



Department for
Business, Energy
& Industrial Strategy

Establishing a new single enforcement body for employment rights

Government response



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Introduction

The consultation paper “Good Work Plan: establishing a new single enforcement body for employment rights” was published in July 2019, with the consultation period closing on 6 October 2019. The consultation considered the case for a new single labour market enforcement body to tackle the deeply fragmented enforcement landscape which:

- makes it difficult for both workers and employers to know where to go for help
- limits the visibility of the work of the bodies
- makes it harder to have a single clear intelligence picture across the labour market

The consultation sought views on:

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

This report summarises the responses to the consultation and **confirms the government’s commitment to create such a body, as set out in the government’s manifesto**. The new body will not just bring together three existing bodies into a single, recognisable organisation, it will deliver a significantly expanded remit. As a result, more vulnerable workers across the country will receive money that is owed to them.

This is an ambitious project. It is right that we use this opportunity to review existing approaches, learn from what works and find new ways to deliver a significant advance in our ability to protect vulnerable workers.

There have been some notable developments since the consultation closed. The Covid-19 pandemic has led to an enormous shift in how people work. The enforcement bodies have had to be quick to adapt to this new reality, both in terms of their own working practices, and being alive to new risks given the current conditions in the labour market. A new single enforcement body will make us even better placed to deal with changes in the labour market, through greater flexibility in how to deploy resource and a more intelligence led approach.

This was particularly highlighted by reports of serious non-compliance in the textiles industry in Leicester. A multi-agency taskforce led by the Gangmasters and Labour Abuse Authority (GLAA) has been facilitating joint working and intelligence sharing. There is much we are already learning from this work as we develop plans for the new single enforcement body.

It has also shown us where there is more work to do, particularly in identifying serious non-compliance. Effective data sharing and analysis will be critical to the success of the body. Even more fundamental will be increasing the number of individuals and third parties who feel confident and able to come forward with a complaint or information. To do this we need to

make the body visible, credible and safe for those who are vulnerable. It also requires strong links with other organisations at a national and local level.

Our stakeholders can provide valuable insights on how to deliver this in practice. We have spoken to a wide range of people both during and after the consultation period and we will continue to do so as we develop plans for the new body. The previous Director of Labour Market Enforcement (DLME) also played a role convening stakeholders for a number of workshops to gather views on specific aspects of how the single body will operate.

This body will not just protect workers, it will also help to provide a level playing field for the majority of employers who respect the law, and who also lose out when unscrupulous businesses cut corners and exploit workers. In these challenging economic times, it is more important than ever that we take action against such behaviour and support responsible businesses to flourish and level-up all areas of the country. The body will also provide more support for businesses to understand their obligations and get things right, in part by bringing three separate organisations together into a single body. This helps workers too as it can prevent problems occurring in the first place, or address them more quickly.

It is also important for businesses, particularly brands at the top of the supply chain, to act responsibly and consider the impact of their behaviour on their suppliers. Aggressive pricing policies, late payment and short notice cancellation of contracts can all have a damaging impact on those working in the supply chain, often on low pay. The single enforcement body and wider government can play a role to support this, but there are many brands who are already leading the way and demonstrating best practice, such as publishing details of suppliers and conducting regular, independent audits to check working practices.

Next steps

Creating this new body will be subject to the usual government approval process, based on a business case. Primary legislation will also be required.

We recognise that this is a complex project to deliver. Whilst this document sets out high level proposals, we are developing more detailed plans for the body in partnership with the existing enforcement bodies.

To support the transition to the new body, we will also work with the enforcement bodies to trial new approaches and build on the joint working in Leicester.

Finally, we will continue to work with stakeholders, particularly as we adjust to post-Covid-19 changes in working practices.

Conducting the consultation exercise

Activity during the consultation period

The consultation on establishing a new single enforcement body for employment rights was launched in July 2019 and closed in October of the same year. 111 responses were received from individual workers (22) and employers (12), academics (7), trade associations (17), trade unions (8), charities or social enterprises (23), public bodies (11), and legal representatives (11).

Officials also organised ten roundtables gathering views from stakeholders in London, Manchester and Edinburgh. Views shared at these roundtables were considered alongside written responses.

Officials used the consultation period and intervening period to discuss the proposals with staff from the enforcement bodies concerned by this reform. Officials continue to engage with external stakeholders and work closely with the enforcement bodies.

Summary of consultation responses

A majority of respondents were supportive of the creation of a single enforcement body and believed that it would be more effective than the current system. However this was conditional on it being well funded, and on further detail around the set-up of the body, with the transition to the new body seen as a particular risk.

