



HM Government

# United Kingdom Labour Market Enforcement Strategy 2021/22

Interim Director of Labour Market Enforcement

Matthew Taylor

December 2021



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**Interim Director of Labour Market Enforcement**  
**Matthew Taylor**

Presented to Parliament pursuant to Section 5 (1)  
of the Immigration Act 2016

December 2021



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ISBN 978-1-5286-2880-8

E02666976 12/21

Printed on paper containing 75% recycled fibre content minimum

Printed in the UK by HH Associates on behalf of the Controller of Her Majesty's Stationery Office

# Contents

Foreword .....	1
Table of recommendations.....	2
Section 1: Introduction and context.....	4
1.1 Introduction .....	4
1.2 The role of the Director of Labour Market Enforcement.....	5
Section 2: Scale and nature of non-compliance: Risk model .....	9
2.1 Introduction .....	9
2.2 Methodology.....	10
2.3 Key findings from risk model .....	11
2.3.1 Different perspectives and assessment.....	11
2.3.2 Sectors with high impact of non-compliance .....	11
2.3.3 Sectors by level of enforcement activity .....	13
2.3.4 Size of sector .....	13
2.4 Improving understanding of non-compliance within a sector: case study of Leicester garment manufacturing.....	14
2.5 Conclusion and recommendations .....	16
Section 3: Improving the evidence base .....	17
Section 4: COVID-19, economic change and non-compliance.....	19
4.1 Introduction .....	19
4.2 Impact of pandemic on employment .....	19
4.3 Implications of the economic downturn for the labour market and workers .....	20
4.4 The challenge to labour market enforcement during the pandemic and its aftermath .	23
4.5 Countering the increasing threat from online recruitment .....	25
4.6 Conclusion and recommendations .....	27
Section 5: Future risks related to changes in the immigration system.....	28
5.1 Introduction .....	28
5.2 Changes to the immigration system and supply of EEA workers.....	29
5.3 Impact on EEA labour .....	30
5.4 Potential labour market enforcement action .....	33

5.5 Future interaction between labour market and immigration enforcement.....	34
5.6 Conclusion and recommendations .....	35
Section 6: Future enforcement with the creation of the Single Enforcement Body .....	37
6.1 Introduction .....	37
6.2 Critical success factors for the development of the SEB .....	38
6.2.1 Ethos, culture, engagement .....	38
6.2.2 Capacity, methods and resources .....	40
6.2.3 National and local collaboration .....	42
6.3 Conclusion.....	43
Section 7: Director of Labour Market Enforcement workplan 2021/22.....	45
Annex A: Data sources on labour market non-compliance during the pandemic .....	47
Annex B: Scale and nature of non-compliance – sectors.....	50
Annex C: List of organisations engaged in workshops.....	52
Acronyms.....	54
References .....	56

# Foreword

Signing off this Strategy will be my final act as Interim Director of Labour Market Enforcement as my appointment has come to an end. I wish the next Director every success and very much hope they can build on my work and that of my predecessor, Sir David Metcalf.

In the sphere of labour market enforcement, this is a time of major challenges but also important opportunities.

The challenges I highlight in this Strategy are twofold. Firstly, a deteriorating labour market could result in greater vulnerability for workers, requiring a stronger focus on upholding worker protections. Secondly, the new immigration rules introduced in 2021 may have unintended consequences for labour market compliance and enforcement, especially in low-paid sectors.

The opportunity lies in the creation of the Single Enforcement Body (SEB) and a renewed approach to labour rights enshrined in the government's forthcoming Employment Bill. The Strategy shares timely and valuable work undertaken by the Office of the Director of Labour Market Enforcement (ODLME) to explore key issues facing the new enforcement body and reinforces our offer to do more to make it a success.

I leave office concerned that the government has not fully grasped the nature of the challenges I describe, or the scale of the opportunity provided by the SEB. I very much hope this Strategy helps to address this and that the coming period will see our system of labour market compliance and enforcement continue to adapt and improve.

The UK has had a strong record on job creation over recent years, but quality of work matters as much as quantity. Minimum standards that are demonstrably enforced are the bedrock of a healthy labour market. I urge the government not to lose sight of this.

I would like to thank the many stakeholders who have engaged with my Office since my appointment in August 2019, and the staff of the three enforcement bodies and sponsor departments.

I end with thanking my small and excellent team for all their work and for producing this report, led by Tim Harrison, and including Moosa Abbas, Mark Birch, Emily Eisenstein, Michael Flynn, Bethan Hunt, Ellie-May Leigh and Carolina Martinelli.



