

Title: EANDCB Validation: Tackling Exploitation in the Labour Market IA No: Lead department or agency: Joint BEIS and Home Office Other departments or agencies:	Impact Assessment (IA)								
	Date 18/08/2016								
	Stage: Final								
	Source of intervention: Domestic								
	Type of measure: Primary legislation								
Contact for enquiries: Harriet.Andrews@beis.gov.uk									
Summary: Intervention and Options					RPC Opinion: Awaiting Scrutiny				

Cost of Preferred (or more likely) Option				
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANDCB on 2014 prices)	In scope of one in/three out?	Business Impact Target Status
N/A	-£0.01m	£0.00m	Yes	IN

What is the problem under consideration? Why is government intervention necessary?
Anecdotal and operational evidence from the Gangmasters Licensing Authority (GLA) suggests that there has been a shift in recent years towards multiple breaches of labour law which amount to serious labour exploitation, with a greater presence of organised crime gangs operating in the GLA regulated, and other, sectors. Furthermore the National Living Wage was introduced in April 2016 and will increase the number of workers and businesses who could be subject to follow-up enforcement activity. Government intervention is required to adapt the current enforcement framework to meet these new challenges.

What are the policy objectives and the intended effects?
The high level policy objective is to decrease the level of labour exploitation.
The effects of which will mean fewer vulnerable workers will have their employment rights breached without recourse to means of protection. In addition there will be a reduction in the unfair costs which disadvantage legitimate businesses who comply with employment law.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)
Option 0: Do Nothing
Option 1: Implement the following reforms:
a. The establishment of a statutory Director of Labour Market Enforcement.
b. Equipping existing enforcement bodies with the power to issue enforcement undertakings and orders.
c. Increasing intelligence and data sharing between existing enforcement bodies and also other bodies.
d. Widening the remit, strengthening the powers and changing the name of the Gangmasters Licensing Authority.

Will the policy be reviewed? It will not be reviewed. If applicable, set review date: N/A					
Does implementation go beyond minimum EU requirements?				N/A	
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.		Micro Yes	< 20 Yes	Small Yes	Medium Yes
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)				Traded: N/A	Non-traded: N/A

I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs.

Signed by the responsible Minister _____ Date: _____ October 2016

Summary: Analysis & Evidence

Policy Option 1

Description: Tackling Exploitation in the Labour Market

FULL ECONOMIC ASSESSMENT

Price Base Year 2016	PV Base Year 2016	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: N/A	High: N/A	Best Estimate: N/A

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	0	0.0	0.0
High	0	0.0	0.0
Best Estimate	0	0.0	0.0

Description and scale of key monetised costs by 'main affected groups'

We estimate that a small number of compliant businesses over the period will face a small cost of up to £1,000 a year in total for dealing with undertakings imposed on them. Increased inspections by the GLA could impose additional costs of up to an estimated £400 a year.

Other key non-monetised costs by 'main affected groups'

As this is a validation impact assessment, we haven't monetised the costs to government, which will include additional staffing costs and familiarisation costs for the enforcement bodies, and costs relating to setting up and maintenance of the intelligence hub.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Not estimated	Not estimated	Not estimated
High	Not estimated	Not estimated	Not estimated
Best Estimate	Not estimated	Not estimated	Not estimated

Description and scale of key monetised benefits by 'main affected groups'

There is a lack of evidence on which to base estimates of the beneficial competitive effects of an increased number of firms compliant with labour market regulations, or the beneficial effects of fewer workers being exploited. Therefore potential benefits have not been monetised.

Other key non-monetised benefits by 'main affected groups'

- Employees will benefit from a reduced risk of exploitation.
- Fewer firms will be able to gain a cost advantage by breaking labour market regulations. This will benefit their law abiding competitors who currently comply with regulations.

Key assumptions/sensitivities/risks

Discount rate (%) 3.5

- Assumption that 1 per cent of EAS/HMRC and GLA enforcement undertakings will fall to compliant businesses, based on historic appeal data from the three enforcement bodies.
- Assumption that proving compliance with EAS/HMRC inspections will take four hours of senior manager time and two days of time for GLA inspections.
- The cost implications if these assumptions are varied are examined in the risks section (section F).

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			Score for Business Impact Target (qualifying provisions only) £m
Costs: £0.00	Benefits: N/A	Net: £0.00	

Evidence Base (for summary sheets)

A. Strategic Overview

A.1 Background

Currently the majority of employment law is enforced by individuals taking their employer to an employment tribunal to seek redress if they believe they have been subject to some form of labour exploitation. Statutory enforcement bodies step in to enforce legislation in some situations, for example, where it is believed that there is a higher risk of vulnerability. This is achieved through a number of dedicated enforcement bodies including:

- Her Majesty's Revenue and Customs (HMRC), which, on behalf of the Department of Business, Energy and Industrial Strategy (BEIS), enforces the National Minimum Wage Act 1998.
- The Employment Agency Standards Inspectorate (EAS), which enforces the Employment Agencies Act 1973 and the Conduct of Employment Agencies and Employment Businesses Regulations 2003.
- The Gangmasters Licensing Authority (GLA), which enforces the Gangmasters (Licensing) Act 2004.

In addition, the National Crime Agency (NCA) tackles serious and organised crime more generally, including organised crime gangs engaged in organised labour market exploitation. Individual police forces can also investigate instances of labour market exploitation where individual workers are subject to intimidation or physical abuse.

