant intelligence at the start of the HMRC NMW's intelligence triage process. All intelligence is risk assessed as part of the NMW Triage Process. Intelligence trends are discussed on a monthly basis at NMW Risk Governance Board and this feeds into Target Enforcement planning. NMW Risk Governance board is made up of NMW Risk lead, project leads, representatives from HMRC compliance and HMRC Risk Intelligence Service (RIS). NMW representatives also attend HMRC taskforces meetings, HMRC Hidden Economy meetings and GLAA meetings to improve sharing of intelligence and maximise opportunities for joint working. HMRC uses these meetings to review the triage process and to identify opportunities for targeted enforcement and will continue to seek ways to improve.

The Government **accepts** the recommendation that the three bodies develop an understanding of the extent to which offences within their remit occur alongside other

violations. The enforcement bodies already engage with stakeholders and relevant law enforcement partners. For example: EAS work with a range of stakeholders according to need. This ranges from Police forces, to charities and NGO's. EAS has been working closely with both the English and Welsh Government procurement services to ensure that supply chains that use labour from employment business and agencies are compliant with the law and transparent. EAS works closely with Trading Standards to ensure that those seeking to use the modelling and entertainments sector are treated in accordance with the law and are not subject to photographic scams. Additionally, EAS continues to build its partnership with the Security Industry Authority, to support them in their aim to ensure criminality is reduced and standards are raised in the private security industry so that the public is, and feels, safer.

- HMRC, the GLAA and EAS share information on the use of Labour Market Enforcement Undertakings and Orders (LMEUs and LMEOs) on a monthly basis. This includes discussions on best practice and successes in regard to affecting on-going compliance.
- HMRC have also developed a data exchange with the Police on national recording of Slavery and Trafficking Prevention and Risk Orders.
- HMRC are engaged in data collection to evaluate joint working.
- The GLAA produces monthly data on the number of joint investigations it has undertaken, in its performance pack, which is provided to the Home Office and ODLME, and is broken down to set out the enforcement bodies it has collaborated with. The GLAA also works with Local Authorities. Examples of this include its work with Nottingham City Council to identify labour exploitation in unlicensed houses of multiple occupancy and work to scope the issues in nail bars in Manchester. The GLAA is also considering further work in other high-risk sectors, including hand car washes and the textile industry in Leicester.

The enforcement bodies will continue to work with each other, other Government departments, the Police and local authorities where appropriate to the risks that are identified. The bodies will also conduct a mapping exercise to identify offences that fall into the labour market space and the findings will be shared across other enforcement bodies to ensure links are made.

The Government **partially accepts** the recommendation to share information on Labour Market Enforcement Undertakings/Orders (LMEU/Os) with the Insolvency Service. LMEUs are a confidential agreement between the enforcing body and the business/employer to put measures in place to correct non-compliance. The Government believes that it would not be appropriate to share this information with the Insolvency Service.

LMEOs are granted through the courts. Where information sharing gateways exist the enforcement bodies will consider on a case by case basis whether to share information on LMEOs with the Insolvency Service.

HMRC currently make limited referrals to the Insolvency Service at the point when enforcement actions have been exhausted or completed.

## Working together and with DLME (Recommendation 10)

The enforcement bodies are committed to working together to determine how best to use shared powers and to working with the DLME to improve strategic understanding of threat, risk and harm. Since the creation of the DLME, the enforcement bodies have worked to improve joint working and information sharing, both individually and within the Strategic Coordination Group (SCG) and good progress has been made. They regularly share intelligence with each other and the Information Hub, which has allowed them to identify opportunities to work together collaboratively. They look forward to continuing to work in close partnership with the DLME to take forward these recommendations.

The Government **accepts** the recommendation that the enforcement bodies consider how to use the Evidence and Analysis Group, Labour Market Enforcement Board and Strategic Coordination Group. Before Sir David Metcalf stepped down from the role, he sent out letters to the enforcement bodies setting out the priority sectors he had identified for the enforcement bodies to target. These have already been incorporated into the bodies' work programmes for 2019/20. Government considers that the SCG should be used to agree high risk sectors based on an intelligence led assessment of cases investigated by the enforcement bodies and will work with the DLME's office to take this forward.