Some respondents opposed the proposals. Those who opposed the reform questioned whether improvements could be made to the current system without the upheaval of creating a new body and stated that more time was needed to assess the progress made by the creation of the position of Director of Labour Market Enforcement.

The key potential benefits highlighted by respondents were the increased clarity on where to go for help, and the opportunity for a better offer of support for both workers and employers. Respondents also believed this new body could bring greater consistency across all areas of enforcement (including a more compliance focused approach), a more comprehensive intelligence picture, more effective use of resources, and clear independence and accountability.

The key risks highlighted by respondents were the risk of being under resourced, a loss of specialisation and expertise, and a potential for increased bureaucracy. Respondents also feared the transition to a new body could lead to its focus being diverted away from certain areas (particularly at the lower harm end of the spectrum), and a distraction of time and resources.

The vast majority of consultation respondents agreed that enforcement should focus on both compliance and deterrence but there were different priorities between business and workers' representatives. Business representatives focused on the need to dedicate more resources to support employers to comply. Workers' representatives tended to advocate for stronger deterrence, and especially higher penalties for non-compliance to be used in part to fund increased proactive enforcement.

The government also notes the Women and Equalities Select Committee recommendation that any new enforcement body, including the planned new labour market enforcement body, must have an explicit mandate to secure compliance with the Equality Act 2010 using its enforcement powers.¹

Conclusions

The consultation responses show there is a real opportunity to deliver more effective enforcement of employment rights for vulnerable workers. **The government will proceed with plans to bring together the existing labour market enforcement bodies, in line with the manifesto commitment.**

This new single body will support employers to comply with the law, building on the compliance activity of the existing bodies, and by providing detailed technical guidance as well as introducing a compliance notice system for lower harm breaches.

It must also be more effective at identifying non-compliance. We will look to achieve this through better data use and analysis, as well as tackling the barriers that can prevent workers, third parties and employers from coming forward with information.

The body will also have new powers to tackle non-compliance, with the introduction of civil penalties for underpayment for the breaches under the gangmasters licensing and employment agency standards regimes that result in wage arrears. It will also have powers to enforce statutory sick pay, holiday pay and transparency in supply chains / modern slavery statement reporting.

¹ Women and Equalities Select Committee Report: [Enforcing the Equality Act: the law and the role of Equality and Human Rights Commission](#)

1. Reforming the current system

Chapter 1 of the consultation described the draw backs of the existing enforcement landscape, and the benefits of creating a new single enforcement body. It also set out the proposed core remit for the body.

Despite reforms in the Immigration Act 2016, including the creation of the Director of Labour Market Enforcement's role, the enforcement of employment rights has remained fragmented across multiple different bodies. This creates a number of problems:

- it makes it difficult for both workers and employers to know where to go for help
- it limits the visibility of the work of the bodies
- it makes it harder to have a single clear comprehensive intelligence picture of the scale and nature of non-compliance across the labour market

The consultation proposed bringing together the three existing labour market enforcement bodies: HMRC National Minimum Wage Enforcement; the Gangmasters and Labour Abuse Authority; and the Employment Agency Standards Inspectorate into a single body. This would deliver:

- a strong recognisable single brand, so individuals know where to go for help
- better support for businesses who want to comply with the rules
- pooled intelligence to provide a more comprehensive picture of labour market enforcement
- more effective use of resources, with a greater ability to address new and emerging priorities
- coordinated enforcement action with new powers and sanctions to tackle the full spectrum of non-compliance
- closer working with other enforcement partners, including health and safety, the Pensions Regulator and wider local authority enforcement

This new body would also deliver commitments to enforce holiday pay for vulnerable workers, enforce transparency in supply chains / modern slavery statement reporting and regulate umbrella companies (certain companies that are involved in the payment of agency workers).

While respondents were not asked for views on the core remit, some did raise questions around the inclusion of the GLAA's role tackling modern slavery linked to labour exploitation. There was concern from some respondents (including the then Director of Labour Market Enforcement) that this risked shifting the focus and approach of the body away from labour market non-compliance and towards more serious criminality. As others have strongly argued however, an enforcement body can never be certain what they will find when they start a visit or investigation. The spectrum of non-compliance in the labour market ranges from a basic lack of understanding and application of labour rights to criminal labour exploitation and modern slavery, therefore **including the GLAA's powers and remit in this area will ensure**

the single enforcement body has a comprehensive approach to the labour market and is able to respond to a broader range of activity. This will prevent cases slipping through the gap between the single enforcement body and the law enforcement agencies

Effectiveness of the current system (Q1)

74% of the consultation respondents did not think the current system of enforcement was effective, whilst only 6% thought it was effective and 20% did not express a view.