These bodies collectively tackle the whole spectrum of infringement of labour market legislation, from genuine misunderstanding through carelessness to serious criminality. Most employers in the UK strive for and achieve compliance within this legal framework. Where there are breaches, targeted, effective regulatory enforcement intervention is in place to tackle criminal non-compliance. However, feedback from enforcement bodies suggests that there has been a change in the nature of non-compliance with labour market regulation over time. This has seen a shift from the more general abuses of employment regulation towards increasing organised criminal activity involving serious and organised crime gangs infiltrating legitimate labour supply chains across a number of sectors to exploit workers.

The Government is committed to protecting vulnerable workers by ensuring that effective measures are in place to identify and tackle non-compliance with labour market regulation across the entire spectrum of exploitation.

A.2 Consultation

The Government ran a public consultation from 13 October to 7 December 2015 and sought views on proposals for enhancing the capability of the existing framework to deal with individuals and businesses that breach labour market regulation. Alongside the consultation, the Government held two stakeholder events to listen to the views of business and non-governmental organisations about the proposals. In total 93 responses were received.

Of the consultation respondents, 90 per cent agreed that more needs to be done to tackle labour market exploitation. One key theme was the increase in modern slavery and human trafficking as shown by published research and statistics¹, with respondents noting that this is a NCA high priority threat and that

¹ Source: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/469968/IDMG_Report_Final.pdf

the current offences are difficult to prove (and so penalties may not act as a deterrent). Other responses focused on the need to remove a source of revenue for criminal gangs.

Another theme was the risk of the likelihood of businesses who deny workers their rights, 'cutting corners' in other areas such as health and safety and also paying taxes, leading to unfair business competition. Respondents believed that effectively tackling labour market exploitation was a way to ensure fair competition².

B. Rationale

New forms of exploitation

The three enforcement bodies collectively tackle the whole spectrum of infringement of labour market legislation, from genuine misunderstanding through carelessness to serious criminality. Most employers in the UK strive for and achieve compliance within this legal framework. However, over recent years there has been a significant shift, with some non-compliant businesses moving beyond individual infringements of particular aspects of employment law towards deliberately breaching multiple aspects of employment law, evading traditional compliance action by enforcers with the involvement of organised crime groups³. This amounts to labour exploitation, which involves a greater criminal intent within an exploitative business model.

Businesses operating in this way deprive workers of their rights⁴ while benefiting from an unfair cost advantage relative to their compliant counterparts. While each body tasked with enforcing aspects of non-compliance with the law is effective within its own remit, there is a case that the Government's overall response should adapt to these more serious and organised levels of labour market exploitation.

As a result of this, there needs to be more action and greater collaboration to prevent businesses from engaging in this form of labour market exploitation where there is criminal intent.

Greater number of potential victims

The National Living Wage (NLW) was introduced in April. This is a welcome protection for lower paid workers but at the same time poses a challenge to the current enforcement regime. The number of workers whose wages are stipulated by legislation will increase, bringing them within HMRC's national minimum wage (NMW) enforcement activities. In order to deploy resources most effectively across a widening set of priorities, the current operating framework must be reformed to be more collaborative, more evidence based and more targeted⁵.

Enforcement bodies should tackle exploitation where the risk is greatest

The work of the GLA is limited to licensing of Gangmasters, and enforcing those licences, in specified sectors of the economy (food and drink processing and packaging, agriculture and shellfish gathering). These sectors are set out in section 3 of the Gangmasters (Licensing) Act 2004.

Exploitation occurs in almost all sectors of the economy and the worst forms of exploitation do not necessarily happen only in those sectors which are currently covered by the GLA. In order to ensure that

² Source: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/491260/BEIS-16-11-government-response-to-tackling-exploitation-in-the-labour-market.pdf

³ National Crime Agency, National Strategic Assessment of Serious and Organised Crime 2015, June 2015,

<http://www.nationalcrimeagency.gov.uk/publications/560-national-strategic-assessment-of-serious-and-organised-crime-2015/file>

⁴ Alistair Geddes et al, Forced Labour in the UK, June 2013, Joseph Rowntree Foundation, - this reports that allegations of non-compliance with GLA licensing standards during the period 2006 to 2010 included 272 on withholding of wages, 98 on debt bondage, retaining ID and restricting movement and 177 on physical and mental mistreatment.

⁵ BEIS, in their *National Minimum Wage: Final Government Evidence to the Low Pay Commission's 2016 Report*, January 2016, say that based on an analysis of ASHE that 0.7% of jobs held by those ages 21+ are paid below the NMW, compared to 2.2% of jobs held by 18-20 year olds. However, BEIS point out that ASHE does not directly measure non-compliance, as there are legitimate reasons for an employer to pay below the NMW, for instance where accommodation is provided by the employer.

the limited resources of the enforcement bodies have the greatest impact in terms of preventing exploitation, effective targeting is required. To achieve this, greater sharing of information between enforcement bodies would help to establish where the need for enforcement is greatest.

C. Objectives

To tackle more serious and organised breaches of labour market regulation, amounting to exploitation of workers, a number of objectives need to be met:

- Ensure that the existing enforcement bodies work to a common, overarching and coordinated set of priorities, combined with a single view of risk and more responsive allocation of resources between them.
- Improve the way law enforcement currently deals with unscrupulous employers who deliberately, persistently and brazenly commit breaches of labour law, and fail to take remedial action.
- Enable the current enforcement bodies to work together more effectively by sharing data between them and with other relevant bodies, creating a central shared intelligence function.
- Address the limited remits of individual enforcement bodies to tackle exploitation, particularly the GLA which is limited to operating a licensing regime within certain specified sectors.