The enforcement bodies **accept** the recommendation to establish how best to use Labour Market Enforcement Undertaking/Order powers jointly. The use of LMEU/O powers is set out in the MOU that exists between the three enforcement bodies. Only GLAA can issue or apply for combined LMEU/Os. The enforcement bodies regularly engage with each other to proactively look for appropriate cases to utilise combined LMEU/Os and will continue to do so.

## Joint working with wider partners (Recommendation 11)

The enforcement bodies understand the importance of working with wider partners and already have links with strategic partnerships and other networks. There are a variety of partnerships and networks in place across local authority and police areas, which can make it challenging to engage effectively with each one. They **accept** the recommendation to continue to engage with strategic partnerships and anti-slavery networks. Where targeted enforced activity is planned, the bodies already reach out to relevant local partnerships, and will continue to do so.

HMRC NMW work closely with other colleagues within HMRC, notably the Modern Slavery & Illegal Working lead and will continue to develop these relationships. At local and regional level HMRC NMW SNC teams have developed relationships with Government Agency Intelligence Network (GAIN) coordinators and colleagues in GLAA, EAS, Home Office Immigration Enforcement, Police and Local Authorities.

The bodies **accept** the recommendation to explore how different agency powers can be used collectively. At present, where the enforcement bodies identify opportunities for joint activity, an Operational Order is normally produced. This will set out what powers each body can operate, and whether they enable the different bodies to enter a premises together, or whether entry

has to be sequenced so that bodies that only operate civil powers apply their powers after the first stage which utilises criminal powers. The creation of a single labour market enforcement body will enable us to go further, bringing the powers of the different bodies together under one organisation. As part of the work around establishing this new body, the Government is considering how to ensure different powers can be used more effectively during a single operation. These discussions about how agency powers can be used collectively are already an active and on-going part of the work that the SCG does, starting with contributions that partner organisations make to the DLME Threat Register.

EAS are working with a variety of law enforcement organisations to educate them on how to make full use of EAS' range of powers, from driving compliance to EAS' powers under Section 9 Employment Agencies Act 1973 to gather evidence, or to seek prohibition orders to disrupt non-complaint or illegal behaviour.

The enforcement bodies **accept** the recommendations to continue to engage with local authorities to ensure relevant staff are aware of and know how to spot the signs of non-compliance and to better understand issues in other sectors.

HMRC NMW plan to engage with local authorities where appropriate to support planned promote or enforcement activities. HMRC NMW Serious Non-Compliance teams will continue to engage with Local Authorities on an operational basis and will share information wherever appropriate and permitted by HMRC disclosure rules.

EAS has reached out to all local authorities in Great Britain. Although more work in this space is needed, this remains part of EAS' overarching strategy of Advise, Protect and Enforce.

## Evaluating Joint Working (Recommendation 12)

The Government recognises the importance of evaluating joint working in order to learn lessons for future cooperation. This will also support work to establish a single labour market enforcement body, ensuring barriers to joint working are identified and addressed in the design of the new body.

The bodies **accept** the recommendation to continue evaluation of the pilot joint operation involving the three bodies aimed at tackling non-compliance in the Leicester garment industry. The DLME's office has already produced an evaluation of the pilot. The bodies provide regular updates to the SCG and will continue to do this until enforcement action has been completed.

