



Department  
for Business  
Innovation & Skills



Home Office

**Tackling Exploitation in the  
Labour Market**

Consultation

OCTOBER 2015

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# Ministerial Forewords

## Secretary of State for Business, Innovation and Skills



Thanks to our long term economic plan, over the last Parliament we enabled businesses to create an extra 2 million private sector jobs. In our manifesto we committed to create another 2 million this Parliament. We know that a decent job is the best way to provide security for families.

Our legal framework protects workers and ensures they benefit from employment rights – including from April 2016 the National Living Wage for over 25s. The majority of employers in the UK recognise the importance of complying with this framework and strive to do so. In these cases, the Government's role is in providing guidance to inform employers how to meet their obligations. Where employers are not complying, the Government steps in to enforce legislation in some circumstances, for example where it is believed that there is a higher risk of exploitation or vulnerability.

There are currently three main enforcement bodies for employment legislation. Each maintains a good reputation within its own field and deals with all complaints. However, there is a degree of fragmentation: they have different lines of accountability and underlying missions and, while there are protocols in place to refer cases on, intelligence is not systematically shared. This means that it is too easy at present for rogue employers and employment agencies to get away with deliberate exploitation of workers.

If more rogue employers are brought to task for exploitation, this will reduce illegal wage undercutting and unlock wealth creation by legitimate businesses, by releasing them from unfair competition by exploitative rivals. That's why we will double the penalties for not paying the National Minimum Wage (from 100% of arrears to 200%) and are naming and shaming the most exploitative employers. A new team of compliance officers in HMRC will investigate the most serious cases of employers not paying the National Minimum Wage and the National Living Wage when it is introduced in April 2016.

Considering the effectiveness of current enforcement also offers an opportunity to reduce the burden that enforcing regulations can place on compliant businesses, which affects their ability to grow and create jobs. We want to enable better intelligence-led targeting of risk so that we focus our efforts on the offenders.

Our proposals to address this, set out in this consultation, are to create a new Director of Labour Market Enforcement and provide them with the necessary powers, remit, skills, intelligence and increased resources to deliver a step change in impact. The Director will set an annual strategy for labour market enforcement, by using information drawn from a new intelligence hub, which will provide a shared understanding of risks and indicators across the spectrum of non-compliance. To ensure we have the necessary tools to implement the strategy, we propose the creation of a new offence of an aggravated breach of labour market legislation, and to reform the Gangmasters Licensing Authority to enable it to tackle serious exploitation wherever it is found in the economy. With these reforms, state enforcement will be carried out in a more effective way to the benefit of both vulnerable workers and the UK economy as a whole.



### **Sajid Javid**

Secretary of State for Business, Innovation and Skills

## **Home Secretary**



Last March, the introduction of the Modern Slavery Act meant that Britain is once again at the forefront of the fight against this appalling and inhuman crime. We now have the toughest penalties and sanctions in place to deal with perpetrators, important protections and support for victims, and we have introduced a requirement for businesses to disclose what steps they have taken to ensure that their supply chains are slavery free.

The Modern Slavery Act will ensure that we can tackle the organised criminals and opportunistic individuals who seek to profit from the trade in human lives. But we must go further. Exploitation can take various forms, and can occur in different contexts, and we must now expand our approach to deal with all forms of forced labour and abuses of employment law. Not only so that we can protect the vulnerable, but also to protect local workers and responsible businesses affected by those prepared to exploit cheap labour.

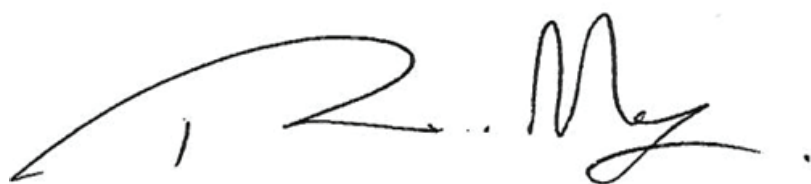
Our manifesto made clear our commitment to tackle illegal working and crack down on worker exploitation across all labour sectors. This means we must build on the work of the Modern Slavery Act and ensure that we stop those who exploit workers in our country: those who lure people here on the promise of a good job, but who deliver low or no wages, those who provide horrific working conditions, and those who wilfully disregard employment laws.

The Immigration Bill, currently before Parliament, proposes the creation of a new statutory Director of Labour Market Enforcement. The Director will be responsible for overseeing and setting the priorities for labour market enforcement, and will help ensure greater focus on concerted, coordinated action across our enforcement agencies. This consultation sets out a broader package of proposals that will support the Director in taking strong and effective action against exploitation.

We also recognise the good work of the Gangmasters Licensing Authority, and the calls for that organisation to play an expanded role in tackling worker exploitation. This consultation proposes significant reforms to the GLA to provide it with additional powers and a wider remit to tackle serious labour exploitation more effectively, wherever it occurs across the economy.

Finally, we need effective sanctions for unscrupulous employers who are clearly exploiting workers, but whose actions fall between existing labour market offences and the modern slavery offences. So we are seeking views on a possible new offence of aggravated breach of state-enforced labour market legislation.

I welcome this joint consultation with the Department for Business, Innovation and Skills. Through concerted cross-Government action, we believe we can make a difference to the lives of those affected, from the people experiencing the misery of exploitation to the many good businesses who do the right thing, treat their workers fairly, and play by the rules.

A handwritten signature in black ink, appearing to read 'Theresa May', with a large, sweeping flourish at the beginning and a small dot at the end.

**Theresa May**

Secretary of State for the Home Department

# 1. Summary

1. More people are working in the UK than ever before. Over 2 million private sector jobs have been created since 2010, resulting in 600,000 fewer workless households<sup>1</sup>. 73.5% of people aged 16 to 64 are now in employment<sup>2</sup> and an increasing proportion of women and older people are participating in the labour market<sup>3</sup>.
2. The UK has a strong statutory framework to ensure that those in work are entitled to work in the UK, are paid at least the National Minimum Wage – and from April 2016 for over 25s, the National Living Wage – and benefit from other employment rights. Several aspects of this framework are enforced by the state on behalf of workers: the National Minimum Wage by HM Revenue and Customs (HMRC), the regulation of employment agencies and businesses by the Employment Agency Standards Inspectorate and the licensing of labour providers in the fresh produce supply chain by the Gangmasters Licensing Authority – as well as enforcement of immigration rules by the Home Office.
3. Under the last Government, several steps were taken to strengthen this framework. These include:
  - increasing the budget of the HMRC minimum wage enforcement team from £8.1m in 2010 to £13.2m in 2015/16;
  - introducing new ‘naming and shaming’ penalties from 2013 for employers not paying the National Minimum Wage;
  - increasing the deterrent for employers from breaking National Minimum Wage legislation by increasing the maximum penalty for under-payment from £5,000 per employer to £20,000 per worker; and
  - prohibiting employment agencies from advertising exclusively abroad or in a foreign language when they are advertising jobs located in Great Britain.
4. Most employers in the UK strive for and achieve compliance within this legal framework. Where there is uncertainty, a number of organisations provide advice and guidance to employers to assist compliance. Targeted, effective regulatory intervention then tackles criminal non-compliance, ensuring a level playing field for all employers.

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<sup>1</sup> <https://www.gov.uk/government/news/600000-fewer-workless-households-since-2010-workless-households-now-lowest-in-a-decade>

<sup>2</sup> <http://www.ons.gov.uk/ons/rel/lms/labour-market-statistics/september-2015/sty-labour-market-statistics--september-2015.html>

<sup>3</sup> [http://www.ons.gov.uk/ons/dcp171766\\_398886.pdf](http://www.ons.gov.uk/ons/dcp171766_398886.pdf)

5. However, there has been a change in the nature of non-compliance with labour market regulation over the last ten years, with a shift from abuses of employment regulation towards increasingly organised criminal activity engaged in labour market exploitation. Feedback from enforcement officers suggests that serious and organised crime gangs are infiltrating legitimate labour supply chains across a number of sectors, and that the incidence of forced labour may be growing at a faster rate than other forms of exploitation.
6. In addition, as the number of people participating in the workforce continues to increase, it is even more important to ensure that workers receive, for example, the National Minimum Wage and the National Living Wage when it is brought in. This will require even more flexibility to target enforcement appropriately. Labour market enforcement activity also needs to support the Government's deregulation agenda and the economic benefits that will bring.
7. All forms of labour market exploitation affect not only the individual victims. Other businesses struggle to compete against rogue employers, while illegal pay and conditions for some workers can depress or hold back pay and conditions more widely in the sector locally. Exploited workers are often migrant workers, duped into working in the UK and then exploited by unscrupulous employers.
8. These increases in both the level of participation in the labour market and the reported incidences of exploitation mean that Government needs to consider the effectiveness of the way it tackles non-compliance with labour market regulation across the spectrum. This consultation therefore examines the ability of the current framework to deal with individuals and businesses that breach this regulation, from serious criminality to low-level non-compliance. This is vital to protect vulnerable workers and will bring benefits to the UK economy and wider UK labour market. This consultation also fulfils the statutory requirement under the Modern Slavery Act 2015 for Government to consult on the future of the Gangmasters Licencing Authority.
9. This consultation sets out the following four proposals to build on the effectiveness of the current regime:
  - to establish a statutory Director of Labour Market Enforcement, who will set priorities for the enforcement bodies across the spectrum of non-compliance, from criminally-minded exploitation to payroll errors;
  - to create a new offence of aggravated breach of labour market legislation;
  - to increase intelligence and data sharing between the existing enforcement bodies and also other bodies to strengthen the targeting of enforcement; and



- to widen the remit, strengthen the powers and change the name of the Gangmasters Licensing Authority to enable it to tackle serious exploitation.