Many respondents referred to the complexity of both the enforcement landscape and also the legislation which the existing bodies enforce. Most respondents felt the fragmentation of the enforcement landscape made it harder for them to be aware of the legislation and to know where to go for help. Some workers reported that some cases were 'falling through the cracks due to disputes over jurisdiction' (individual worker, CS021).

Beyond the effectiveness of the current state enforcement system, many workers' representatives used this consultation to point at issues with employment tribunals. While the consultation focused on state enforcement, most employment rights are enforced by an individual through an employment tribunal. The key issues reported with the employment tribunal system were delays in obtaining hearings and decisions, securing employment tribunals' awards and the lack of readily available legal aid.

Some respondents also asked for better interactions between state enforcement bodies and employment tribunals.

Impact of a new single enforcement body (Q1-4)

55% of respondents thought that a new body would be more effective than the current system, whilst only 17% disagreed and 28% did not know or did not answer.

Respondents were broadly supportive of establishing a single enforcement body in principle and agreed with the potential benefits set out in the consultation, but this was conditional on it being well funded and the final set-up of the body. A key benefit cited by the majority of respondents was the creation of a **recognisable single brand** which could simplify the current landscape and make it easier for both employers and workers to know where to go for help.

The majority of respondents were confident that a single enforcement body could lead to **better coordinated enforcement action and pooling of intelligence**, improving enforcement action across the board. Most of those who believe a single enforcement body could make a difference in this space referred to the opportunities that could be exploited from centralised capturing of data.

A range of respondents welcomed the creation of a single enforcement body as an opportunity **to strengthen links with stakeholders** in the field, building on existing relationships.

Respondents did also raise some risks in creating the new body. Lack of resources was a major concern for a number of respondents. Many raised that additional resource should be included to deliver the expanded remit of the new single enforcement body.

Other risks raised focused on the transition to a new body, including a potential loss of expertise and the potential for focus to be drawn away from enforcement outcomes. Some respondents thought the transition would be more manageable if new enforcement functions, such as holiday pay, were phased in once the body was established. This was supported by the Director of Labour Market Enforcement and enforcement bodies themselves. There was also agreement on the importance of creating a clear culture and vision for the new body.

Conclusions

The government will create a new single enforcement body as set out in the 2019 Manifesto – and this is supported by the responses to the consultation. The need for consolidation and reform of the enforcement landscape has only been confirmed by activity in Leicester to tackle non-compliance in the textiles industry. The joint working the GLAA-led Taskforce has carried out in Leicester has illustrated many of the benefits we would look to get from a single enforcement body.

While there are clear potential benefits, we also recognise that the success of the new body will depend on how it is created and a carefully managed transition. We will only establish a single enforcement body if it will not put existing enforcement capabilities at risk. We will continue to work closely with the enforcement bodies to develop these plans and ensure that the new body is able to build on their enforcement work.

This proposal to establish a new central government arm's length body is subject to the usual government approval process. This process will also support careful consideration of the type of body it is, level of independence, and governance arrangements.

The overriding objective behind the creation of the new body is to significantly improve the government's ability to protect vulnerable workers and ensure they receive their employment rights. This is both through greater support for employers to get it right, and effective enforcement action to tackle non-compliance and create a level playing field for businesses across the country.

This is not a cost-saving exercise. Resource for existing areas of enforcement would be maintained but used more effectively. Funding for new areas, such as enforcement of holiday pay for vulnerable workers, will be considered through the next spending review.

2. Relationship with other areas related to labour market enforcement

In addition to the enforcement currently carried out by the existing bodies, and new areas where the government has committed to extend state enforcement, chapter 2 of the consultation considered the relationship with a number of other areas related to labour market enforcement. It also considered extension of the existing Gangmasters Licensing Scheme to other high-risk sectors.

Statutory sick pay (Q7)

55% of respondents were in favour of the single enforcement body taking on responsibility for enforcing Statutory Sick Pay (SSP), with 16% against and 29% unsure.

We agree that the single enforcement body should take on enforcement of SSP. The government recently consulted on plans to reform SSP as part of *Health is Everyone's Business*. The majority of respondents to that consultation agreed that the government should take a more robust approach to employers who fail to meet their obligations. We will look at how this is delivered in line with the single enforcement body's approach to enforcement and powers set out in chapters 3 and 4.

Enforcement of employment tribunal awards (Q9)

Most of those who expressed a view thought that more should be done to enforce employment tribunal awards.