As a result of the allegations around labour exploitation in Leicester in July 2020, a new multi-agency taskforce (Op TACIT) led by the GLAA has been set up to bring together the enforcement bodies to continue to work together to secure robust intelligence to enable appropriate enforcement activity. It consists of: HMRC National Minimum Wage; Employment Agencies Standards Inspectorate (BEIS); Leicestershire Police; National Crime Agency; Leicester City Council; Department for Work and Pensions and Immigration Enforcement (Home Office). With reference to learning from the pilot, the taskforce will coordinate a multi-agency approach to enforcement activity, the gathering and sharing of intelligence and wider

community engagement aimed at encouraging reporting and helping raise awareness of workers' rights

The bodies **accept** the recommendation to establish success criteria at the start of an operation and to evaluate outcomes. This is already a standard part of any joint operation. The responsibility for evaluation sits with the lead agency. HMRC are currently in the early stages of developing a model to measure the disruptive impact of its enforcement activities and will keep the SCG updated of developments.

The Government **accepts** the recommendation to conduct ongoing evaluation of the impact of LMEU/Os. LMEUs can be put in place by enforcement bodies for up to two years and LMEOs can be granted by the courts for a length of two years. As the first LMEU's were issued in March 2018, the Government believes that it would be more appropriate to undertake a review after the two year period to allow for a wider range of cases to be evaluated. The Home Office will work with the enforcement bodies and the ODLME to consider the most effective way to assess the use of LMEUs and LMEOs, including what time period would be suitable to undertake evaluation.

# Summary of responses to recommendations

No.	Recommendation	Response
1	All three bodies should develop a better understanding of existing labour market non-compliance threats and better align their resourcing to tackle these.	
a	I recommend that Government support me in meeting my obligations under the Immigration Act 2016 by providing the necessary investment to undertake robust research in 2019/20 into measuring the scale and nature of non-compliance in the labour market.	Accept
b	I recommend that, regarding HMRC NMW's prioritisation of cases, HMRC NMW/BEIS focus their enforcement efforts further along the non-compliance spectrum, thereby seeking to tackle more serious cases.	Accept
c	I recommend that HMRC NMW review the role and effectiveness of its strategic intelligence functions with a view to integrating with, and thereby strengthening, its risk modelling and hence improving the effectiveness of targeted enforcement.	Accept
d	In time for my 2020/21 Strategy, I recommend that GLAA provide stronger evidence of managing risk in the shellfish gathering and agriculture sectors. GLAA should also undertake more unannounced visits of labour providers across the regulated sectors as a whole to identify unlicensed operators.	Accept
e	I recommend that BEIS lead a comprehensive review of the threat to labour hire compliance from online and app-based recruitment. This should build on the work carried out to date by EAS and SAFERjobs, but involve other partners (for instance drawing on data analytics expertise and wider government interests in online policy). This review should be completed by the end of 2019 with findings to feed into my 2020/21 Strategy.	Accept
2	All three bodies need to better understand how their interventions impact on reducing labour market non-compliance.	
a	Following this first phase of work to evaluate the impact of the work of the labour market enforcement bodies, I recommend that all three bodies commence a programme of evaluation work, beginning with discrete evaluation of specific compliance and enforcement interventions in the	Accept

No.	Recommendation	Response
	short term, with a view to considering wider impact evaluation in the longer term once better measures of labour market non-compliance have been developed.	
b	The deterrent effect of the current NMW penalty multiplier should be assessed and I recommend that BEIS commission an independent evaluation to report by the end of 2019. This could potentially lead to a reconsideration of the case for supporting the raising of penalties in the future and/or increasing enforcement resources across all three labour market enforcement bodies.	Reject
3	In terms of resourcing for the three bodies:	
a	I recommend that EAS resourcing in 2019/20 be at least doubled from its current staffing levels: <ul style="list-style-type: none"> <li>• to effectively carry out its business-as-usual work;</li> <li>• to provide a dedicated analysis resource to maximise the benefits of its new case and intelligence management system; and</li> <li>• to properly undertake the additional enforcement work given the expansion of EAS's remit to enforce umbrella companies.</li> </ul>	Accept
b	I recommend that HMRC's funding for NMW enforcement be increased in line with inflation and that, from 2019/20, HMRC NMW better demonstrate the cost-effectiveness of its suite of triaging interventions.	Accept
c	I recommend that funding for GLAA also be increased in line with inflation. Furthermore, GLAA should achieve financial self-sufficiency for its licensing scheme by the end of 2022.	Partially accept
4	I recommend that the enforcement bodies continue to improve awareness of worker rights and complaints channels.	
a	I recommend that the three bodies further develop strategies to target and improve the awareness of employment rights, particularly for vulnerable, at-risk and hard-to-reach communities.	Accept
b	I recommend that BEIS and HMRC establish and promote an information-sharing protocol for third-party information.	Partially accept
c	I recommend that Acas (the Advisory, Conciliation and Arbitration Service) may wish to review the statutory Code of Practice on grievance procedures, in consultation with key stakeholders, to create	Accept