## 2. How to respond

10. Consultation issued: 13 October 2015
11. Please respond by: 7 December 2015
12. Enquiries to: [labourmarket.consultations@bis.gsi.gov.uk](mailto:labourmarket.consultations@bis.gsi.gov.uk)
13. You can reply to this consultation through an online survey available at <https://bisgovuk.citizenspace.com/lm/tackling-exploitation-in-the-labour-market>.
14. Alternatively, a consultation response form is available electronically on the consultation page (until the consultation closes). The form can be submitted by email or by letter to:  
  
Harriet Andrews  
Labour Market Directorate  
Department for Business, Innovation and Skills  
1 Victoria Street  
London  
SW1H 0ET  
Tel: 0207 215 5000  
Email: [labourmarket.consultations@bis.gsi.gov.uk](mailto:labourmarket.consultations@bis.gsi.gov.uk)
15. When responding please state whether you are responding as an individual or representing the views of an organisation. If you are responding on behalf of an organisation, please make it clear who the organisation represents by selecting the appropriate interest group on the consultation form and, where applicable, how the views of members were assembled.
16. You may make printed copies of this document without seeking permission.

## Confidentiality and Data Protection

17. Information provided in response to this consultation, including personal information, may be subject to publication or release to other parties or to disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004). If you want information, including personal data that you provide, to be treated as confidential please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.
18. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

## Principles of Government consultation

19. The principles that Government departments and other public bodies should adopt for engaging stakeholders when developing policy and legislation are set out in the consultation principles:  
<http://www.cabinetoffice.gov.uk/sites/default/files/resources/Consultation-Principles.pdf>

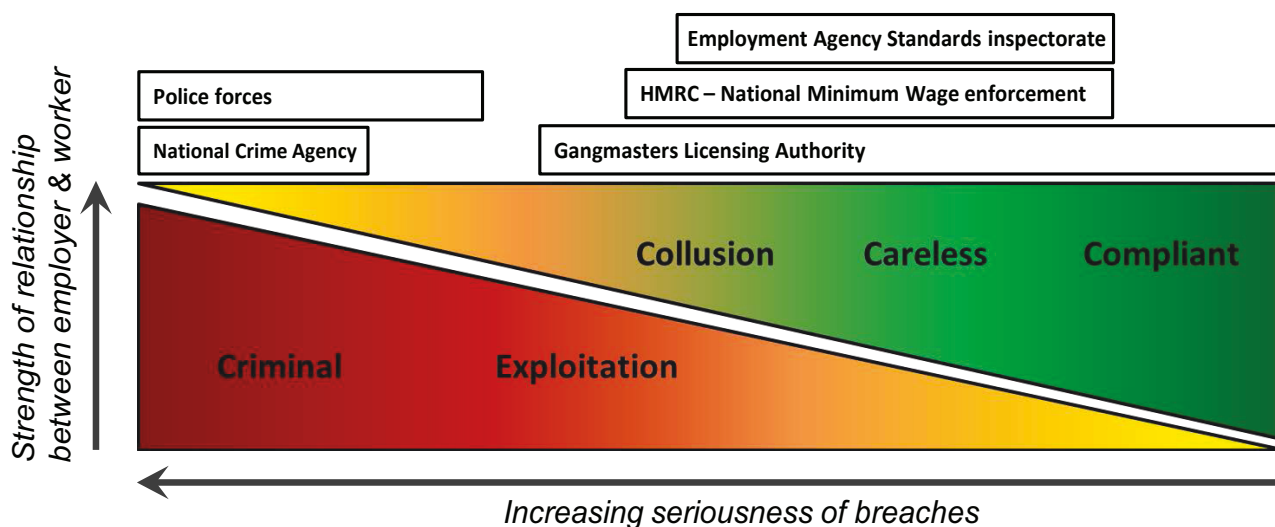
### 3. The current enforcement framework

20. 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 wronged. The ACAS helpline<sup>4</sup> provides free and independent advice on how to handle any kind of query or dispute within the workplace. But state enforcement bodies step in to enforce legislation in some situations, for example where it is believed that there is a higher risk of exploitation or vulnerability. This is achieved through a number of enforcement bodies<sup>5</sup>:
- HM Revenue and Customs enforces the National Minimum Wage Act 2008;
  - the Employment Agency Standards Inspectorate enforces the Employment Agencies Act 1973 and the Conduct of Employment Agencies and Employment Businesses Regulations 2003 (the Conduct Regulations); and
  - the Gangmasters Licensing Authority enforces the Gangmasters (Licensing) Act 2004.
21. In addition, the National Crime Agency tackles serious and organised crime more generally, including those engaged in organised labour market exploitation. Individual police forces can also investigate instances of labour market exploitation and might do so, for instance, where individual workers are subject to intimidation or physical abuse. All of these bodies work with the Home Office where breaches of immigration rules are found.
22. These bodies collectively span the whole spectrum of infringement:

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<sup>4</sup> <http://www.acas.org.uk/helpline>

<sup>5</sup> The Health and Safety Executive, local authorities and other sectoral enforcement bodies also enforce aspects of the Working Time Regulations.



23. The UK Government is responsible for employment policy in England and Wales and Scotland. In addition it is responsible for National Minimum Wage across the whole of the UK. As a result, HMRC's National Minimum Wage function covers the whole of the UK, while the Employment Agency Standards inspectorate covers only England and Wales and Scotland. The Department for Employment and Learning in Northern Ireland has its own Employment Agency Inspectorate which enforces similar regulations governing the conduct of employment agencies and employment businesses. The Gangmasters Licensing Authority operates across the whole of the UK: Schedule 2 of the Gangmasters (Licensing) Act 2004 explains how it applies in Northern Ireland, where the GLA operates on behalf of the Department of Agriculture and Rural Development.
24. The following sections examine the roles of each of the enforcement bodies individually before considering how the current framework can be made more effective.

## Enforcing the National Minimum Wage

25. The National Minimum Wage (NMW) guarantees decent minimum levels of pay for workers and promotes fair competition between businesses. The vision is clear: everyone who is entitled to the NMW should receive it. Non-compliant employers need to believe that there is a real risk that they will be investigated, and workers need confidence that others are working within the system. The National Living Wage (NLW) will be introduced, for those aged 25 and above, from 6 April 2016. The compliance and enforcement activities currently carried out for the NMW regime will also be required for the NLW.

26. **HM Revenue and Customs (HMRC)** enforces the NMW across the UK on behalf of BIS<sup>6</sup> and has NMW enforcement staff based in 19 locations, tackling non-compliance by employers ranging from national retailers to smaller local businesses. It reacts to individual complaints and conducts proactive risk-based enforcement.
27. HMRC investigates every complaint received directly or referred from the ACAS helpline. HMRC triages these allegations, allowing them to carry out investigations in the most appropriate way. It has increased the number of interventions carried out by phone where appropriate and has introduced specialist caseworkers for more complex cases. This sits alongside broader education initiatives and measures to 'nudge' employers towards compliance.
28. In addition, HMRC conducts risk-based enforcement in sectors or areas where there is a higher risk of workers not getting paid the legal minimum wage. If HMRC investigates an employer that is breaking NMW law the employer will have to pay back the arrears owed, face a financial penalty and be publicly named and shamed under the BIS NMW Naming scheme. As of July this year, 285 employers have been named under this scheme. HMRC also undertakes selective prosecutions against criminal NMW breaches.
29. NMW officers also contribute to a cross-Government team tackling serious non-compliance and taking on some of the highest risk cases. The multi-agency team conducts proactive operations targeted at specific regions and sectors to tackle illegal working. Successful targeted campaigns have been run across sectors from fashion to retail to mini-cabs.

## Regulating employment businesses and agencies

30. **The Employment Agency Standards Inspectorate (EAS)** enforces the Employment Agencies Act 1973 and the Conduct of Employment Agencies and Employment Businesses Regulations 2003. EAS's enforcement model is based on risk, with 'high risk' cases including:
  - complaints about non-payment to temporary agency workers;
  - where workers are being charged a fee for work-finding services; and
  - where there are potentially serious consequences of poor practice – for example, nurses being placed for work without adequate criminal record checks.

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<sup>6</sup> The National Minimum Wage Act 2008 places responsibility on the Secretary of State for Business to enforce the National Minimum Wage. The Secretary of State has then delegated this power to the HMRC Commissioners as the most appropriate regulatory body. BIS funds HMRC's work on National Minimum Wage enforcement.

31. EAS responds to every complaint received and will initially make contact with the agency concerned, drawing attention to the requirements of the legislation and the obligation to comply with it. In cases where the agency fails to respond or where there are multiple complaints about a particular agency, EAS will visit the agency in person.
32. Where appropriate, EAS will issue warning letters to agencies and seek to ensure that corrective measures are put in place. In extreme cases, EAS can consider prosecution. Between 31 March 2013 and 1 April 2015, EAS brought nine prosecutions in the Magistrates' Court and in seven of these obtained convictions against the individuals and companies involved. In addition, the Inspectorate can consider prohibiting individuals from running an employment agency for up to 10 years. 18 individuals are currently prohibited from running, or being involved in running, an employment agency or employment business.
33. EAS resource was doubled in 2014/15 and has been increased again for the financial year 2015/16, bringing the number of EAS inspectors to nine. The additional resource is being used for targeted enforcement in high risk sectors and locations in order to protect the most vulnerable agency workers.