BEIS currently run a penalty scheme for unpaid employment tribunal awards which involves government fining a respondent for late payment. As a minimum, this scheme would transfer over to the single enforcement body to administer. However, we recognise that a significant proportion of employment tribunal awards still go unpaid and this undermines individuals' ability to get redress. We will work with the Ministry of Justice to consider whether the single enforcement body could do more to support individuals to pursue enforcement of their awards through existing routes.

Other areas considered (Q8, 10 and 11)

There was not strong support for any other areas to be included in the single enforcement body's remit, but developing closer links to other bodies will be important.

While most stakeholders thought the Equality and Human Rights Commission (EHRC) should continue in their current role tackling discrimination and harassment in all areas (including the

workplace), there was support for the single enforcement body to be more ambitious in using its enforcement framework to tackle discrimination. The Women and Equalities Select Committee recommended this, and also suggested the body could have a role enforcing some other areas including equal pay, direct discrimination including failure to make reasonable adjustment and harassment and victimisation.

Many of the vulnerable workers that would fall under the single enforcement body's remit hold one or more protected characteristics. This must be a key factor in determining its strategic approach – for example, taking steps to understand and address additional barriers that some protected groups may experience when trying to seek help.

Licensing and at-risk sectors (Q5-6)

58% of respondents thought that the current gangmasters licensing scheme should be expanded to other sectors at risk of exploitation, 5% did not believe the system should be expanded and 37% did not have a view.

The consultation asked whether the current licensing scheme underpinned by the Gangmasters (Licensing) Act 2004, which operates on the supply and use of labour should be expanded to other sectors at risk of exploitation by gangmasters.

Respondents were broadly supportive of expanding the current licencing scheme to other sectors at risk of exploitation of gangmasters but differed in the sectors which they believed licencing should be expanded to and the way that such licencing should be implemented.

Whereas the workers in the agriculture, shellfish gathering, food processing and packaging sectors captured by the existing GLAA licensing model are mostly supplied by labour providers (or 'gangmasters'), the additional sectors proposed by respondents, including food manufacturing, construction, car washes and care were more likely to directly employ workers. Whilst the government recognises that these sectors can be as equally at high risk of exploitation there is limited operational evidence to demonstrate that an extension of the gangmasters licensing scheme would be the most effective method in tackling non-compliance in sectors that operate on a direct employment model.

Fundamentally, all employers and labour providers regardless of the sector they operate in have a duty to comply with employment and other laws in respect of workers and can be subject to sanctions, including in some cases prosecution when they fail to do so. Tackling non-compliance across multiple sectors is complex. It is clear from the responses that applying a blanket approach comes with the risks of not addressing the specific risks within each sector. We need to understand the full range of issues in each sector to better understand the threat of exploitation and determine the right approach.

Of those respondents that disagreed with the proposed expansion of licensing some cited voluntary industry-led schemes that are already in place, such as the Responsible Car Wash Scheme pilot, where a code of practice has been developed to set the expected standards and suggested evaluation of them to determine whether a regulatory approach is required. The

scheme found that there was a positive impact in driving up standards where indicators of worker exploitation were identified. Many of the issues that arose were linked mostly to non-payment of national minimum wage, worker status, health and safety and environmental issues rather than severe labour exploitation or modern slavery. Following its success, a second pilot is now underway to further examine the scheme's effectiveness. A full evaluation will be published during summer 2021. The findings from the evaluation and intelligence gained from these pilots helps build our understanding of non-compliance in this sector. Others noted existing regulation of higher risk sectors, for example health and social care which is regulated by the Care Quality Commission.

The impact of the Covid-19 pandemic has highlighted further potential risks and exposure of workers to exploitation. While it was not one of the top sectors raised during the consultation period, following reports of poor working conditions and labour market non-compliance in the Leicester textiles industry, raised in Summer 2020, the British Retail Consortium has subsequently advocated a 'fit to trade' licensing scheme for textiles manufacturers.

Initial proposals from the British Retail Consortium suggested that manufacturers should be licensed in a similar way to labour providers. However, as set out above, this could not be achieved by a simple extension of the current gangmasters licensing scheme, as a significant proportion of the workers in the textile industry are employed directly, rather than through labour providers.

This is not the only proposal in this space. The Environmental Audit Committee has separately suggested that the government should explore the proposal for a Garment Trade Adjudicator – similar to the Groceries Code Adjudicator. This type of model would more directly target retailers. Any extension of the licensing scheme or adoption of any other proposals should be informed by an assessment of the full evidence base. We need to ensure it will drive the right behaviour from both manufacturers and retailers to improve standards across the whole sector.