No.	Recommendation	Response
	practical guidance for collective as well as individual grievance processes.	
5	The three bodies should conduct a full review of the guidance to clarify the regulations and improve the support offered to employers, labour providers and employment businesses.	
a	I recommend that the three enforcement bodies look to produce and update their guidance in closer collaboration with trade associations and trade unions.	Accept
b	I recommend that the three bodies do more to coordinate the guidance and subsequent messaging between themselves, where there is overlap of issues.	Accept
c	I recommend that the three enforcement bodies draw upon examples of good practice beyond their remits to consider introducing a toolkit of interactive online compliance tools and additional guidance resources.	Accept
d	I recommend that BEIS review and consolidate guidance on NMW/NLW with HMRC enforcement to create a single, comprehensive and overarching guidance document. An evaluation of the impact of this guidance should be undertaken two years from its introduction.	Accept
e	I recommend that HMRC and BEIS focus on sector-specific naming rounds coupled with an education campaign to maximise the impact of naming and to raise awareness. At the same time, in order to expose the most serious NMW/NLW infringements, the cut-off for naming should be on the basis of average arrears per worker per employer and the threshold set at average arrears in excess of £500.	Partially accept
f	I recommend that BEIS, with input from HMRC enforcement, produce supplementary sector-specific advice booklets for those sectors where trends of certain types of breaches emerge or where the regulatory landscape is particularly complex (i.e. such as issues around uniform deductions within retail and hospitality, pay averaging, salary sacrifice, etc.).	Partially accept
6	HMRC NMW should improve the consistency of its caseworkers' interpretation and application of the NMW regulations by:	
a	Providing additional training on how to interpret and apply the legislation, particularly for emerging problem areas for underpayment, such as uniform deductions.	Accept

No.	Recommendation	Response
b	Reviewing and improving the internal operational guidance offered to caseworkers by the Professionalism, Learning and Guidance team (PLG) as the first point of contact to clarify the regulations and operational application. This should be carried out in tandem with the review of external guidance for employers.	Accept
c	Conducting independent audits of a sample of enforcement activity to ensure that application of the regulations and outcomes are consistent. This could build upon the PLG's current work to conduct quarterly moderation on Key Stage Indicators for the NMW Management Board. Audit findings should be used to inform and improve internal operational guidance.	Partially accept
d	Assigning caseloads to inspectors by specialism to develop sector- and issue-specific expertise, as far as is practicably possible within resourcing constraints, to improve the quality of interactions and achieve better consistency.	Accept
7	I recommend that BEIS review and consult on the following sections of the NMW regulations, to consider issues regarding their practical application and operation.	
a	Record keeping requirements: to set out the minimum requirements needed to keep sufficient records and to extend the time period for which employer records must be kept, to align with the period of liability under the NMW Act 1998.	Partially accept
b	Deductions for the benefit of workers: to review the regulations underpinning deductions from pay, to consider how best to enable low paid workers to access genuine, non-cash workplace benefits within the scope of the NMW provisions.	Partially accept
c	Pay averaging: under current regulations pay can be averaged in some circumstances but not others, but there is no clear policy rationale for this.	Accept
d	Clarifying issues around uniform payments, working time and time recording, salary sacrifice and pension schemes.	Accept
8	To promote compliance with the regulations, I recommend that the enforcement bodies should increase the volume of awareness raising campaigns and improve the targeting of educational messaging aimed at employers.	