## Licensing gangmasters

34. **The Gangmasters Licensing Authority (GLA)** was set up by the Gangmasters (Licensing) Act in 2004 to protect vulnerable and exploited workers after the deaths of 23 Chinese cockle pickers in Morecambe Bay. It licenses businesses (called 'gangmasters' under the Act) which supply workers to the farming, food processing and shellfish gathering sectors to make sure they meet the employment and other standards required by law; and carries out inspections and enforcement activity.
35. The licensing scheme aims to ensure that a level playing field is provided for all those who supply workers covered by the Act and that those suppliers meet the standards required by law. All new applicants are assessed by a GLA officer to make sure they meet the required licensing standards.
36. The current Licensing Standards were issued in May 2012 following consultation<sup>7</sup>. These standards are used to assess the labour providers' performance against licensing conditions, including the obligation to comply with

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<sup>7</sup> <http://www.gla.gov.uk/PageFiles/956/Licensing%20Standards%20-%20May%202012.pdf>.

a range of employment and other law<sup>8</sup>. Conditions cover a range of areas including: the NMW; Health and Safety; tax and National Insurance; forced labour; and compliance with rules on the employment of migrant workers.

37. Compliance with the Licensing Standards is assessed using a points system. Those businesses scoring above a set number will normally have their licence refused or revoked. However a licence may be issued with Additional Licensing Conditions where the GLA determines that this would be proportionate.
38. Under the Act, the GLA may take action against companies that break the law: where it is established that a business is operating as a gangmaster without a licence, where a business is using an unlicensed gangmaster or obstructing a GLA officer in the performance of their duties.
39. The GLA is an intelligence led organisation and much of its work in enforcing workers' protection is based on the information it receives from both open and covert sources. This information is used to assess risks and to determine what actions to take in order to ensure compliance, for instance in determining when further compliance inspections are required; and whether criminal investigations should be pursued with a view to prosecution. In exercising these functions the GLA works closely with other enforcement partners, including the police, the National Crime Agency, HMRC and local authorities.

## Organised criminal behaviour

40. **The National Crime Agency (NCA)** leads UK law enforcement's fight against serious and organised crime. It is tasked with disrupting and bringing to justice those serious and organised criminals who present the highest risk to the UK.
41. The NCA has built multi-agency partnerships across police, law enforcement, the public sector, private industry and internationally to lead, support and coordinate the UK's response to a wide range of threats. NCA officers also support and coordinate operational activity, providing a range of specialist capabilities to partners who help to deliver criminal justice outcomes, recover assets and prevent and disrupt criminal activity.
42. When it comes to exploitation of workers, the NCA focuses its attention on those cross-border, high harm organised crime groups that represent the very worst aspects of criminality in this sphere. It leads on investigation relating to people

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<sup>8</sup> The current licensing conditions are contained in the Gangmasters (Licensing Conditions) Rules 2009.



smuggling, kidnap and extortion as well as being the home of the UK Human Trafficking Centre.

43. In November 2014, the UK appointed the first independent Anti-Slavery Commissioner (IASC). The Commissioner has a UK-wide remit, ensuring that modern slavery issues are tackled in a coordinated and effective manner across the whole of the UK.<sup>9</sup> The Commissioner works closely with law enforcement agencies, local authorities and third sector organisations to encourage good practice in the identification of victims and the prevention, detection, investigation and prosecution of modern slavery crimes, including international collaboration. The Commissioner acts strongly in the interests of victims – and potential victims – by making sure that the law enforcement response to modern slavery is focused, coordinated and effective.
44. On top of all of this, every police force in the UK has a responsibility to deal with criminality in their area, working with the NCA and regional organised crime units where necessary, to ensure everyone in the UK can live and work without fear of intimidation or physical abuse.

## Building on success

45. The experience of those enforcing employment legislation is that only a relatively small proportion of businesses are non-compliant and that the majority of breaches are due to unintentional error rather than malice or criminal conspiracies.
46. In addition, significant steps have also been taken since 2010 within the current framework to deal with non-compliance and exploitation in the labour market. The creation of the NCA and IASC have helped to tackle high end criminality and serious organised crime groups associated with modern slavery. Additional resources have been given to HMRC and EAS to tackle a range of issues from low level non-compliance and collusion through to criminal offences. The GLA has also helped to tackle the exploitation and non-compliance that was prevalent in the agriculture, food processing and shellfish collection sectors.
47. HMRC, for example, carried out joint work with the Department of Health and BIS on increasing awareness amongst care workers and employers of the NMW, through a series of advertisements in trade journals. HMRC is jointly working with the Association of Directors of Adult Social Services (ADASS) to look at the

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<sup>9</sup> The Scottish Parliament and the Northern Ireland Assembly passed Legislative Consent Motions to enable the IASC to have this UK wide role.

additional responsibilities on local authorities in the commissioning process following the introduction of the Care Act 2014. Currently there are 142 open investigations in the care sector. Since 1 April 2015, complaints from care workers are being fast tracked for investigation, and the progress and outcomes of these cases specifically monitored. A further 13 care providers are being investigated under targeted enforcement action with more to follow.

48. Since 2006 GLA has successfully prosecuted some 58 unlicensed gangmasters and 24 users of unlicensed gangmasters. In 2014-15 alone the GLA has conducted 53 joint investigations and led on 22 convictions for offences of being an unlicensed gangmaster and associated offences of fraud, threats and intimidation, sham marriage, benefit fraud and mortgage fraud. The GLA is currently investigating 300 criminal groups or at least one thousand individuals suspected of supplying unlicensed labour in the UK. Training and awareness courses have been delivered to 2,500 supply chain and public sector staff from 314 organisations pledging to raise awareness of the risks of labour exploitation to an estimated 367,154 workers.
49. Between April 2013 and March 2015 EAS brought 9 prosecutions in the Magistrates' Court and in 7 of these obtained convictions against the individuals and companies involved. During the same period they also brought proceedings at the Employment Tribunal to prohibit three individuals from being involved in running or owning employment agencies or employment businesses. All were successful, with one individual being prohibited for a period of seven years and the other two for 10 years. There are currently 18 people on the published prohibited persons list<sup>10</sup>.
50. However, enforcement bodies also report a significant shift in the nature of non-compliance with labour market regulation over time. Among the small minority of businesses that are non-compliant, for some there has been a shift from individual abuses of employment regulation towards increasingly organised criminal activity amounting to labour market exploitation. The phrase "labour market exploitation" is used in this consultation document to mean more than merely deliberate non-compliance. It involves a greater criminal intent within an exploitative business model and can include:
  - threats of violence or retribution against workers or their families;
  - intimidation;
  - deliberate and systematic withholding of wages or spurious deductions at a significant level; and / or

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<sup>10</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/403653/employment-agency-standards-inspectorate\\_prohibited\\_people\\_list\\_4\\_.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/403653/employment-agency-standards-inspectorate_prohibited_people_list_4_.pdf)

- difficulty in obtaining retained documents.
51. There is some evidence that suggests that serious and organised crime gangs are infiltrating legitimate labour supply chains across a number of sectors, and that the incidence of forced labour may be growing at a faster rate than other forms of exploitation. In principle, the existing framework gives enforcement bodies the power to act where labour exploitation takes place. But some suggest that where deliberate non-compliance strays into labour exploitation, but falls short of the criminality that would prompt police or NCA action, enforcement bodies do not have the breadth of view and the tools they need to act.
  52. In addition, as the number of people participating in the workforce continues to increase, it is even more important to ensure that workers receive, for example, the NMW and the NLW when it is brought in. It is estimated that by 2020 an additional 2.75 million employees will come under the scope of the NLW; the current compliance and enforcement regime will need to be extended to protect them. This will require even more flexibility among enforcement bodies to target their enforcement appropriately. It is more important than ever that enforcement bodies work together to be more efficient as well as effective.
  53. It is also vital for the UK economy and the wider UK labour market to tackle labour exploitation. Other businesses struggle to compete against rogue employers, distorting competition and reducing levels of employment over the longer term. Illegal levels of pay and conditions for exploited workers can depress or hold back pay and conditions more widely in the sector locally and reduce the availability of job opportunities with reputable employers. Enforcement officers report that victims of labour market exploitation are often migrant workers duped into working in the UK and then exploited by unscrupulous employers.

## The nature of exploitation

54. Exploitation of workers comes in many different forms, but there are some common features. Firstly, migrant labour is particularly targeted by exploitative employers for a number of reasons. Some victims will have paid an individual or an agency in their home country for the opportunity to work in the UK, possibly starting to build up debts that are later held against them. In many cases they come willingly, with the hope of a job, accommodation and the chance to earn a living. However, on arrival, they find themselves working excessive hours, for illegal levels of pay and living in sub-standard accommodation.
55. For others, travel documents can be retained by the groups that organise the work and individuals find it difficult to get the documents returned, suffering from

threats of physical harm or intimidation when they try. These individuals can find themselves working in remote locations, being taken to and from work with little access to the authorities. When the employer operates in collusion with a rogue landlord, workers can find themselves never speaking to anyone outside of the work party, living in almost complete isolation from the outside world. Even if they knew who to go to for help, they would not have means to contact them or would fear the potential recriminations if they did.