In light of the very serious allegations raised, the government established a multi-agency taskforce – Operation TACIT – led by the Gangmasters and Labour Abuse Authority (GLAA), bringing together the key enforcement bodies and Leicester City Council to take appropriate action against employers and individuals who exploit workers. Operation TACIT continues to operate on the ground in Leicester and has now visited more than 250 premises across the Leicester textiles industry, taking swift and appropriate action to deal with any exploitation and labour market non-compliance where this is found.

While law enforcement and the labour market enforcement bodies continue to root out non-compliant and criminal activity, we will continue to engage with both the enforcement bodies and industry partners to strengthen our understanding of levels of non-compliance across the garment trade. This will form a basis for us to consider options that will drive up standards across the sector, from manufacturers to retailers, including whether a new licensing scheme would be effective.

Transparency in supply chains (Q26)

46% of respondents agreed that the single enforcement body should have a role in enforcing section 54 of the Modern Slavery Act, 10% thought that the single enforcement body should not have a role, 7% gave another response and 37% did not answer this question.

In September 2020, the Home Office published the response to its consultation on strengthening the transparency in supply chains provisions in the Modern Slavery Act 2015. This included a commitment to mandate organisations captured by section 54 of the Modern Slavery Act 2015 to publish their modern slavery statements on a new government-run registry for modern slavery statements - this requires legislative change and will be introduced as soon as parliamentary time allows. As part of the response, the government also committed to consider appropriate enforcement options for those that are non-compliant under section 54, including civil penalties.

The Home Office will introduce financial penalties for organisations which fail to meet their statutory obligations under Section 54 of the Modern Slavery Act 2015. While the Home Office will maintain and monitor the government-run register of modern slavery statements, and use this to identify organisations who have not met the reporting requirements, **the single enforcement body will have powers to impose financial penalties against non-compliant organisations.**

There are synergies here given the single enforcement body's role in relation to tackling modern slavery and labour exploitation. Enforcement of transparency in supply chains legislation will provide the single enforcement body with a better overview of the spectrum of non-compliance on labour market related issues. If an organisation does not meet its obligations under the Modern Slavery Act 2015 it may be an indication that they are not fully compliant with the law.

We will continue to work with the Home Office to determine how this will be implemented by the single enforcement body.

Conclusions

The single enforcement body will have an extensive remit to protect vulnerable workers covering:

Area of the law	Currently enforced by
National Minimum Wage (NMW) and National Living Wage (NLW)	HM Revenue and Customs (HMRC)
Domestic regulations relating to employment agencies	Employment Agency Standard Inspectorate (EAS)
Umbrella companies, which employ and handle payment for agency workers but do not currently fall within the remit of the Employment Agency Standards Inspectorate	Not currently enforced but government has committed to legislate to give the state a role
Licenses to supply temporary labour in high risk sectors in agriculture and the fresh food supply chain	Gangmasters and Labour Abuse Authority (GLAA)
Labour exploitation and modern slavery related to worker exploitation	Gangmasters and Labour Abuse Authority (GLAA)
Holiday pay for vulnerable workers	Not currently enforced but government has committed to legislate to give the state a role
Statutory Sick Pay	HMRC currently run a dispute resolution process
Modern slavery statements	A present the only enforcement route is for the Home Secretary to seek an injunction in the High Court.
Unpaid employment tribunal awards	Penalty scheme currently run by BEIS

The new body will need to create strong relationships with a range of other bodies and organisations. Two were particularly raised by stakeholders in the course of the consultation: Immigration Enforcement and the Insolvency Service.

Many stakeholders, particularly worker rights groups, highlighted the difficulties in making migrant and illegal workers feel safe coming to any sort of enforcement body for help. Illegal workers are at particular risk of exploitation but may fear the consequences if they raise their mistreatment to the authorities. Even legal migrant workers can be fearful, with instances of employers dishonestly telling their workers they do not have the right to work in order to facilitate their exploitation.