The Government therefore intends to make governance and operational changes to the current enforcement bodies that will tackle exploitation in the labour market, protect individuals and provide a level playing field for businesses.

D. Options

Option 0 – Do Nothing

Under this option no proposals will be implemented and labour market enforcement regulation will be dealt with as it is currently. This option has no additional cost but does not meet the Government's objectives.

Option 1 – Implement Proposals

The proposals considered in Option 1 aim to build on the effectiveness of the current regime. For each proposal the current situation will be laid out, followed by the changes outlined under Option 1:

Proposal (a): Establish a Statutory Director of Labour Market Enforcement (LME)

Current Situation

Currently there is no Director of Labour Market Enforcement and the priorities and strategic direction of the three enforcement bodies are set individually by the responsible minister in BEIS or the Board of the GLA. The NMW is enforced by HMRC, the EAS deals with the regulation of employment agencies and business and the GLA ensures that suppliers in the fresh produce supply chain meet the licensing standards required by law⁶.

6

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/471996/Transparency_in_Supply_Chains_etc__A_practical_guide_final_.pdf

Change under Option 1

- A statutory Director of Labour Market Enforcement will be established who will recommend to ministers priorities for all the enforcement bodies across the spectrum of non-compliance, including better targeting of criminally-minded exploitation.

Proposal (b): Introduce Labour Market Enforcement Undertakings and Orders

Current Situation

Currently enforcement bodies have recourse to a number of powers when they believe a business has breached labour market law. For example, a civil penalty can be imposed which requires a business to pay its workers any money they are owed in addition to a fine equal to the value of the money owed. The business may be publically named and shamed for its non-compliance (NMW)⁷ or its licence might be revoked by the GLA⁸.

It is currently very difficult, although not impossible, for the enforcement bodies to deal successfully with persistent, repeat offenders⁹. Future inspections against the same business must start afresh which is a significant burden to the enforcement bodies. While enforcement bodies can bring criminal proceedings against businesses in some circumstances, this is not always the most effective or proportionate method of achieving compliance. Additionally, not all breaches are punishable by a custodial sentence.

Change under Option 1

- Enforcement bodies will be given the power to seek LME undertakings and orders.
- Enforcement undertakings necessitate that a business must continue to demonstrate compliance for up to two years following the issuing of the undertaking. The measures through which compliance is secured may be subject to negotiation between the business and the enforcement body. If the business is found to be in breach of any of the conditions of the enforcement undertaking during this time then the enforcement bodies will then be able to apply to a court for an enforcement order.
- Enforcement orders work in a similar way to enforcement undertakings, except that if a business is found to be in breach of the conditions of the order then criminal proceedings can be brought against them. If the business is successfully prosecuted it is likely to receive a substantial fine or its directors may face imprisonment.

Proposal (c): Create an intelligence hub and set up data sharing arrangements

Current Situation

There is close co-operation between different enforcement bodies, often involving multi-faceted collaboration to tackle abuse. However, this co-operation is sometimes impeded by barriers to sharing data and by the enforcement bodies not being able to access data from other organisations. There is also no central point where the information is co-ordinated and analysed to produce a shared view of risk in the labour market.

Change under Option 1

- Powers will be introduced allowing the Director and the three enforcement bodies to share data and intelligence with each other and other relevant bodies. In doing so, an intelligence hub will be

⁷ BEIS, Policy on HM Revenue & Customs enforcement, prosecutions and naming employers who break National Minimum Wage and National Living Wage law, April 2016

⁸ GLA, Licensing standards <http://www.gla.gov.uk/i-am-a/i-supply-workers/i-need-a-gla-licence/licensing-standards/> (accessed 13th May 2016)

⁹ In 2014, GLA investigations only led to the conviction of 5 individuals.

created (which will report to the Director) to provide the evidence base to improve the targeting of enforcement across the whole spectrum of the labour market exploitation.

Proposal (d): Reform of the Gangmasters Licensing Authority

Current Situation

The GLA runs a licensing scheme in the food and drink processing and packaging, agriculture and shellfish gathering sectors. Where it uncovers criminal abuse, the GLA relies on other law enforcement bodies, especially the police, either to accompany GLA officers or be available at short notice to take the necessary action. GLA officers cannot arrest individuals for criminal offences associated with worker exploitation and lack ordinary police powers to seek and use warrants, search premises after arrests to secure crucial evidence.

Changes under Option 1

- The name of the Gangmasters Licensing Authority (GLA) will be changed to the Gangmasters and Labour Abuse Authority (GLAA) to reflect its broader functions (see below).
- The GLA will be given strengthened, police-style investigative and enforcement powers. It will have labour abuse prevention officers (LAPOs) who will have powers to arrest suspects, be able to enter premises where they believe labour market offending is taking place, and search and seize evidence where required to do so.
- The GLA LAPOs will have the power to demand, seize and secure evidence of breaches of the NMW, NLW and the regulation of employment agencies.
- On the advice of the Director (see reform (a)) ministers will have the ability to introduce licensing in new sectors and the GLA will be required to seek the Home Secretary's approval to the licensing criteria before that is set out in secondary legislation.