56. Other workers suffer exploitation through poor conditions at work, intimidation and wilful disregard of employment law. Vulnerable individuals can find themselves attached to employers in order to pay off debts, or prevented from claiming holiday pay or taking sick leave.
57. Many exploited workers tend to be low skilled or have personal circumstances that can lead to them being singled out by those who wish to exploit them. However, there are other indicators of where labour exploitation is more likely to be prevalent. For instance, as well as being unskilled, victims tend to find themselves in short-term, sometimes seasonal roles, in sectors that are generally high volume with a high turnover. This kind of work lends itself to exploitation by rogue gangmasters as an individual's ability to integrate with those around them is limited, reducing the risk that those being exploited will report it to enforcement bodies or the police. Location is also important with isolated, rural locations being well suited to the types of control necessary to exploit these individuals.

## The case for more effective enforcement

58. We have identified four core areas in the existing enforcement framework that we believe can be strengthened to address this new challenge.
59. Firstly, we have identified the need for a **single set of priorities** across the enforcement bodies, combined with a **single view of risk** and **more responsive allocation of resources** between enforcement bodies. Currently the enforcement bodies each have their own visions and success measures. HMRC operates within a legislative framework, guided by a service level agreement with BIS. Likewise EAS operates within its own legal framework, with the Secretary of State setting both the direction and the measures of success. The GLA Board performs a similar function using a licensing approach. At the most serious end of labour exploitation, the NCA is responsible to the Home Secretary for fighting serious and organised criminality and works closely with the IASC to ensure modern slavery is prioritised within this.
60. While there is a great deal of overlap between missions, what is missing is a clear, single set of priorities in which there is a clear objective of reducing labour

market exploitation. A common view of risk underpinning prioritisation within and between the different enforcement bodies, recognising that each has a different operational focus, would engender a culture of collective purpose. A more flexible and responsive allocation of resources would help individual bodies to respond to the priorities more effectively.

61. Secondly, we have identified a need for a **new criminal offence** to tackle labour market exploitation specifically. The nature of non-compliance has changed: enforcement needs to keep up with that change.
62. Thirdly, we have identified the need for greater **data sharing** between enforcement bodies. Labour market enforcement bodies currently have a range of information sharing gateways in legislation but they have a number of limitations. Where these are used effectively, it can lead to targeted multi-body enforcement action that delivers positive results for victims. For instance, HMRC NMW enforcement officers regularly work closely with EAS inspectors to target certain areas or sectors where they have reason to believe that non-compliance goes beyond simple non-payment of the NMW and involves employment agencies or businesses. This kind of joined up, information sharing approach, which is also used effectively by law enforcement agencies at the serious criminality end of the spectrum, is key to dealing with those who exploit their workforce. But the existing limitations impede its use.
63. To protect those vulnerable workers who are being prevented from raising the alarm, it is important that any relevant information is communicated quickly and effectively to those who can act. Greater ability for enforcement bodies to share information would help this, ensuring where there is evidence of exploitation it can be identified and acted upon.
64. Fourthly, we have identified a need to address **individual enforcement bodies' limited remits**. In particular, the GLA's remit is limited to specific sectors, restricting its ability to act when labour providers operate outside specific sectors of the labour market.

Question 1:

- Do you agree that more needs to be done to tackle organised labour market exploitation?  
(Yes/No/Not sure; Please give your reasons)

## 4. A new Director of Labour Market Enforcement and more flexible enforcement

65. The previous chapter set out the areas we believe could be targeted to increase the effectiveness of labour market enforcement further. This chapter deals with three of those issues: the need for a single set of priorities, a new criminal offence focused on labour market exploitation and greater information sharing. The following chapter deals with the remaining issue: the need to address individual enforcement bodies' limited remits by reforming the GLA and providing it with the powers it needs to tackle exploitation.

### A new Director of Labour Market Enforcement

66. In considering how to achieve a single set of priorities across enforcement bodies and more flexible allocation of resources, we have considered how best to achieve improved enforcement outcomes with the minimum of cost and without unnecessarily diverting effort away from operational priorities. We believe that the key lies in effective, overarching leadership and co-ordination of the enforcement bodies. This will provide greater pooling of resources and a more targeted, coherent approach to enforcement, rather than in wider institutional change. This, alongside a new offence and the right enforcement powers and remit to tackle labour market exploitation, will achieve the ambition set out in the Prime Minister's speech of May 2015<sup>11</sup>.
67. Different skills are required to deal with different types of non-compliance and exploitation. At the most serious end, the police are able to act to stamp out wilful criminality using all the powers that the office of constable brings with it. HMRC officers are skilled in enforcing the NMW and have a wider understanding of the types of evidence and intelligence that can lead to a successful operation. EAS leads the way in encouraging and enforcing compliance within a disparate recruitment sector. It builds strong relationships with business representatives and unions that have a common interest in lawful operations and understands the different ways in which employment agencies and employment businesses work in different parts of the economy. The GLA has built up a skillset that is suited to

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<sup>11</sup> <https://www.gov.uk/government/speeches/pm-speech-on-immigration>

the licensing of gangmasters, making judgement calls when formal enforcement activity is required and with in-depth knowledge of the licensed sectors.

68. We see it as vital to retain those specialist and varied skills to deal with both day-to-day compliance issues and serious criminality. If the system were to focus exclusively on either labour market exploitation or low level, higher volume breaches at the expense of the other, it would not provide the necessary protection for vulnerable workers.

## The Director Role – Our Vision

69. We have concluded there is a need for better leadership and co-ordination of the efforts of different bodies working across the spectrum of labour market enforcement, to underpin the enforcement bodies, meaning the HMRC NMW team, EAS and the GLA, with a common view of risk and priorities drawn from shared intelligence. This will allow joint strategies to be set and resources to be allocated in the best way to achieve the Government's aims of tackling exploitation and ensuring compliance.
70. To do this, we will create a new Director of Labour Market Enforcement. They will be appointed by and report to both the BIS Secretary of State and the Home Secretary. The Director's remit will stretch across the whole of the labour market – including direct employment as well as labour providers – and the whole of the spectrum of non-compliance, from accidental infringement to serious criminality. We intend that the Director will hold a statutory position, and we have included legislation to create the position in the Immigration Bill, which was introduced to Parliament on 17 September<sup>12</sup>.

## A powerful intelligence hub – painting a clear picture of non-compliance and driving an enhanced operational response

71. The Director will lead an intelligence hub that forms a coherent view of the nature and extent of exploitation and non-compliance in the labour market, and uses this to formulate the strategy. The intelligence hub will be drawn from HMRC, GLA, EAS / BIS and the Home Office, retaining strong links to those bodies. It will gather available data from the labour market enforcement bodies and other sources, such as Immigration Enforcement, the police, NCA, HSE, local authorities and the voluntary sector. It will analyse this information and develop a much richer picture than we have now of the nature, extent and impacts of

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<sup>12</sup> <http://services.parliament.uk/bills/2015-16/immigration.html>

exploitation in the labour market, and how it relates to day-to-day infringements. It will identify the parts of the labour market where problems are greatest.

72. Whilst some of the data may be included in the published strategy, sensitive material and tactical intelligence will be fully protected and not released into the public domain.

## **Setting the strategy – closing gaps in enforcement provision and taking a single view of risk**

73. Based on this intelligence picture, the Director will develop the strategic plan for labour market enforcement to deal with the whole spectrum of non-compliance and submit it to the BIS Secretary of State and the Home Secretary. It will set out, for the financial year ahead: the priorities for enforcement; the outcomes required from the enforcement bodies; and the budgets for the enforcement bodies, within the total envelope of available funding. Once approved by Ministers, the plan will be laid before Parliament and published. This plan will be the starting point for all of the work of the three enforcement bodies. Redactions may be made on grounds of national security, to protect personal safety or to avoid prejudicing an investigation or prosecution.
74. The plan will address the approaches that need to be adopted by the enforcement bodies in order to be as effective as possible in addressing the problems identified. For example, it might require more joint working between particular bodies; more joint operations; greater reliance on particular means of obtaining tactical intelligence about exploitative businesses; or a change in the balance between prosecution and civil penalties.
75. HMRC, EAS and the GLA will be expected by BIS and the Home Office to achieve against their respective parts of the Director's strategic plan. The Director will be of critical importance for all of the enforcement bodies, given such a key role in setting enforcement priorities and budgets, providing both strategic and tactical intelligence, continuously assessing progress, leading work to promote compliance, encouraging reporting of non-compliance and engaging stakeholders.

## **Ensuring delivery**

76. The Director will play a dynamic role, driving delivery of the plan and responding to urgent enforcement priorities, with input from the enforcement bodies and in conjunction with BIS and the Home Office. They will do this by:
  - Bringing together the heads of the bodies regularly (at least quarterly), to discuss the picture painted by the evidence and agree how to tackle it. This



- will ensure they are working together across the full range of enforcement challenges, gather insight from operations, and resolve any roadblocks.
- Ensuring that the published strategy is not a static document and that the plan stays relevant by, through the intelligence hub, monitoring changes in practice and emerging challenges, for instance new modes of non-compliance or exploitation, or shifts of it into new sectors.
  - Providing reports to the BIS Secretary of State and Home Secretary on progress, including making in-year amendments to the strategic plan as necessary to reflect evolving challenges, and recommending other forms of corrective action – including where enforcement bodies are not fulfilling their role in the plan.
77. The Director’s intelligence hub will also need to interact constantly with the enforcement bodies. It will provide a crucial source of tactical intelligence to inform operational planning and tasking decisions.
78. At the end of each financial year, the Director will submit an annual report to the BIS Secretary of State and the Home Secretary, assessing the success of action to meet the objectives and priorities in the previous year’s strategic plan. Where necessary, the Director will also be able to submit formal reports to Ministers on other issues, including at the request of Ministers. All these reports will be laid before Parliament and published, subject to the need for redactions on the same grounds as the strategic plan.