Currently, the labour market enforcement bodies work with partners to tackle a range of labour abuses by unscrupulous employers and have a duty to share data in the interests of preventing such abuses. The ability to employ illegal workers creates a permissive environment for other labour abuses and Immigration Enforcement is a key partner in taking action against employers who do not play by the rules as well as enforcing compliance with our immigration system. However, the safety of an individual is always considered paramount in any subsequent enforcement action and each individual's circumstances are considered carefully. All immigration officers receive training as part of their induction on spotting the signs of labour exploitation and modern slavery and a programme of refresher training has previously been rolled out to Immigration Enforcement. In addition, earlier this year, the Home Office launched a dedicated training package for all first responders, including Immigration Enforcement, on the indicators of modern slavery and how to refer into the National Referral Mechanism (the UK's framework for identifying potential victims of modern slavery to ensure they receive the appropriate support). The Home Office continue to engage with first responders to understand their needs and the training they receive. It is also important to highlight that referrals to Immigration Enforcement do not automatically lead to removal. As a public body, the single enforcement body will have a duty to report any activities of a criminal nature to the relevant authorities.

We recognise this concern among workers and how it can act as a barrier to disclosure. As we develop plans for the design and operation of the single enforcement body we will consider how to make individuals feel more confident coming forward, working closely with stakeholders. We will also build on existing work to promote the rights of workers and ensure they are better informed.

Another issue frequently raised by stakeholders was around employers becoming insolvent and how this can act as a barrier to workers getting redress (both through an employment tribunal and the enforcement bodies). There was particular concern around 'phoenixing': the practice of carrying on the same business or trade successively through a series of companies where each becomes insolvent in turn. Some businesses may use this approach to avoid paying money owed to workers.

The Insolvency Service have a role to play in these situations. They can look into the affairs of companies in liquidations and can work to disqualify unfit directors in all corporate failures. The Insolvency Service already has existing intelligence sharing streams with Home Office, HMRC

National Minimum Wage and the Gangmasters Labour Abuse Authority for both live and insolvent companies. This permits fast track data sharing to enable appropriate targeting decisions. Initial scoping activity is underway to introduce similar arrangements for employment tribunal decisions. A small pilot stream of National Minimum Wage referrals resulted in 30% of referred cases leading to director disqualifications and a further 20% of cases resulting in full repayments to underpaid workers. **Having a single body will allow us to replicate this approach across all of the areas under the body's remit and strengthen the link between labour market enforcement and the Insolvency Service.**

The consultation also explored the relationship with health and safety enforcement. Some responses highlighted the fact that both the single enforcement body and the Health and Safety Executive (HSE) have similar mandates: to support and guide businesses with regulatory compliance, and protect workers. The HSE already has a close relationship with the three employment rights enforcement bodies: this includes the use of joint operations and sharing of case intelligence. Given the technical expertise used in the different organisations, the consultation proposed health and safety enforcement be retained separately in HSE and not wrapped into the single enforcement body. Nonetheless, the single enforcement body is an opportunity to streamline the data and intelligence sharing relationship with health and safety enforcement, including that done by local authorities. There will also be opportunities for the organisations to share best practice in supporting businesses and providing technical guidance. **We will ensure that the Health and Safety Executive remains a key partner for the single enforcement body, particularly with regards to intelligence sharing and support for businesses.** We will keep the nature of the two bodies' relationship under review and, as the single enforcement body gets up and running, continue to consider how their roles can be mutually supportive.

Finally, links at a local level with police and in particular local authorities will be incredibly important. Local authorities have a role in enforcing health and safety in the workplace, but they also have much more detailed knowledge of local businesses and communities. This can support more effective engagement of higher risk communities and businesses. Local intelligence can inform more targeted proactive activity. **As we develop plans for the single enforcement body, we will consider the best way to achieve this.**

3. The approach to enforcement

Chapter 3 of the consultation considered how to establish a consistent and proportionate approach to enforcement across all the areas covered by the single enforcement body.

This included ways to support compliance including increasing awareness of employment rights; and ensuring a more consistent, proportionate approach to breaches at the ‘lower harm’ end of the spectrum. The consultation also looked at how the single enforcement body could deter non-compliant behaviour by:

- making it easier to raise a complaint
- improving the ability to identify non-compliance
- publicising breaches more effectively

Overall approach (Q12, 20 -22)

76% of respondents supported a balanced approach to enforcement focused on both compliance and deterrence.

Though there were conflicting views about how this should be achieved, and relative priorities. Business representatives tended to focus on the need to provide more support for employers to understand how to comply with the law. Workers’ rights groups instead advocated for stronger sanctions to deter non-compliance. Some also feared that increasing resources to support employers could reduce support and protection for workers.

Overall, respondents supported a proportionate approach to deal with the wide spectrum of breaches covered by the single enforcement body. While it is often not possible to tell whether a breach was simply a mistake or deliberate, one idea which gained support during the consultation roundtables was a compliance notice system for use where less serious breaches are found. This would give employers a fixed period of time to take corrective action before further action was taken if needed (such as issuing a penalty notice).