E. Appraisal (Costs and Benefits)

General Assumptions

Costs to non-compliant businesses

Each of the policies below is aimed at reducing non-compliance with existing labour market laws. As such the vast majority of any cost to business associated with these changes will fall on **non-compliant** businesses. In accordance with the Better Regulation Framework Manual, paragraph 1.9.44, we do not assess the cost incurred by companies for non-compliance with regulation. The period of appraisal is over 10 years from the introduction of the policies and a social discount rate of 3.5 per cent is used. Costs and benefits are given in 2015/16 prices.

Cost to a compliant business of proving compliance

During the appraisal of the impacts of the proposals the cost to compliant businesses of proving their compliance with regulations will be used to assess the additional impact of these proposals on businesses. This applies both to the business proving compliance when under initial inspection and following an enforcement undertaking. It should be noted that the enforcement bodies do not set out to target compliant business. An inspection or intervention is made as a result of suspected non-compliance but which later turns out to be invalid.

The main cost associated with proving compliance falls to the time required by a senior manager/director of a compliant business and therefore a gross hourly wage cost of £24.85 is used¹⁰. In order to prove compliance with a GLA inspection, the Association of Labour Providers estimates that two days of senior manager time will be required. Assuming an eight hour working day, this equates to a cost of £398 to the compliant business. In order to prove compliance with an EAS inspection, the Recruitment and Employment Confederation estimates that on average four hours of senior manager time will be required. Combining this with an hourly cost of £24.85 leads to an estimated total cost of £99 per compliant business to prove its compliance following an inspection/enforcement undertaking. Proving compliance with HMRC NMW inspections is anticipated to require a similar amount of work for the employer on average as an EAS inspection. As a result of this, the figure of £99 is also used as the cost to a compliant business of proving its compliance with an HMRC NMW inspection/ enforcement undertaking.

Familiarisation Costs

Adapting to the new proposals will require some adjustment, particularly for the enforcement bodies. They will need to adapt to the new Director, who will provide overall leadership, bringing with it a combined set of priorities for enforcement. These priorities will be informed by the work of the information hub, which will be able to analyse the shared data from the enforcement bodies.

The EAS, HMRC and GLA already provide active enforcement of the relevant legislation, so businesses should already be aware of the legislation and compliant with it. Only the process of enforcement will change following these new proposals, the requirements for businesses to be compliant will remain unchanged. The establishment of a Director of Labour Market Enforcement and the creation of an intelligence hub are internal reforms within government on how labour market enforcement is organised, to enable the enforcement bodies to undertake enforcement more strategically to target non-compliance. The introduction of enforcement undertakings and orders are designed to tackle employers engaged in persistent or serious non-compliance, and therefore it would primarily be businesses who are non-compliant as part of their business plan who would need to familiarise themselves with this change (as the procedure would directly affect their business model). When a business enters into an undertaking, the notice served by the enforcing authority will set out precisely what the business has to do to become compliant with existing legislation. Businesses that aim to be compliant would not expect to be subject to these additional enforcement arrangements. The reforms in proposal d) enable the GLA to investigate the range of labour market offences set out in the Immigration Act 2016 across all labour sectors, including NMW and EAS offences, and to use Police and Criminal Evidence Act 1984 (PACE) powers to do so. The GLAA are therefore enforcing matters that are already in legislation and which govern the conduct of any business or employer or labour provider. Given this, businesses should already be aware that exploitation in relation to NMW/NLW and the operation of employment agencies and businesses can be investigated can potentially result in arrest. The policy driver is to provide a stronger enforcement focus on areas where multiple breaches of labour market legislation occur. Therefore we do not expect the reforms to require any additional familiarisation among businesses –they should already know how to work within the broader framework of employment legislation. The reforms should enable some improved targeting and focusing of labour market enforcement and better enable the enforcement bodies to tackle persistent non-compliance.

Proposal (a): Establish a Statutory Director of Labour Market Enforcement

Costs – Business

The statutory **Director of Labour Market Enforcement** will be appointed by the Secretary of State for BEIS and the Secretary of State for the Home Office (the Home Secretary). The Director will be tasked with setting priorities to tackle the full spectrum of labour market breaches, including exploitation, and putting these to the Secretaries of State as a forward looking, annual strategic plan. The plan and an

¹⁰ An hourly wage of £20.31 for a full time “Managers, directors and senior manager officials” is taken from the sector average given in Table 14.6a of the Annual Survey of Hours and Earnings 2015 Provisional Results. This figure has been uplifted to account for non-wage costs, such as NI and pensions, by 20.2 per cent (Department of Business, Innovation and Skills, 2015). This gives an hourly estimate of £24.41 which is then uprated using Average Weekly Earnings data to a 2016 labour cost of £24.85.

annual report will be laid before Parliament and published. The enforcement bodies will work to the plan, but existing formal lines of accountability to the respective Secretaries of State will not change.

There will be **no immediate, direct impact on business as a result of creating the Director role** over the ten year period. In the medium term, once a Director has been appointed and a first plan published, the balance of compliance and enforcement priorities may shift in type, and between sectors. In the longer term, enforcement across the three regimes will become better targeted and more efficient, so there is the potential and intention that the burden on compliant businesses will be reduced.

Proposal (b): Introduce Labour Market Enforcement Undertakings and Orders

Costs – Business

Enforcement undertakings will be introduced as an additional sanction which the enforcement bodies can apply to businesses they believe to be in breach of labour market regulations. These undertakings necessitate that a business must continue to demonstrate compliance for up to two years. This proposal may therefore create additional costs to compliant businesses who will need to prove their compliance if they are issued with an enforcement undertaking in error.