## **Leading prevention work across government and business**

79. While it is vital that we bring to justice those who are exploiting workers, the Government wants to see greater effort to stop such exploitation happening in the first place. Most businesses are responsible and share the Government’s goal to drive up compliance with labour market regulation, prevent worker exploitation and to drive unscrupulous employers out of the market. The Director will lead and co-ordinate work to promote compliance by employers and labour providers with labour market legislation, and to encourage and enable people to report infringements and exploitation. Communication efforts to alter behaviours in the labour market will be a crucial part of the strategy to address non-compliance and exploitation.
80. The GLA has been developing work across its regulated sectors aimed at improving industry awareness of the risk of exploitation. For example, its recent “Spotting the Signs” guidance booklet has been commended by the International Labour Organisation. While these products are focused on the industries that the GLA regulates, they have an equal application to other industries.

81. EAS has increased its enforcement resource and, while continuing to investigate every relevant complaint, has been working in partnership with external organisations such as the regional Strategic Migration Partnerships to capture information and regional intelligence to assist them in their risk-based targeted work. EAS has also carried out two joint operations alongside the Pension Regulator to ensure that employment agencies and employment businesses are compliant with the requirements on auto-enrolment and the Conduct Regulations.
82. HMRC investigate every complaint they receive and fast-track complaints from the social care and hairdressing sectors, as well as interns and apprentices. They also undertake targeted enforcement activity (identifying at-risk businesses and engaging with them) at employment agencies alongside EAS, companies identified as having non-paid internships, the social care sector, and large fashion retail. They have recently launched a campaign in the hairdressing sector, encouraging employers to check their records and self-correct, and get in touch with HMRC to assist them in improving compliance.
83. We want the Director to be able to build on this knowledge and expertise, providing support to compliance in the most effective way. For example, in some parts of the economy, there may be a case for a voluntary certification scheme enabling businesses, employers and trade bodies to examine and test procedures and practices against a number of indicators of vulnerability to labour exploitation. (This would not be a precursor to more regulation, rather a recognition that businesses may want to lead work to counter exploitation in their own sectors and supply chains.) The Director will be able to initiate this kind of activity.
84. The Director will set out an effective and coordinated plan to promote compliance in areas where the intelligence indicates a threat of labour exploitation or greater levels of non-compliance. The Director will also need to be able to call on any of the enforcement bodies to assist in the implementation of that plan.
85. The Director will have a high public profile as a leadership figure for labour market enforcement and against exploitation of workers. Their reports and evidence would be a focal point of any Parliamentary debates or Select Committee inquiries on the issue, for example. They will engage with a wide range of stakeholders to gather insights and perspectives on real world practices, improve detection of exploitation and understand external views of the effectiveness of the enforcement landscape. Stakeholders will include Government departments, the IASC, the police, local authorities and other public bodies; organisations representing employers and employees across the economy and in particular sectors of interest; and a range of third sector bodies that engage with vulnerable/exploited groups.

86. The Director will also be a key figure for Ministers: not just in setting the strategy for the enforcement bodies but in advising Ministers on a day-to-day basis and providing leadership in responding to high-profile events with labour market exploitation or infringements at their heart. We expect the Director to become the person who connects the political perspective with the intelligence picture and translates it into enforcement action.
87. We propose that the Director would also be able to work with others in order to fulfil their strategic objective. While the three labour market enforcement bodies will take the lead in protecting workers from exploitation and wider breaches, this will be a whole of Government approach, working with communities, to tackle exploitation and non-compliance.
88. The Director will have a distinct role from the IASC. Firstly, the IASC looks at all types of modern slavery. The focus of the Director role will be on labour market exploitation and enforcement, of which modern slavery cases in the labour market form a very serious but small part. Secondly the practical roles are different. The Director will set the strategic plan, priorities for targeted action and overall approach for the labour market enforcement bodies. In contrast, the Commissioner has a broad role to look at the effectiveness of all the bodies engaged in the fight against modern slavery, encourage best practice, and make recommendations for improvements. That role will in future include looking at the effectiveness of the new Director and the reformed GLA where their work relates to modern slavery, as well as other agencies such as the police, the Crown Prosecution Service and the National Crime Agency. We propose to support the Commissioner to fulfil his remit as part of these changes in labour market enforcement by ensuring that the reformed GLA continues to have a duty to cooperate with him and that the Director is added to the list of bodies with a duty to cooperate with the Commissioner.

Question 2:

- Do you agree with the following statement? “Establishing a new Director for Labour Market Enforcement to set the strategic direction of the enforcement bodies will be effective in tackling worker exploitation.”  
(Yes/No/Not sure; Please give your reasons)

Question 3:

- What other factors should we consider in developing the new Director role?

## New offence of aggravated labour law breach

89. Enforcement bodies can impose civil penalties for minor breaches of labour law and there are criminal penalties for more serious offences, such as repeated and deliberate underpayment of NMW. The Government has also recently brought into force Modern Slavery offences to deal with the worst cases of exploitation. The problem is that these existing offences do not always offer an effective and efficient way for law enforcement to deal with unscrupulous employers whose offences against their workers fall somewhere in the middle.
90. These employers deliberately, persistently and brazenly commit breaches of labour law, and fail to take remedial action. Their pattern of exploitative behaviour neither meets the threshold for Modern Slavery offences (although anecdotally, such employers are more likely than others to engage in controlling or coercive behaviour which makes employees too afraid to seek redress), nor can it be dealt with satisfactorily through repeated use of existing penalties or offences. We need to make it easier for law enforcement to deal with such offenders in a way that breaks the pattern and, in so doing, reduces the risk of serial offenders subjecting their workers to more serious forms of exploitation.
91. We propose to fill the gap by introducing a simple and practical way for the bodies overseen by the Director to deal with such patterns of exploitative behaviour, which will show how seriously we take such offences and our commitment to stop employers from repeating them. We have identified two options for a new offence of aggravated labour law breach under which the Court can impose tougher penalties on offenders. We anticipate that enforcement bodies will use existing arrangements for a first offence or isolated breach of labour market legislation. In order to send a strong message to employers that exploitative practices will not be tolerated, the new offence would be available where there was systematic abuse as part of an exploitative business model. Given the serious impact of this behaviour, we believe we should consider a custodial penalty and, once this consultation has concluded, we will consider the appropriate penalty in order to reflect the more serious level of offending and to act as a deterrent so that workers are better protected from exploitation.
92. The first option would create an offence which would be committed where:
  - An employer has committed an existing offence under a range of state-enforced employment law within the Director's remit (many such offences are only punishable by a fine); and
  - The motivation for the offence (wholly or partly) was the deprivation of a person's rights as a worker (e.g. their right not to have unlawful deductions made from their pay); or

- The employer has exploited the worker in connection with the commission of the offence (e.g. threatening a worker in order to make them work for less than NMW).
93. In the interests of consistency, it may be best if the offence in section 31(1) of the National Minimum Wage Act 1998, which makes it an offence to refuse or wilfully neglect to pay a worker the NMW, was capable of being aggravated by the new offence. However, if the mental elements are too similar the alternative would be to exclude the offence in section 31(1) and consider whether it needs separate treatment e.g. an increase to the maximum sentence.
94. This would require a definition of worker exploitation. One way of doing this is through a non-exhaustive list of indicative types of behaviour to provide greater flexibility (e.g. as exploitative practices develop over time) or an exhaustive list, which is more certain. The list of behaviours would include things such as withholding a worker's identity or travel documents, threatening the worker with violence or removal from the UK, debt bondage and other things that make a worker more vulnerable to exploitation e.g. keeping them in tied housing in isolated locations, inhibiting their ability to contact the authorities.
95. Alongside, or instead of, this option we could create a new type of improvement notice. After a breach of employment law had occurred, one of the three enforcement bodies would be able to ask the court to issue an improvement notice ordering the business to take remedial steps within a specified period in order to fix the problems which had been identified. While the improvement notice would be issued as part of civil proceedings, breach of the notice would be a criminal offence.
96. We could also provide for employers to undertake that they will comply with an improvement notice in terms proposed by the enforcement body without attending court.

#### Question 4:

- Do you agree that a new offence of aggravated labour law breach is needed to tackle exploitation of workers?  
(Yes/No/Not sure; Please give your reasons)

#### Question 5:

- Which of the options described would be most effective in tackling labour market exploitation?

- A) create an offence involving a motivation intention to deprive a worker of their rights or to exploit a worker in connection with the commission of the offence;
  - B) create a new type of improvement notice;
  - C) both A) and B);
  - D) None of the options.
- Please give your reasons.

Question 6:

- What are the benefits of creating an offence involving motivation to deprive a worker of their rights?

Question 7:

- What are the benefits of creating an offence involving motivation to exploit a worker or exploiting a worker in connection with such an offence?

Question 8:

- What are the benefits of creating a new type of improvement notice to tackle exploitation of workers?

## Information sharing

97. There is already close cooperation between different enforcement bodies, often involving multiple enforcement bodies working together in tackling abuses. However, this cooperation is sometimes impeded by barriers to sharing of data between the enforcement bodies and by the enforcement bodies not being able to access data from other bodies.
98. The description above of the new Director's role has already explained the important role that we envisage for a new intelligence hub reporting to the Director. To enable the intelligence hub to work effectively and to enhance operational data sharing, we propose that the Director and the three enforcement bodies should have wide-ranging powers to share data and intelligence with each other. Whilst there are existing arrangements to share data between the enforcement bodies, these are often bilateral and a more comprehensive arrangement is needed to pool data within the hub and create the strategic intelligence picture. This will inform and support delivery of the Director's strategic plan by providing an up to date picture of those areas where workers are at risk of abuse.