Getting support and raising a complaint (Q13-19)

53% of respondents said there was not enough guidance and support available to workers and employers. 58% thought the single enforcement body should have a role providing advice.

As highlighted in the consultation, Acas already have the primary role providing information and advice to both employers and workers, with further advice available on gov.uk. This is generally designed to provide easily digestible information that will cover the majority of queries. The single enforcement body should not duplicate any of the work of Acas or advice

available on gov.uk – this would not be a good use of its resource. However, given the wide range of different business and employment models, some employers felt additional guidance to cover more specific, technical issues would be helpful to prevent unintentional non-compliance.

Conclusions

The single enforcement body is a real opportunity to review and strengthen the impact of our approach to compliance and enforcement of employment rights. A focus on increasing compliance rates must be central to the body's approach. The best outcome all round is for employers to understand their obligations and comply with the law, so that workers receive their rights in the first place. This requires both support – so employers understand how to comply – as well as effective, visible enforcement action to deter irresponsible employers from believing they can get away with not meeting their obligations

We recognise that some employment legislation can be complex, so to support employers who want to get it right and complement Acas' offering the **single enforcement body will focus on providing detailed technical guidance**. This builds on the existing approach of the enforcement bodies and can be enhanced by the single enforcement body's broader intelligence function to better identify areas where non-compliance is more common.

All of the existing enforcement bodies carry out some form of compliance activity. This is as much for the benefit of workers as employers. It prevents issues arising in the first place, rather than requiring what can often be a long and complex investigation.

Building on this, we will work with the enforcement bodies to develop a compliance notice system, which will establish a consistent approach to lower harm breaches across the single enforcement body's remit. There are cases where a compliance notice would not be appropriate, for example for more serious breaches or where an employer has been found to be non-compliant multiple times. As part of this work we will look to set out a transparent policy around their use.

Whilst the single enforcement body should support employers who genuinely want to do the right thing, unfortunately there are also those who deliberately seek to avoid their responsibilities. **The single enforcement body must be more effective at identifying these cases. We will look to achieve this through:**

Use of data – As many respondents raised in the course of the consultation, it is vital that the single enforcement body retains access to HMRC data which supports NMW enforcement. We will include an information sharing gateway in the legislation that establishes the single enforcement body, and we are working closely with HMRC to surmount the practical challenges to accessing relevant business and taxpayer data from outside HMRC. We will also build on the work of the Leicester Taskforce and explore additional sources of data and new techniques for analysing it which could support more effective targeting of enforcement activity.

Encouraging better flows of information and intelligence – The most effective way of identifying non-compliant employers is usually through complaints from individual workers. There are many reasons workers may not come forward. They may fear repercussions, either from their employers or, in cases of illegal workers, from the authorities. Workers may simply not know what their rights are in the first place or be unsure where to go for help.

Tackling these barriers will be a primary goal in designing the single enforcement body and its approach:

- creating a high-profile body, supported by awareness raising activity
- establishing a culture that makes workers feel safe to come forward
- setting out clear, transparent information on what happens when an individual makes a complaint and what information is needed to support action
- building strong links with community and worker groups, both to make use of trusted channels to spread awareness and also to learn about and adopt best practice to support engagement with at risk groups

Worker and industry groups, as well as other third-party organisations, can also play an important role. Some have expressed frustration that there is not enough clarity on how they can pass on information, what constitutes ‘actionable intelligence’ and what action is taken as a result. **To encourage better flows of information and provide greater transparency, we will work with the enforcement bodies to establish clear published guidelines on these issues and clearer routes to pass on information.**

4. Powers and sanctions

The final chapter of the consultation set out proposals to create a more consistent set of powers through the introduction of new civil penalties. It also sought views on powers to tackle non-compliance within supply chains.

45% of respondents thought the enforcement bodies' current powers were not sufficient. Of those who thought they were sufficient, many argued they were underused – with many respondents highlighting the low number of prosecutions from all enforcement bodies. Improving the ability to identify serious non-compliance (as set out above), could lead to further prosecutions. However, this will only be the most appropriate approach in the most serious of cases.

Civil penalties and publicising enforcement activity (Q21-25)

The vast majority of those who expressed a view agreed that civil penalties should be introduced for the breaches under the gangmasters licensing and employment agency standards regimes that result in wage arrears. Respondents saw the proposal as providing a useful middle ground sanction, and consistent approach.

34% of respondents agreed that these new penalties should be set at the same level as NMW penalties, with 56% not expressing a view. 10% disagreed and tended to support a higher level of penalties across all areas, including National Minimum Wage.