The cost to a compliant business of demonstrating its compliance with an enforcement inspection is calculated to be £99 per business (both HMRC and EAS) or £398 (GLA). As undertakings require demonstration of compliance over two years, more than one inspection is likely to be necessary each year to ensure compliance. EAS suggested that it might envisage follow-up action as frequently as every three months. This equates to four inspections a year.

Investigating bodies have made estimates as to the number of enforcement undertakings that they expect to make based on analysis of their existing caseload and the type of serious non-compliance that is likely to lead to an undertaking being issued. They estimated 35 (HMRC), 20 (EAS), and (13) GLA.

Enforcement undertakings and orders are primarily designed to tackle employers engaged in **persistent** non-compliance. Therefore there is little likelihood that they will be placed on employers where there is no existing evidence base of them breaching regulations. The corollary of this is that it is unlikely that undertakings or orders will be placed on compliant employers. We estimate the percentage of enforcement undertakings which will fall on compliant businesses using data on appeals against enforcement action (those cases where employers felt that enforcement wasn't justified).

- The GLA annual report shows that in the last five years no appeal against a revocation of licence has been successful¹¹.
- HMRC figures show that in 2013/14, 6 out of 23 appeals against notices of underpayment were successful. In total during this period approximately 680 notices of underpayment were issued and therefore this suggests that under 1% (6 out of 680) of notices of underpayment were issued against compliant businesses.
- EAS data shows that there have been no successful appeals against prohibitions in the last five years.

This appeal data can be used as a proxy for the number of enforcement undertakings which will be issued against compliant businesses. As undertakings and orders are new powers, and there is a possibility that a compliant business subject to enforcement activity may not appeal against the enforcement, we conservatively estimate that **1 per cent of enforcement undertakings** issued by each of the GLA, EAS and HMRC will be to compliant businesses.

Businesses would have a number of opportunities to prove their compliance before they would be issued with an enforcement order by a court, including being issued with an enforcement undertaking. It is therefore very unlikely that an enforcement order would ever be issued to a compliant firm and so our best estimate is that **zero enforcement orders** would be issued to compliant firms.

¹¹ Source:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/444757/50616_HC_273_GLA_Annual_Report_web.pdf

The best estimate of (35 HMRC, 20 EAS and 13 GLA) enforcement undertakings per year is combined with the estimates for the proportion of enforcement undertakings carried out against compliant businesses. This leads to the estimate that each year on average 0.55 of an enforcement undertaking will be carried out against a compliant business by the EAS and HMRC combined ($35 \times 0.01 + 20 \times 0.01 = 0.55$) and 0.13 of an enforcement undertaking carried out by the GLA against a compliant business ($13 \times 0.01 = 0.13$). This equates to about one every two years for the EAS and HMRC combined, and one every seven years for the GLA. We assume that the compliant business would go through the undertaking process, if an undertaking was imposed.

Over the 10 year period of assessment there would therefore be an estimated five EAS/HMRC undertakings (such as the 1st, 3rd, 5th, 7th and 9th years) and two GLA undertakings (1st and 8th years).

The total cost to compliant businesses of each undertaking imposed by EAS/HMRC, based on four inspections a year over two years for each undertaking, is: $1 \times 4 \times 2 \times \text{£}99 = \text{£}792$.

The total cost to compliant businesses of the undertakings imposed by GLA, based on four inspections a year over two years for each undertaking is: $1 \times 4 \times 2 \times \text{£}398 = \text{£}3,184$.

Given an estimated five EAS/HMRC undertakings and two GLA undertakings leads to a total cost over 10 years of: $\text{£}792 \times 5 + \text{£}3,184 \times 2 = \text{£}10,328$.

Cost to business best estimate (average annual cost): $\text{£}10,328 / 10 = \text{£}1,033$. (10 year PV of $\text{£}8,999$)¹².

Proposal (c): Create an intelligence hub and setting up data sharing arrangements

Costs – Business

A central intelligence hub will be created and data sharing arrangements will be set up between the Director, the existing enforcement bodies and other agencies that deal with worker exploitation. The effect of this will be to create a co-ordinated intelligence picture of labour market infringements and exploitation. The improved intelligence overview will be fundamental to the construction of the Director's strategic plan. The intelligence hub function and data sharing arrangements do not imply the collection from individuals or employers of any new pieces of data. There will be no additional cost to businesses from creating the intelligence hub.

Proposal (d): Reform of the Gangmasters Licensing Authority

Costs – Business

The proposed changes to the GLA (outlined in section D) will allow the GLA to investigate wider forms of labour market exploitation and enable it to enter premises and arrest suspects without police involvement. By widening the remit of the GLA and therefore having more GLA inspections there is the potential for more compliant businesses being inspected by the GLA.

As part of the licensing and enforcement work that the GLA undertakes, it carried out an annual average of 118 compliance investigations between 2013-14 and 2015-16, of which approximately 5 per cent, that is 6 investigations, found the employer being investigated compliant. Based on the estimate of the cost to a business of a GLA inspection of $\text{£}398$, the current annual cost to compliant businesses of GLA compliance investigations is estimated at $\text{£}2,338$.