No.	Recommendation	Response
a	The bodies should promote and advertise all changes to the regulations and guidance, to set clear expectations against which to enforce. I appreciate that this activity should be proportionate to the scale and impact of the changes.	Accept
b	The bodies, particularly GLAA and EAS, should consider how to promote and insert their messaging across wider government communications such as through GOV.UK's 'step by step' guide for new employers.	Accept
c	The bodies should look to use the Pensions Regulator's approach to distributing educational material as an example of best practice, such as by producing similar newsletters bulletins for employers on a regular basis. In particular, more use should be made of case study examples to highlight both good and bad employer behaviour as a practical guide to compliance.	Accept
9	I recommend that the three enforcement bodies review existing intelligence processes and legal gateways in order to adopt a more proactive approach to intelligence sharing and to improve the efficiency of their joint operational activity.	
a	The three bodies and sponsor departments should review the joint working MoU as a priority to ensure that the intelligence flow and subsequent tasking processes are operating as effectively as possible.	Accept
b	I recommend that intelligence-sharing between GLAA and EAS is improved as a matter of priority.	Accept
c	I recommend that HMRC consider how to better identify relevant intelligence at the start of the intelligence triage process in order to optimise opportunities for targeted enforcement.	Accept
d	I recommend that three bodies develop an understanding of the extent to which offences within their remit occur alongside other violations and where non-compliance is deliberate. This will involve further developing of relationships with law enforcement and other government departments in order to identify and access relevant data sources.	Accept
e	I recommend that the bodies proactively share information on Labour Market Enforcement Undertakings/Orders with the Insolvency Service in order to inform their targeting decisions and potentially streamline their investigations.	Partially accept
10	The three enforcement bodies and sponsor departments should work with my Office to align activity within the DLME-defined priority sectors,	

No.	Recommendation	Response
	consider how best to use shared powers and improve strategic understanding of threat, risk and harm.	
a	I recommend that the bodies and my Office consider how to use the Evidence and Analysis Group, Labour Market Enforcement Board and Strategic Coordination Group respectively, to identify, agree and facilitate joint activity in the sectors on which the Director recommends the bodies focus. This process should, of course, allow for the fact that not all sectors will be relevant to all bodies.	Accept
b	I recommend that the bodies establish how best to utilise Labour Market Enforcement Undertaking/Order powers jointly, in order to address non-compliance across the whole spectrum of offences.	Accept
11	The three enforcement bodies should consider how they can engage further in joint working with wider partners, with particular focus on recidivists and deliberate non-compliance.	
a	I recommend that the three bodies engage with strategic partnerships and anti-slavery networks.	Accept
b	I recommend that the three bodies explore how different agency powers can be used collectively to support sustained and long-term disruption of non-compliance, with a focus on recidivists and deliberate offenders.	Accept
c	I recommend that the three bodies further engage with local authorities to ensure that their inspectors have the necessary information to identify the signs of non-compliance and the channels through which to share actionable information in return.	Accept
d	I recommend that the three bodies work more closely with local authorities to tackle labour market non-compliance and exploitation, particularly in those sectors not within HSE's enforcement remit, such as warehousing.	Accept
12	I recommend that the three enforcement bodies conduct robust evaluation of joint working in order to understand the value of such initiatives and where intelligence and operational resources can best be utilised in further work.	
a	I recommend a full evaluation of the Leicester pilot in order to understand what works and whether this is a good model for elsewhere.	Accept

<b>No.</b>	<b>Recommendation</b>	<b>Response</b>
b	I recommend that the three bodies establish success criteria at the start of operational activity, evaluating immediate outcomes through processes such as multi-agency debriefs as well as monitoring of the longer-term disruption effect.	Accept
c	I recommend that the three bodies conduct ongoing evaluation of the impact of Labour Market Enforcement Undertakings/Orders, both in terms of immediate outcomes and the longer-term disruption effect.	Accept

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