99. The intelligence hub will also need to exchange data and intelligence with other relevant bodies – those engaged in tackling labour market exploitation and those enforcing other legislation that is often breached by the same rogue businesses. This would therefore include HMRC, BIS, the Home Office, the National Crime Agency, UK police forces, the devolved administrations, certain registered UK charities, local authorities, foreign governments (including their police forces, immigration authorities and employment / labour ministries) and the IASC. This will require a proper statutory framework in order to allow this sharing of data across enforcement bodies.

Question 9:

- Do you agree on the need for powers to share data and intelligence across the enforcement bodies and with other organisations?  
(Yes/No/Not sure; Please give your reasons)

## **Territorial extent of proposed reforms**

100. The UK Government's responsibility for the issues discussed in this chapter extends generally to England and Wales and Scotland, but to the whole of the UK in the case of the NMW. So the Director of Labour Market Enforcement will mostly cover England and Wales and Scotland but will also have a role in Northern Ireland in respect of the NMW. The Government will consult the Northern Ireland Executive as to whether it wishes the proposals to extend to Northern Ireland more generally. If so, this would require the agreement of the Northern Ireland Assembly. There may be bodies within the competence of the devolved administrations that would benefit from being included in the information sharing proposals. Further, since we are proposing to create a new offence we will need to take into account the different legal systems in the UK. The Government will also therefore consult the Scottish Government and the Welsh Government on these proposals and on these points in particular.

## 5. Reforming the Gangmasters Licensing Authority

101. Chapter 3 set out the challenge we face as the nature of non-compliance with labour market regulations shifts towards increasingly organised and systematic exploitation of workers. The response from the State and from employers must keep pace. The new Director of Labour Market Enforcement<sup>13</sup> will deliver a better coordinated effort to prevent labour exploitation. But better coordination on its own will not be sufficient. We must ensure that bodies tasked with implementing the Director's plan have the necessary powers and capabilities to protect workers from exploitation. This chapter sets out how the Government proposes to transform the GLA into an organisation that prevents serious exploitation across the labour market so that unscrupulous employers have nowhere to hide. This fulfils the requirement to consult on the role of the GLA, contained in the Modern Slavery Act 2015.

### A new Authority

102. Since its creation in 2006, the GLA has established itself as a world leader in licensing the activity of gangmasters in certain sectors and has uncovered many instances of labour market exploitation (as set out in paragraph 48). But it has been limited to investigation of licensing-related offences in the regulated sectors. This has necessarily limited its ability to tackle worker exploitation. The Government proposes to build on the GLA's strengths by transforming it into an organisation that is capable of preventing worker exploitation, especially in its most persistent and serious forms, wherever it occurs in the labour market.

103. This chapter sets out proposals for a reformed GLA to:

- Support delivery of the Director's coordinated plan to prevent labour market exploitation;
- Have new tools and powers to tackle worker exploitation across the economy;
- Investigate exploitation of all workers, whether employed through an agency, gangmaster or direct employer; and
- Do the above with minimal structural changes so that the new body can focus on what really matters: protecting workers from exploitation.

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<sup>13</sup> "Director" throughout this chapter continues to refer to the Director for Labour Market Enforcement



104. We propose that the GLA moves from a narrow focus on licensing in specific sectors to a wider role of preventing and tackling serious worker exploitation using a broader range of tools.

Question 10:

- Do you agree with the proposal to expand the role of the Authority or should we retain the current model? (Yes/No/Not sure; Please give your reasons)

## The objectives and remit of the new Authority

105. The aims of the GLA are set out in section 1 of the Gangmasters (Licensing) Act 2004. They are currently focused on licensing, reviewing the activity of gangmasters and reviewing the effectiveness of the Gangmasters (Licensing) Act 2004. These objectives reflect the original purpose of the organisation – to license gangmasters – and have proved effective for that purpose.

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

107. The Government believes that these provisions should be strengthened. The new Authority needs different tools to tackle serious exploitation. The new Authority should also have the flexibility to focus its efforts where the risk of serious exploitation is greatest. This should be based on a dynamic assessment of the intelligence picture across the agencies overseen by the Director.

108. We propose to give the new Authority a new mission: to prevent, detect and investigate worker exploitation in support of the Director's plan.

109. We propose to make the remit of the new Authority wider and more flexible:

- Where the new Authority has a role in investigating regulatory breaches and criminal offences, the new Authority will be able to do so wherever they affect employees and workers (e.g. agency workers) and in whatever sector they take place;
- Where the Director's plan identifies a need to do so, the new Authority will be able to work with businesses to help provide training, develop codes of conduct and voluntary accreditation and similar activities that businesses believe will help to promote compliance and prevent exploitation. The new Authority will be able to charge for such activities up to full cost recovery.

Question 11:

- Do you agree that the mission of the new Authority should be to prevent, detect and investigate worker exploitation, in support of the Director's annual plan? (Yes/No/Not sure; Please give your reasons)

Question 12:

- Should the new Authority work with business to provide training, and develop codes of conduct and voluntary accreditation schemes? (Yes/No/Not sure; Please give your reasons)

Question 13:

- Should the new Authority be able to charge for such services? (Yes/No/Not sure; Please give your reasons)

Question 14:

- What other tasks might the new Authority perform?

## **Powers of the new Authority**

110. The GLA can only investigate a narrow set of criminal offences relating to licensing, and it can only do so in the sectors that it regulates. The GLA has a good record of identifying exploitation in these sectors but it faces two significant operational hurdles:
- Its role is limited to licensing labour providers in sectors where a statutory licensing scheme is in place.
  - Even where it uncovers criminal abuse, the GLA relies on other law agencies, especially the police, to accompany GLA staff or be available at short notice to take the necessary enforcement action. The GLA cannot arrest individuals for the criminal offences that are associated with worker exploitation and it lacks ordinary police powers to seek and use warrants, and to search premises after arrests to secure crucial evidence.
111. If the new Authority is to be able to fulfil its mission to tackle worker exploitation, it needs to have the right powers at its disposal. The Government proposes that the new Authority should be able to:
- investigate suspected regulatory breaches and criminal offences within the Director's remit, in connection with tackling labour exploitation; and

- maintain a reformed licensing regime for labour providers focused on agreed areas of risk, targeting exploitation, which reduces the burdens on the consistently compliant.

112. In addition, the new Authority may be the best placed organisation to take forward elements of the Director's plans to promote compliance. For example, the new Authority may have expertise to help business organisations develop a voluntary accreditation scheme or a code of practice.

### Investigation of exploitation

113. During its licensing work, the GLA's limited powers have restricted its ability to use criminal offences to tackle serious exploitation. The GLA estimates that approximately 15% of regulatory breaches they encounter in their licensing regime could have been considered for criminal prosecution by the GLA if they had the powers to go beyond revoking the licence. In order to ensure such opportunities are not missed and to investigate serious exploitation including criminal conduct which can give rise to substantial prison sentences, the new Authority needs adequate investigative powers. We have modelled our proposals on the investigative powers exercised by similar bodies such as HMRC and Immigration Enforcement.

114. We therefore propose that the new Authority would be able to investigate breaches of the NMW / NLW, regulation of employment agencies, the proposed new aggravated labour market offence and other relevant criminal offences – where they are in connection with labour market exploitation.

115. The new Authority's ability to investigate should not be constrained to exploitation in the sectors that it licenses. It would start investigations for a wider range of reasons than those rooted in the licensing regime. It would also identify cases through:

- reports of suspected exploitation from workers, members of the public or concerned businesses;
- requests from EASI and HMRC NMW teams to investigate suspected cases of more serious exploitation;
- partnership working with other public authorities, trade bodies, Trade Unions, NGOs and others; and
- intelligence from other law enforcement agencies.

116. Extending the reach of the GLA beyond the sectors they currently regulate will enable them to bring to bear their expertise in identifying worker exploitation abuses wherever they occur. These important changes will improve the capacity

within the system to tackle high harm, low volume cases of exploitation, falling short of those tackled by the NCA.

117. The ACAS helpline would remain the point of contact for people to report labour market non-compliance. Reports of day-to-day infringements of NMW / NLW rules or employment agency regulations would continue to be referred to HMRC and EAS, regardless of where the report was made.
118. The new Authority should, however, have the ability to investigate criminal offences that typically give rise to serious exploitation of workers. We expect that the new Authority would generally use the new aggravated labour market offence proposed at paragraphs 89-96. However, the new Authority should also have the ability to investigate evidence of the most serious abuses of workers: slavery, servitude, forced or compulsory labour or human trafficking, which carry a maximum life sentence under the Modern Slavery Act 2015.
119. The new Authority will work closely with other law enforcement agencies, and in the more serious cases such as modern slavery cases, the police or the National Crime Agency will often be the most appropriate lead investigative body. But it is critical that where the new Authority finds evidence of potential exploitation in the labour market, it can take immediate action to secure evidence, arrest suspects and rescue victims, without having to wait for other law enforcement bodies to mobilise and act.
120. We propose that the Home Secretary should be able to designate trained staff of the new Authority to use the following police-style powers, similar to HMRC and Immigration Enforcement officers:
  - the ability to enter and search premises with a warrant authorised by a Justice of the Peace (under section 8 of the Police and Criminal Evidence Act 1984 (PACE));
  - the power to enter premises to execute an arrest warrant or for the purpose of arresting someone for an indictable offence (under section 17 PACE);
  - the power to search premises controlled by a person under arrest (under section 18 PACE);
  - the powers to search a person at time of arrest and, when a person is arrested for an indictable offence, to search the premises the person was in immediately prior to arrest (section 32 PACE);
  - the power to use reasonable force in exercise of PACE powers, (section 117 PACE); and
  - the ability to seize evidence and then sift through it under section 50 of the Criminal Justice and Police Act 2001 when exercising a power of seizure under PACE or the Gangmasters (Licensing) Act 2004.