The GLA's budget for 2015/16 is $\text{£}4\text{m}$. Under these proposed reforms, the budget of the GLA will be increased to $\text{£}4.5$ million for 2016/17. This is an increase of 12.5%. Further budget increases from the current level are planned beyond 2016/17. However, given that the size of these increases is yet to be confirmed we have made an assumption that the budget increase will be to $\text{£}4.5\text{m}$ for each year after 2016/17. If we assume that there is a linear relationship between the budget of the GLA and the number of compliance investigations that it carries out, then we anticipate that 12.5 per cent more compliance

¹² PV calculated on the assumption stated previously that EAS/HMRC undertakings would fall in years 1, 3, 5, 7, 9 and GLA undertakings would fall in years 1 and 8.

investigations will take place (around 15 a year on average)¹³. This would lead to around one extra compliant business being inspected from 2016/17 onwards. At an estimated cost of £398 per business to prove its compliance at the inspection, this will lead to an additional annual cost to businesses of £398.

Direct cost to business best estimate (average annual cost): £398 (10 year PV of £3,426)

GLA licensing remit

Licensing can be a valuable compliance tool and aids in enforcement operations against serious exploitation. However it also creates burdens on compliant businesses. The Director will assess which sectors should be covered by the licensing regime based on the balance of risk and burden. It is proposed that the Secretary of State be enabled to lay secondary legislation before Parliament, to adjust the sectoral coverage of licensing. **No change will be made as a result of primary legislation.** Any changes to the scope of licensing will require secondary legislation, and would be the subject of further impact assessment.

There is evidence that serious labour exploitation is a growing problem. The 2016 assessment by the National Crime Agency states that adult labour exploitation is one of the most prevalent forms of exploitation reported through the National Referral Mechanism. The report states that the trafficking of adults into labour exploitation rose by 53 per cent between 2014 and 2015¹⁴. However, there are currently no sectors being actively considered for an extension of the GLA's licensing remit. Once the Director and intelligence hub is in place, there is the potential for such sectors to emerge from the analysis of evidence on labour provision in particular sectors. If it was clear from the evidence base that licensing could help tackle labour exploitation in a particular sector, the Director, supported by the GLAA, would then recommend to the Secretary of State the extension of the licensing remit to cover that sector, and if the Secretary of State agreed then secondary legislation would be put to Parliament for its approval. Licensing is not a decision that Government will take lightly. Proportionate analysis would be required to determine that licensing was a necessary part of the solution to tackle labour exploitation in a sector, due to the cost burden that a licensing regime imposes on compliant businesses. There would be full consultation with any sector considered for licensing and rigorous analysis would be presented in an impact assessment to support secondary legislation.

The costs of extending the GLAA's licensing remit will depend on the circumstances in any sector affected, such as the number of labour providers operating, and the standards of labour provision and the requirements of the licensing regime. As no sectors are currently under consideration, it is not possible to provide an estimate of the costs of extending the licensing remit to new sectors. However, for illustration purposes, an estimate of the unit costs to a labour provider of moving to a licensing regime can be provided.

Familiarisation costs

In line with the impact assessment DEFRA1472 (30 July 2012) on 'changes to the scope and governance of the GLA'¹⁵, the estimate is that it would take managers or directors of labour providers one hour to familiarise themselves with the guidance on licensing. According to ASHE 2015, the median hourly wage of a manager, directors or senior official was £20.31 in 2015. Updated by 20.2 per cent to account for non-wage labour costs as a percentage of wages, the hourly labour cost of a manager or director is estimated to be £24.41.

¹³ 2016/17 budget (£4.5m) will lead to approximately 108 inspections (96 x £4.5m / £4m).

¹⁴ National Crime Agency, National Strategic Assessment of Serious and Organised Crime 2016, September 2016, p36
<http://www.nationalcrimeagency.gov.uk/publications/731-national-strategic-assessment-of-serious-and-organised-crime-2016/file>

¹⁵ DEFRA, Changes to the scope and governance of the Gangmasters Licensing Authority, July 2012, p11,
https://consult.defra.gov.uk/food/gangmasters_licencing/supporting_documents/GLA%20IA%20210313%20final.pdf

Transition costs

The labour provider would also have to complete a licence application form. The IA DEFRA 1472 estimates that it would take two hours of a manager or director's time to complete the form¹⁶, at an estimated labour cost of around £49.

The labour provider would also have to pay the fee for a licence. This is set at different amounts depending on the annual turnover of the labour provider in the sector being licensed. In the process of becoming licensed, the GLA would need to inspect the labour provider, with the latter paying for the inspection. The inspection fees also vary depending on the turnover of the labour provider in the sector being licensed. Table 1 indicates that the fees for a license and inspection for a labour provider range from a total of £2,250 if their annual turnover for the sector is below £1 million, to £5,500 if their annual turnover for the sector is above £10 million.

Table 1: GLA Licensing and inspection fees, 2016-17

<u>Annual turnover in the licensed sectors</u>	<u>Fee Band</u>	<u>Application fee</u>	<u>Inspection fee</u>	<u>Total application and inspection fee</u>
£10 million or more	A	£2,600	£2,900	£5,500
From £5 million to less than £10 million	B	£2,000	£2,400	£4,400
From £1 million to less than £5 million	C	£1,200	£2,150	£3,350
Less than £1 million	D	£400	£1,850	£2,250

The inspection will also take up some management time for the labour provider. In line with the impact assessment DEFRA 1472, a licensing inspection could take up to 28 hours of a labour provider manager's or director's time¹⁷. Again, based on an hourly labour cost of £24.41, this is estimated at a total labour cost of around £684.