The consultation also sought views make on establishing a consistent approach to naming and publicising enforcement action, extending naming beyond National Minimum Wage breaches. The majority of respondents agreed that naming non-compliant businesses had an effective deterrent effect. Some stakeholders advocated focusing naming on more serious breaches as they felt it could have greater impact.

Wider supply chain recommendations (Q27-34)

The consultation also sought views on recommendations made by a former Director of Labour Market Enforcement, Sir David Metcalf, to tackle non-compliance in domestic supply chains. These were:

- Joint responsibility – where brands would be notified when non-compliance is found within their supply chain and have a responsibility to work with their supplier to rectify the problem or risk being publicly named
- Embargoing of 'hot' goods – where goods produced by a non-compliant supplier could be embargoed. This would result in disruption to the supply chain, and could act as a deterrent, encouraging brands to conduct more due diligence

A large proportion of respondents did not provide views on these proposals. However, 54% of respondents overall supported the use of joint responsibility. Some called for stronger measures – namely joint liability. Views were more mixed on whether it would be fair and proportionate to publicly name a brand for failure to address a breach in their supply chain. Some mentioned the distinction between direct suppliers with which the brand has a contractual relationship, versus subcontractors further down the supply chain. Responses were also mixed in terms of when joint responsibility should apply.

35% of respondents overall supported embargoing of hot goods. Again, there were conflicting views on how this should be used. 36% thought it could be effective in all sectors, with 32% disagreeing. The most common issue raised was its use in relation to fresh produce, where it could lead to goods becoming not fit for consumption. Others noted that this measure would be ineffective in service industries, where no goods are produced. Some respondents thought this should only be used as a final measure, or to address persistent non-compliance.

Other measures suggested included options to promote good practice and raise awareness.

Conclusions

We will introduce new civil penalties for the breaches under the gangmasters licensing and employment agency standards regimes that result in wage arrears. Civil penalties will be used where a compliance notice has not been deemed appropriate, or if employers fail to comply with a compliance notice in time. In line with the consultation proposals, the penalties will be set at the same level as the NMW penalties – 200% of arrears – with a minimum penalty of £100 and maximum of £20,000 per worker. We will consider the interaction between the introduction of compliance notices and the current 50% discount where arrears and penalties are paid within 14 days. We are not proposing to increase the level of penalties further at this stage. The level of NMW penalties was increased in 2016 and we are monitoring the impact this has had on compliance before considering any further change.

We will extend the naming scheme for the enforcement areas covered by the newly extended civil penalties. Naming non-compliant businesses has an important deterrent effect. Following a review of the NMW naming scheme, we announced in February 2020 that the threshold for naming employers has been increased so firms which owe arrears of more than £500 in National Minimum Wage payments to their workforces will now be named. Previously the threshold was over £100.

To maximise the impact of naming rounds – particularly the opportunity to use them to raise awareness of common mistakes and best practice – the single enforcement body will use distinct naming rounds by type of breach.

The introduction of compliance notices, and the extension of both civil penalties and naming will create a consistent compliance approach across all enforcement areas covered by this new body. This will provide clarity for employers and make it easier for them to know what to

expect when faced with enforcement action from the new body. We will also look to replicate this approach for enforcement of holiday pay for vulnerable workers and Statutory Sick Pay.

Alison Levitt QC's independent report into Boohoo's supply chain set out in stark terms the impact that brand behaviour can have on working conditions within their supply chain. Brands have a responsibility both to carry out due diligence, but also to behave in a way which supports and promotes fair, legal working practices with their suppliers across their whole supply chain.

We want to support brands to do this, and will work with industry and other stakeholders, as well as the enforcement bodies, to develop best practice guidance. The Apparel and General Merchandise Public/Private Protocol, which commits retailers to work with the enforcement bodies to tackle labour exploitation in UK factories is already doing some work in this space, and we will look to see how we can both support and build on this work.

We believe working with brands in this way is more likely to lead to an improvement in the way they work with suppliers – and avoid unintended consequences such as dropping suppliers or offshoring, which would have a further detrimental impact on workers. As reflected in the mixed responses, we are also concerned that the measures on joint responsibility, and hot goods in particular, would not be appropriate for all sectors. There are significant practical challenges to implementing either measure, particularly given the complexity of supply chains, and insufficient evidence to support their introduction at this time. We will keep this position under review however, and if there is evidence that brand behaviour has not shifted sufficiently, will revisit these proposals.

This publication is available from: <https://www.gov.uk/government/consultations/good-work-plan-establishing-a-new-single-enforcement-body-for-employment-rights>

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