121. The GLA currently has powers of arrest for relevant offences related to the licensing regime and, of course, we will want the new Authority to have appropriate powers of arrest to match its new remit.
122. As with the GLA, we want the new Authority to make effective use of powers under the Proceeds of Crime Act 2002 to investigate money laundering offences and to use the provisions for cash forfeiture and confiscation to remove assets from those that benefit from offences within their remit. We propose to ensure that the new Authority has access to these powers.
123. Where the new Authority's staff identify a substantial risk of very serious worker exploitation occurring, they should also be able to take action to prevent harm. The Modern Slavery Act 2015 introduced Slavery and Trafficking Prevention Orders and Slavery and Trafficking Risk Orders. These are critical new tools which allow the police, the NCA and Immigration Enforcement to apply to court to place restrictions on a person's behaviour if that is needed to prevent the harm that would result if they committed a modern slavery offence. The new Authority will be well placed to identify circumstances where there is a real risk that exploitative practices could result in an even more serious Modern Slavery Act 2015 offence taking place. We therefore propose that the new Authority should also be able to apply to court for these Orders.
124. It is crucial that there is effective oversight of the new Authority in the exercise of all police-style investigative powers. We propose that:
- the new Authority's staff would be subject to similar training requirements as police officers who exercise these powers, and the new investigative powers would not be activated until the new Authority demonstrates that it has the capabilities and skills to use the powers effectively and appropriately, such that the Home Secretary designates staff with those powers;
  - the new Authority's staff designated to exercise police-style powers are subject to the relevant PACE Codes; and
  - the new Authority's staff designated to exercise police-style powers are subject to Independent Police Complaints Commission supervision.

Question 15:

- Do you agree that the new Authority should be able to investigate labour market breaches and offences that fall under the remit of the new Director, including the new aggravated breach offence and Modern Slavery Act offences, as well as breaches of NMW / NLW and employment regulations, where they are connected with labour exploitation? (Yes/No/Not sure; Please give your reasons)

Question 16:

- Do you agree that the new Authority should have the power to investigate these offences across all sectors of the labour market?

Question 17:

- Are the investigative powers proposed appropriate given the new Authority's functions?  
(Yes/No; If No, which ones should not be available:
  - the ability to enter and search premises with a warrant authorised by a Justice of the Peace (under section 8 of the Police and Criminal Evidence Act 1984 (PACE));
  - the power to enter premises to execute an arrest warrant or for the purpose of arresting someone for an indictable offence (under section 17 PACE);
  - the power to search premises controlled by a person under arrest (under section 18 PACE);
  - the powers to search a person at time of arrest and, when a person is arrested for an indictable offence, to search the premises the person was in immediately prior to arrest (section 32 PACE);
  - the power to use reasonable force in exercise of PACE powers, (section 117 PACE); and
  - the ability to seize evidence and then sift through it under section 50 of the Criminal Justice and Police Act 2001 when exercising a power of seizure under PACE or the Gangmasters (Licensing) Act 2004.

Please give your reasons?)

Question 18:

- Are there any additional powers the new Authority should have? Please describe and give your reasons.

Question 19:

- Do you agree that the new Authority should be able to use Proceeds of Crime Act powers to recover criminal assets?  
(Yes/No/Not sure; Please give your reasons).

*Joint work by law enforcement to stop serious labour exploitation*

125. The GLA already works closely with police forces to tackle criminal offences. The new Authority's increased remit would mean that this working relationship becomes even more vital to achieving its mission.
126. We expect that almost all investigations of the most serious exploitation will involve partnership working with other agencies, including the police and the NCA. For example:
- Where the new Authority has evidence of serious crime taking place, they would inform the police and typically mount a joint investigation. The new Authority will bring specialist investigators. The police force will have access to local knowledge and resources that can be necessary to successfully tackle serious and organised crime, such as covert surveillance capabilities. Working together will maximise the chance of a successful prosecution or disruption.
  - In a much wider range of investigations, where the new Authority arrests a suspect using their powers, they will typically use the local police force's custody facilities.
127. We want to strengthen the new Authority's cooperation with other law enforcement bodies in order to ensure an effective operational response to serious worker exploitation.
128. In the vast majority of cases, the new Authority's work with police, NCA and Immigration Enforcement will take place based on informal cooperation between the new Authority and those bodies. We propose that these be enhanced through more formal memoranda of understanding with (for example) police forces, the NCA, Immigration Enforcement, HMRC-NMW and EAS to support effective joint working.
129. We also propose to introduce a formal statutory mechanism for the new Authority to request assistance from the NCA, the police or Immigration Enforcement. Refusal of assistance would require a written explanation. We expect that the very presence of this formal statutory avenue would make it less likely that reasonable, informal requests for assistance would be refused, and that most or all cooperation will take place without the need for a formal request.
130. There may be instances where, for legitimate operational reasons, other law enforcement bodies may be unable to provide the new Authority with immediate support due to the need to prioritise responding to an even more serious incident. We do not therefore want the new Authority to be able to over-ride the resource and prioritisation choices of Police and Crime Commissioners, Chief Constables or the Director-General of the NCA. For this reason, we propose that the 'power to ask' should stop short of the NCA's 'power to task'.

Question 20:

- What are the benefits of the new Authority having a formal power to ask for assistance from relevant organisations?

Question 21:

- Which organisations should this power apply to?

Question 22:

- Should other enforcement organisations be given the 'right to ask' the new Authority to offer operational support?  
(Yes/No/Not sure; Please give your reasons).

## Licensing

131. The GLA currently operates solely through licensing gangmasters in specified sectors. The licensing scheme aims to ensure that labour providers in those sectors meet the standards required by law.
132. Statutory licensing can be a valuable tool because it supports proactive compliance with a wide range of relevant minimum legal standards in sectors known to be at significant risk of worker exploitation. It can drive up standards in a high risk sector and provide valuable intelligence for enforcement operations against those who are committing serious exploitation.
133. However, licensing can also create burdens for the consistently compliant businesses within licensed sectors. The Government recognises that there are many examples of good and responsible businesses across the labour market. It is important that the Government's regulatory approach targets businesses who break the law and who exploit their workers, but doing so in a way that balances tackling exploitative practices with reducing unnecessary burdens on responsible businesses.
134. The Government recognises that it can achieve the objective of tackling exploitation through a range of interventions, including regulation. The changing nature of the threat of labour exploitation means we want to examine how the use of licensing in high risk sectors can contribute to the Director's plan. The Government believes that licensing can add value where the identified risk is the greatest and where there is a clear consensus in favour of this form of regulation amongst legitimate operators in the sector concerned. This should be done



without creating an overly burdensome regime for the many compliant businesses across labour sectors. With this in mind, we welcome views on what type of regulatory framework offers the best balance between those aims

135. The current licensing regime affects labour providers across several sectors, principally in the fresh produce supply chain. Through the current legislation, sectors can be removed from the licensing regime by regulation. This was last done in 2013, when certain sectors including forestry were removed from the regulatory regime. We would welcome views on whether the risk presented by the current sectors still justifies the licensing of businesses that operate in those sectors.
136. As part of this consideration of licensing, we would welcome views on how the current regime could be reformed to ensure that it targets the right risks and the riskiest businesses. This might be including licensing criteria that highlight a risk of exploitation or recognising those who are consistently compliant. This could be through increasing the duration of the licence in some circumstances or reforming the licensing criteria.
137. A further option would be for the Government to establish a flexible and evidence-based approach to using licensing as a tool to prevent exploitation in the very highest risk sectors. Any changes to the licensed sectors would be agreed by Parliament, after Ministers had considered an evidence based proposal from the Director. This would be based on a risk based intelligence analysis of labour sectors. We believe that this would enable both the impact on business and crime to be considered in a more rounded picture.

Question 23:

- Do you agree that the current licensing criteria should be reformed?  
(Yes/No/Not sure; Please give your reasons)

Question 24:

- What reforms do you think would improve the current licensing regime?