Some labour providers may also face some costs in improving their business operations so that they meet the licensing standards being imposed. This will depend on the particular circumstances existing in any sector being brought under the GLA licensing remit, how many labour providers are below the standard, and to what extent and in what regard. Therefore at this stage it is not possible to estimate these costs, but when more information becomes available it will be possible to do so, if and when any proposals to license and regulate are brought forward. Any measure like this would require secondary legislation which would be supported by a full consultation and IA, with an assessment of the relevant costs and benefits. It should be noted that some labour providers operate in both licensed and unlicensed sectors, and the GLA may request to inspect the non-licensed part of the business when inspecting the part being licensed. Therefore, in some unlicensed sectors there may be labour providers already operating at or above licence standards.

We estimate that the one-off costs to a labour provider would include:

- **Familiarisation costs** of around **£24**,
- **Transition labour costs** of around **£733**, and
- **Licensing and inspection fees** of between **£2,250** and **£5,500**.

Ongoing costs

Based on current practice, labour providers would have to renew their licence every year, at a cost of between £400 and £2,600. However, they would not have to pay for the cost of any inspection. The

¹⁶ DEFRA, Changes to the scope and governance of the Gangmasters Licensing Authority, July 2012, p13.

¹⁷ DEFRA, Changes to the scope and governance of the Gangmasters Licensing Authority, July 2012, p13

renewal application will use the original application form, with the labour provider able to provide amendments to this by phone¹⁸. Therefore, any costs relating to the application form will be minimal.

The renewal process will not automatically involve an inspection, though some labour providers renewing their licence will face a compliance inspection as “part of a random check or following a risk assessment”¹⁹. Potentially, therefore, a compliance inspection may take up some of the labour provider manager’s or director’s time. We estimate above that for a compliance inspection the time taken up is 16 hours, multiplied by a labour cost of £24.41, provides an overall labour cost of £391.

The ongoing costs to a labour provider of maintaining a licence would include a **licence fee** of between **£400** and **£2,600**, and potentially **labour costs** due to a compliance inspection of **£391**.

Overarching costs/benefits from a reduction in labour market exploitation

As a result of establishing a Director of Labour Market Enforcement, an intelligence and data sharing hub and greater powers for the three enforcement bodies, the proposals are likely to result in a reduction in labour market exploitation. This is especially true if more businesses are caught for labour exploitation then the risk of a business of engaging in labour exploitation increases. This may deter businesses from engaging in labour exploitation in the future.

If the proposals are successful in reducing exploitation, this is likely to result in a number of wider social benefits. Due to a lack of evidence on which to make an estimate of the likely reduction in labour market exploitation, the total effect of these costs and benefits cannot be quantified however a number of different outcomes are discussed.

Non-monetised costs and benefits to Business and workers

We expect that the proposed measures will improve the work of the enforcement bodies in tackling non-compliance, by improved prioritisation of enforcement activity underpinned by better utilising of intelligence on non-compliance, by targeting non-compliance by persistent offenders and through an enhanced role for the GLA, including additional budget. This should result in a fairer competitive environment for compliant businesses, as there will be fewer businesses using non-compliance with employment regulation to undercut competitors. Workers will also benefit as there will be fewer non-compliant employers attempting to exploit workers or pay under legal minimums. There might be a reduction in illegal migrant workers (as these individuals are often targeted by exploitative labour providers), which would benefit workers generally, and may benefit public services due to a reduction in the burden placed on them by illegal workers.

F. Risks

There are a number of risks associated with the monetising of these proposals which will now be discussed in more detail.

a) Proving compliance may take longer than four hours/ two days

In the appraisal section it was estimated that an inspection by the EAS or HMRC would on average take approximately four hours of time from a senior manager/ director and two days of time from a senior manager/ director for a GLA inspection. This was based on information provided by trade associations. However, it may be the case that inspections take up more of a business’s time. In order to examine how the costs to business of the proposals would vary given a greater amount of time taken for an inspection, the costs are calculated based on two days (16 hours of senior manager time) and a three days (24 hours of senior manager time) for all inspections (EAS, HMRC and GLA).

¹⁸ GLA, I want to renew my licence, <http://www.gla.gov.uk/i-am-a/i-supply-workers/i-have-a-gla-licence/i-want-to-renew-my-licence/> [accessed 7th October 2016]

¹⁹ GLA, How we inspect and prosecute, <http://www.gla.gov.uk/our-impact/how-we-inspect-and-prosecute/> [accessed 7th October 2016]

As was discussed in the appraisal section, the cost per hour of senior manager time is estimated to be £24.85. Proving compliance therefore costs a compliant business £398 for two days of time or £596 for three days of time.

The impact of this on the estimated cost to a compliant business of proposals (b) and (d) are the following:

Table 1 : Sensitivity analysis of business cost of inspections

Proposal	Number of inspections a year	Previous Cost (4 hours/ two days of time) (£)	Cost given two days of time (£)	Cost given three days of time (£)
(b) Introduction of LME undertakings				
EAS/HMRC	4	396	1,592	2,386
GLA	4	1,592	1,592	2,386
(d) Reform of the GLA				
	1	398	398	596

b) Proportion of inspections which lead to enforcement undertakings may be higher

In the Appraisal section (E), the following numbers of enforcement undertakings were estimated as a result of the introduction of Proposal (b):

- 35 HMRC enforcement undertakings
- 20 EAS enforcement undertakings
- 13 GLA enforcement undertakings

Whilst these figures were estimated by the enforcement bodies, it is possible that they may be an under/over-estimate of the actual number of inspections that will lead to enforcement undertakings in practice.

