Tackling exploitation in the labour market

Department for Business, Energy and Industrial Strategy

RPC rating: validated

The impact assessment (IA) is now fit for purpose as a result of the department's response to the RPC's initial review notice. As first submitted, the IA was not fit for purpose.

Description of proposal

The proposal has four elements, designed to protect the employment rights of vulnerable workers and to tackle organised breaches of labour market regulation. It has four objectives.

- To establish a statutory Director of Labour Market Enforcement, who would be responsible for setting out priorities for labour market enforcement bodies in an annual strategic plan.
- To provide the enforcement bodies, the Employment Agency Standards Inspectorate (EAS), the Gangmasters Licensing Authority (GLA) and HMRC, with the power to execute labour market enforcement undertakings and orders. An undertaking would require a business to demonstrate compliance for up to two years, while an order could lead to criminal prosecution for breach of its conditions.
- To create an intelligence hub, and give both its director and existing enforcement bodies the power to share data with other organisations, in order to enhance enforcement through an improved evidence base.
- To reform the GLA by equipping it with stronger enforcement powers and the ability to introduce licensing in new sectors. Any such increase in scope would be defined in secondary legislation and subject to a further IA.

Impacts of proposal

The IA states that establishment of a Director of Labour Market Enforcement will have "…*no immediate, direct impact on business*…" (page 9), as this would be a reform whose direct impact is felt only within government, affecting the strategic co-ordination of labour market enforcement.

The IA explains that the introduction of labour market enforcement undertakings and orders is unlikely to significantly affect compliant businesses, estimating that only one per cent of undertakings issued by the GLA, EAS and HMRC will relate to these businesses. The Department has used the proportion of successful appeals against enforcement action (0.88 per cent in 2013/14) as a proxy for the proportion of compliant businesses affected. On this basis, the Department has calculated a total cost to compliant businesses of £1,000 per year from enforcement undertakings. Given that businesses have various opportunities to prove their compliance before being issued with an enforcement order, the Department has reasonably assumed that none would be issued to compliant businesses.

In assessing the cost to business of the proposed data-sharing arrangements, the IA explains that, as data would be shared between existing enforcement bodies and other agencies, there would be no collection of new data from individuals or employers. The IA states, therefore, that "*There will be no additional cost to businesses from creating the intelligence hub*" (page 10).

Regarding the expansion of GLA enforcement powers, the IA explains that "*…there is potential for more compliant businesses being inspected…"* (page 10). Having consulted the *Association of Labour Providers*, the Department has obtained an estimate of £398 for the cost of proving compliance during a GLA inspection. It also estimates that one extra compliant business would be inspected per year from 2016/17 onwards, yielding an additional direct cost to business of £398 as a result of this element of the proposal. The assumption is based on expected increases in the GLA budget and the 12.5 per cent increase in the number of investigations. If the proportion of compliant businesses investigated remains the same, this would mean that one more compliant business would be investigated each year.

In addition, the IA explains that sectors to be brought into scope by the extension of the GLA's licensing remit are likely to be known once the Director of Labour Market Enforcement has been appointed and an intelligence hub is in place. As the cost of extending the licensing regime would vary significantly by sector, the Department has instead provided a detailed analysis of the costs per business of moving to a licensing regime. These include initial transition labour costs and licence fees, the ongoing costs of licence renewal and potential compliance inspections.

Quality of submission

Following the Department's response to the RPC's initial review, the revised IA provides sufficient evidence for the RPC to be able to validate an equivalent annual net direct cost to business (EANDCB) of £0.0 million (rounded to the nearest £100,000) at this stage. As initially submitted, the IA did not assess the cost to business that could arise from an adjusted GLA licensing remit, nor explain satisfactorily why this analysis had not been possible. The revised IA explains the constraints around this analysis; *"…there are currently no sectors being actively considered for an extension of the GLA's licensing remit*" (page 11). This is because the Director of Labour Market Enforcement, who would be responsible for recommending an extension before secondary legislation could be brought forward, has not yet been appointed. This recommendation would be based on analysis of evidence on labour provision gathered from the intelligence hub, which is also yet to be established.

The revised IA gives further details of the process by which sectors would, in future, be considered for a licensing extension. In addition, by drawing on the 2012 IA of a change to the scope of the GLA, the IA gives a well-evidenced indication of the unit cost to compliant businesses of moving to a licensing regime. This includes initial transition labour costs of completing a licence application form and overseeing a licensing inspection, as well as the cost of paying for both licence and inspection fees. The IA also explains that there would be ongoing costs to labour providers of renewing their licence each year, and potential further compliance inspections as part of a random check or following risk assessment (page 13).

The original IA presented limited explanation of why the proposal would involve no familiarisation costs for businesses, stating that "*Only the process of enforcement will change… the requirements for businesses to be compliant will remain unchanged*" (page 8). The revised IA has been improved by clarifying, in turn, why each element of the proposal places no such burden on compliant businesses. The IA explains that the establishment of a Director of Labour Market Enforcement and the creation of an intelligence hub would require familiarisation only for the enforcement bodies. In addition, it would be necessary only for non-compliant businesses to familiarise themselves with the introduction of enforcement undertakings and orders, given that these powers are designed to tackle persistent offenders. However, in accordance with the Better Regulation Framework Manual, costs incurred by these businesses would not be included the measure's EANDCB.

The IA would benefit from demonstrating that the proposed information sharing arrangements between enforcement bodies and other organisations would not conflict with existing laws governing data protection such as the Data Protection Act.

The IA states that management information of the enforcement bodies will be analysed for the monitoring and evaluation of the measure. However, the IA would benefit from explaining how this information would be used to assess the effectiveness of the proposal following implementation.

Departmental assessment

Classification	Qualifying regulatory provision
Equivalent annual net direct cost to business (EANDCB)	£0.00 million
Business net present value	-£0.01 million

RPC assessment[1]

Classification	Qualifying regulatory provision (IN)
EANDCB – RPC validated	£0.0 million at this stage A further IA is to be submitted at the secondary legislation stage for RPC validation of EANDCB figures.
Business impact target (BIT) score	£0.0 million

Michael Gibbons CBE, Chairman

[1] For reporting purposes, the RPC validates EANDCB and BIT figures to the nearest £100,000