Question 25:

- Do you agree that we should introduce a more flexible approach to licensing, based on a risk assessment, judged on a sector by sector basis and agreed by Ministers and Parliament?  
(Yes/No/Not sure; Please give your reasons)

Question 26:

- Are there any sectors that you would remove from the current licensing regime? (Yes/No/Not sure; Please give your reasons)

## Other preventative activities

138. While it is vital that we bring to justice those who are exploiting workers, the Government wants to do more to stop such exploitation happening in the first place.
139. Most businesses are responsible and share the Government's goal to prevent worker exploitation and to drive unscrupulous employers out of the market. We want to give businesses as much freedom as possible to work with the new Authority and with each other to prevent exploitation, including by developing alternatives to mandatory licensing. We want to test whether there is a demand from businesses for the new Authority to increase the scope of the GLA's current collaboration with businesses on such activities; and, if there is such demand, what form such collaboration should take.
140. To inform the new Authority's efforts, the Director will set out an effective and coordinated plan to prevent exploitation in sectors where the intelligence hub indicates a threat of labour exploitation, but the evidence does not support the use of licensing.
141. Paragraphs 79 to 84 set out the role that we see the Director having in relation to supporting greater compliance with existing labour market regulation. The Director will need to be able to call on any of the enforcement bodies to assist in implementing the plan for that work.
142. HMRC and EAS have a different legal status that already enables them to undertake these kinds of activities. We want to ensure that the new Authority's powers are also broad enough to allow it to undertake entirely voluntary activities, in partnership with business, in any sector where the Director sees it as beneficial. We propose that:
- The new Authority should be able to work with others to develop training programmes to prevent labour exploitation. While the best approach will often be for the new Authority to work with training bodies and providers to encourage the development of an active market in such training, the new Authority should also be able to undertake training directly when this is the most effective way to prevent exploitation.
  - The new Authority should be allowed to input to the work of business organisations and other partners in developing voluntary codes of conduct to

demonstrate a responsible approach to the treatment of workers and preventing exploitation.

- The new Authority should be allowed to support the efforts of trade bodies in developing voluntary accreditation schemes.

143. We believe the new Authority should be able to charge for providing on-demand services to businesses. In line with the Government's policy on charging, the new Authority should not be able to make a profit on such activity. Such activity should only be carried out to prevent worker exploitation and should involve working with partners to develop accreditation and training solutions. Any charges must not exceed full cost recovery and must not be used to fund any other activity undertaken by the new Authority.

## Governance and oversight of the new Authority

144. The GLA is a Home Office Non-Departmental Public Body (NDPB). It is operationally independently of Government. Its Board and Chair oversee its work, and are ultimately accountable to the Home Secretary.

145. We intend that new Authority remains a Home Office NDPB that is operationally independent of Government. We are clear that we want a body that has the powers and reach necessary to tackle worker exploitation by any employer and that this purpose is set out clearly in legislation. It will do this by supporting the Director's coordinated plan to prevent labour market exploitation and acting in line with the priorities set out in the Director's plan. In doing so, the new Authority will continue to be accountable to Home Office Ministers for its performance (including approving its plan and submitting its accounts) and appointments will be made by Home Office Ministers. We believe that this will:

- Provide the new Authority with the clarity and authority that it needs to fulfil its new mission to tackle worker exploitation in support of the Director's plan.
- Provide the necessary strong oversight of the new Authority's use of police style powers. It is crucial that these powers are exercised with appropriate supervision.
- Support the new Authority in fulfilling its new mission to prevent serious worker exploitation, in support of the new Director's plan.
- Minimise the costs of transforming the GLA into the new Authority by reducing uncertainty around the transition from one NDPB to another.

146. It will be clear in legislation that the new Authority remains accountable to the Home Secretary for achieving its mission in support of the Director's annual plan, and that the new Authority Chair and Board must have regard to that plan in the exercise of their roles. We also propose that the Home Secretary's ability to

direct the new Authority under section 2 of the Gangmasters (Licensing) Act 2004 should be retained, but amended so that it is used only after consultation with the new Director.

Question 27:

- Will the proposed governance arrangements enable the new Authority to achieve its mission under appropriate oversight?  
(Yes/No/Not sure; Please give your reasons).

## **Territorial extent of proposed reforms**

147. The UK Government's responsibility for the issues discussed in this chapter extends mostly to England and Wales and Scotland, although the GLA also operates in Northern Ireland on behalf of the Department of Agriculture and Rural Development. The Government will consult the Northern Ireland Executive as to whether it wishes the proposals to extend to Northern Ireland. If so, this would require the agreement of the Northern Ireland Assembly. However, the UK Government's responsibility extends only to England and Wales in respect of some of the proposals – in particular, offences in the Modern Slavery Act 2015 (paragraph 118), police-style powers (paragraph 120), powers under the Proceeds of Crime Act 2002 (paragraph 122) and Slavery and Trafficking Prevention Orders and Slavery and Trafficking Risk Orders (paragraph 123). These proposals will extend only to England and Wales unless the Scottish Government and Scottish Parliament decide to take forward similar proposals for Scotland. The Government will consult the Scottish Government on all of the proposals. The Government will also consult the Welsh Government.

## 6. Summary of questions

### The case for more effective enforcement

1. Do you agree that more needs to be done to tackle organised labour market exploitation?

- Yes  
 No  
 Not sure

Please give your reasons.....

### A new Director of Labour Market Enforcement and more flexible enforcement

2. Do you agree with the following statement?

*“Establishing a new Director for Labour Market Enforcement to set the strategic direction of the enforcement bodies will be effective in tackling worker exploitation”*

- Yes  
 No  
 Not sure

Please give your reasons.....

3. What other factors should we consider in developing the new Director role?

### New offence of aggravated labour law breach

4. Do you agree that a new offence of aggravated labour law breach is needed to tackle the exploitation of workers?

- Yes  
 No  
 Not sure

Please give your reasons.....

5. Which of the options described would be effective in tackling labour market exploitation?

- A) create an offence involving a motivation intention to deprive a worker of their rights or to exploit a worker in connection with the commission of the offence;

- B) create a new type of improvement notice;
- C) both A) and B);
- D) None of the options.

Please give your reasons.....

6. What are the benefits of creating an offence involving intention to deprive a worker of their rights?
7. What are the benefits of creating an offence involving motivation to exploit a worker or exploiting a worker in connection with such an offence?
8. What are the benefits of creating a new type of improvement notice to tackle exploitation of workers?

## Information sharing

9. Do you agree on the need for powers to share data and intelligence across the enforcement bodies and with other organisations?

- Yes
- No
- Not sure

Please give your reasons.....

## Reforming the GLA

10. Do you agree with the proposal to expand the role of the Authority or should we retain the current model?

- Yes, expand the role of the Authority
- No, retain current model
- Not sure

Please give your reasons.....

## The objectives and remit of the new Authority

11. Do you agree that the mission of the new Authority should be to prevent, detect and investigate worker exploitation, in support of the Director's annual plan?

- Yes
- No
- Not sure

Please give your reasons.....

12. Should the new Authority work with business to provide training, and develop codes of conduct and voluntary accreditation schemes?

- Yes  
 No  
 Not sure

Please give your reasons.....

13. Should the new Authority be able to charge for such services?

- Yes  
 No  
 Not sure

Please give your reasons.....

14. What other tasks might the new Authority perform?

## Powers of the New Authority

15. Do you agree that the new Authority should be able to investigate labour market breaches and offences that fall under the remit of the new Director, including the new aggravated breach offence and Modern Slavery Act offences, as well as breaches of National Minimum Wage/National Living Wage and employment regulations, where they are connected with labour exploitation?

- Yes  
 No  
 Not sure

Please give your reasons.....

16. Do you agree that the new Authority should have the power to investigate these offences across all sectors of the labour market?

- Yes  
 No  
 Not sure

Please give your reasons.....

17. Are the investigative powers proposed appropriate given the new Authority's functions?

- Yes  
 No

If No, which ones should not be designated?

- The ability to enter and search premises with a warrant authorised by a Justice of the Peace (under section 8 of the Police and Criminal Evidence Act (PACE))
- The power to enter premises to execute an arrest warrant or for the purpose of arresting someone for an indictable offence (under section 17 PACE)
- The power to search premises controlled by person under arrest (under section 18 PACE)
- The powers to search a person at time of arrest and, when a person is arrested for an indictable offence, to search premises in which person was immediately prior to arrest (section 32 PACE)
- The power to use reasonable force in exercise of PACE powers, (section 117 PACE)
- The ability to seize evidence and then sift through it under section 50 of the Criminal Justice and Police Act.

Please give your reasons.....

18. Are there any additional powers the new Authority should have? Please describe and give your reasons.

19. Do you agree that the new Authority should be able to use Proceeds of Crime Act powers to recover criminal assets?

- Yes
- No
- Not sure

Please give your reasons.....

20. What are the benefits of the new Authority having a formal power to ask for assistance from relevant organisations?

21. Which organisations should this new power apply to?

22. Should other enforcement organisations be given the 'right to ask' the new Authority to offer operational support?

- Yes
- No
- Not sure



Please give your reasons.....

## Licensing

23. Do you agree that the current licensing criteria should be reformed?

- Yes  
 No  
 Not sure

Please give your reasons.....

24. What reforms do you think would improve the current licensing regime?

25. Do you agree that we should introduce a more flexible approach to licensing, based on a risk assessment, judged on a sector by sector basis and agreed by Ministers and Parliament?

- Yes  
 No  
 Not sure

Please give your reasons.....

26. Are there any sectors that you would remove from the current licensing regime?

Yes/No/Not sure; Please give your reasons

- Yes  
 No  
 Not sure

Please give your reasons.....

## Governance and oversight of the new Authority

27. Will the proposed governance arrangements enable the new Authority to achieve its mission under appropriate oversight?

- Yes  
 No  
 Not sure

Please give your reasons.....

## 7. Comments or complaints on the conduct of this consultation

If you wish to comment on the conduct of this consultation or make a complaint about the way this consultation has been conducted, please write to:

Angela Rabess  
BIS Consultation Co-ordinator,  
1 Victoria Street,  
London  
SW1H 0ET

Telephone Angela on 020 7215 1661  
or e-mail to: [angela.rabess@bis.gsi.gov.uk](mailto:angela.rabess@bis.gsi.gov.uk)

However if you wish to comment on the specific policy proposals you should contact the policy lead (see section 2).



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