Consideration is given to how the costs to business (of complying with enforcement undertakings) varies with a greater (high estimate) and smaller (low estimate) number of undertakings. Given that enforcement undertakings are yet to be introduced, it is difficult to come up with a credible range on which to base these high/low estimates and as a result the cost impact is examined given half as many (low estimate) or twice as many (high estimate) enforcement undertakings as was estimated previously.

If there were half the number of enforcement undertakings than those estimated by the enforcement bodies, we would estimate that there would be around one undertaking issued by the EAS or HMRC to a compliant business every four years, and around one undertaking by the GLA to a compliant business every ten years. Assuming the same costs used for the main estimate, this would reduce the average annual cost to business from Proposal (b) to £516.

If there were twice the number of enforcement undertakings than those estimated by the enforcement bodies, the estimated number of undertakings issued to compliant businesses would rise to one a year for EAS/HMRC and potentially three in ten years for the GLA. Assuming the same costs used for the main estimate, this would increase the average annual cost to business from Proposal (b) to £1,708.

c) Proportion of enforcement undertakings issued against compliant businesses may be higher than 1 per cent

The proportion of enforcement undertakings issued against compliant businesses was estimated to be 1 per cent for each of HMRC, EAS and GLA. As noted above, this estimate is probably reliable, as relatively few undertakings will be issued, and only in cases where non-compliance is severe or persistent. However, as discussed in the Appraisal section (E), the proportion of enforcement undertakings issued to compliant businesses may be slightly higher than this as the estimate is based on appeals data and some compliant businesses may not appeal against sanctions which they have been incorrectly issued with.

This sensitivity analysis examines how the costs to business of complying with enforcement undertakings vary given:

- One per cent of enforcement undertakings against compliant businesses (standard estimate).
- Two per cent of enforcement undertakings against compliant businesses (high estimate).
- Five per cent of enforcement undertakings against compliant businesses (very high estimate).

The current estimate, based on 1 per cent of undertakings being against compliant businesses, has an average annual cost to compliant business over the 10 year period covered by the IA of £1,033 (10 year PV of £8,999).

The high estimate, based on 2 per cent affecting compliant businesses, has an average annual cost to compliant business of £1,707 (10 year PV of £14,656). The very high estimate, based on 5 per cent affecting compliant businesses, has an average annual cost to compliant business of £4,168 (10 year PV of £35,830).

G. Direct costs and benefits to business

We estimate that the cost to compliant businesses of having an enforcement undertaking placed on them is around £1,000 a year on average which has a 10 year PV of around £9,000.

We estimate that the cost of additional compliance inspections by the GLA on compliant businesses resulting from the GLA's increased budget is around £400 a year.

The estimated Business Net Present Value (BNPV) for the 10 years that this impact assessment covers is -£0.01 million.

The estimated equivalent annual net direct cost to business (EANDCB) is £0.00 million.

H. Implementation

The Government plans to implement these changes under the Immigration Act 2016 in a phased manner. Appointing a Director of Labour Market Enforcement and allowing more data sharing (Proposals A and C) do not impact directly on business. Regulations to enable us to appoint the Director and switch on the intelligence hub were made in July 2016 and the recruitment of the Director is underway.

Labour Market Enforcement undertakings and orders and GLA reform (proposals B and D) do impact on business. The Government plans to implement the labour market enforcement undertakings and orders on 31 October 2016 and the GLA reform in early 2017.

The implementation programme is being taken forward jointly by BEIS and the Home Office.

I. Monitoring and Evaluation

The effectiveness of the new regime would be monitored by analysis of the management information of the enforcement bodies.

Annex A – Activities of enforcement bodies

Table A.1: National minimum wage back payments

Year	Closed cases	Closed cases with arrears	% Closed cases non-compliant	Arrears recovered	Workers covered	Average Arrears per worker
2009/10	3,643	1,256	34%	£4.39m	19,245	£228
2010/11	2,901	1,140	39%	£3.82m	22,919	£167
2011/12	2,534	968	38%	£3.58m	17,371	£206
2012/13	1,696	736	43%	£3.97m	26,519	£150
2013/14	1,455	680	47%	£4.65m	22,610	£205
2014/15	2,204	735	33%	£3.29m	26,318	£125

Table A.2: Employment Agency Standards Inspectorate

Cases	2011-12	2012-13	2013-14	2014-15	2015-16
Complaints received	643	828	714	603	781
Complaints cleared	784	916	779	581	730
Targeted inspections	407	229	46	23	194
Infringements (cleared cases and inspections)	2,146	1,479	320	186	782
Warning letters issued	602	471	179	133	275

Table A.3: Gangmasters Licensing Authority

Year	Completed compliance inspections	Revocations		Convictions				
		with immediate effect	without immediate effect	S12	S13	S18	Other	No. Offenders
2009-10	127	2	27	5	1	1	2	8
2010-11	149	1	31	14	3	0	0	16
2011-12	93	2	30	8	4	0	0	12
2012-13	83	1	15	11	15	0	0	26
2013-14	124	5	13	5	1	0	3	6
2014-15	132	2	18	9	0	0	4	5
2015-16	98	4	16	5	0	0	6	1