**Matthew Taylor**  
**Interim Director of Labour Market Enforcement**

Submitted to Government on 30 January 2021

# Table of recommendations

	<b>Recommendation</b>	<b>Delivery timescales<sup>1</sup></b>	<b>Lead body</b>
<b>1</b>	<p><b>Risk modelling</b></p> <p>I recommend that the enforcement bodies, together with the ODLME Information Hub and external experts, continue to develop the risk model, including widening the information sources used and improving the robustness of the data. This evolving model should feed into the development of the Single Enforcement Body's approach to assessment and prioritisation of risk. The assessment should be reviewed every six months.</p>	<p>Ongoing feeding into the SEB</p> <p>Assessment to be reviewed every six months</p>	All bodies with ODLME
<b>2</b>	<p><b>Sector-based approach</b></p> <p>I recommend that the enforcement bodies should work with ODLME through the Strategic Coordination Group (SCG) to adopt a more strategic, sector-based joint-working approach to tackle non-compliance in high-risk industries. A two-year programme of work should be developed with appropriate interim milestones, to commence at the beginning of the 2021/22 financial year. The learning and progress from this programme of work will feed into developing an effective sectoral approach for the SEB.</p>	Two-year programme to commence beginning of the 2021/22 financial year	All bodies with ODLME
<b>3</b>	<p><b>Managing compliance risks from changes in the labour market</b></p> <p>To monitor and mitigate the potential risk to workers related to a changing labour market, I recommend:</p> <p>a) that both HMRC NMW and EAS are given the resource and ability to utilise more timely and impactful communication approaches;</p> <p>b) that all three bodies seek to overcome current intelligence and information gaps by maximising the use of new and alternative data sources (e.g. from fraud investigations into the Coronavirus Job Retention Scheme) to identify potentially non-compliant employers.</p>	<p>By end of 2021</p> <p>By 2022</p>	<p>HMRC NMW and EAS</p> <p>All bodies</p>
<b>4</b>	<p><b>Managing shared challenges</b></p> <p>To support the three bodies in dealing with shared challenges and rapid changes ahead, I recommend that the heads of HMRC NMW, GLAA and EAS convene, with coordination from the ODLME, to identify issues of common concern and to find joint solutions wherever possible. This forum could address issues such as resourcing, use of innovation, training and operational cultures, and potentially involve time-limited and measurable workstreams.</p>	To commence by the beginning of the 2021/22 financial year	All bodies with ODLME

<sup>1</sup> This Strategy was submitted to Government on 30 January 2021. Because of the delay in publication, the original delivery dates for some of the recommendations have lapsed. However, the expectation remains that the government and enforcement bodies will implement these recommendations as part of their business planning for 2022/23.

	Recommendation	Delivery timescales <sup>1</sup>	Lead body
5	<p><b>Online recruitment</b></p> <p>To better understand and develop ways of tackling heightened risks in online recruitment, I recommend:</p> <p>a) that BEIS and EAS, working with the recruitment industry and JobsAware (formerly SAFERJobs), explore how they can better use innovative technologies to identify fake and fraudulent jobs advertised online;</p> <p>b) that BEIS (i) prioritise the completion of the review of online recruitment accepted from the 2019/20 LME Strategy to evidence better the online harms threat and (ii) feed the findings into broader government and industry discussions around regulating online activity, with a view to identifying practical safeguards and remedies for jobseekers affected by this threat.</p>	<p>By end of 2021/22 financial year</p> <p>Complete review by end of 2021/22 financial year</p>	<p>BEIS and EAS</p> <p>BEIS</p>
6	<p><b>Immigration and labour market enforcement</b></p> <p>To increase the focus and build the evidence base around the impact of the new immigration system on labour market enforcement, I recommend:</p> <p>a) that a strategic oversight group be established involving relevant government departments and enforcement agencies focusing on the potential labour market enforcement implications arising from the new immigration system. To be implemented by the end of June 2021, before the deadline for applications for the EU Settlement Scheme;</p> <p>b) that Home Office and BEIS commit to regular and ongoing monitoring of the impact of the new immigration system on labour market compliance, building on existing structures such as the Vulnerability Advisory Group. In addition, there should be an independent evaluation of these impacts after 18 months of the new system;</p> <p>c) that Home Office and BEIS, working with the enforcement bodies, should review the interaction between labour market and immigration enforcement to ensure sufficient protections for migrant workers and improve intelligence flows via safe reporting structures. This should feed into development of the SEB.</p>	<p>To be established by end of June 2021</p> <p>Monthly monitoring</p> <p>Evaluation to report by the end of 2022</p> <p>By end of 2021/22 financial year</p>	<p>Home Office</p> <p>Home Office and BEIS</p> <p>Home Office, BEIS and enforcement bodies</p>
7	<p><b>Immigration and labour market enforcement</b></p> <p>The labour market enforcement bodies should urgently act to mitigate the labour exploitation risks of the new immigration system. For all three bodies, I recommend:</p> <p>a) that they identify sectors and locations with high numbers of European Economic Area (EEA) migrant workers and issue communications targeting both workers and employers to raise awareness about the immigration changes;</p> <p>b) that they better monitor emerging risks from the new immigration rules to be able to respond in a timely manner, by increasing their working with: (i) other enforcement bodies and; (ii) third-party organisations (such as unions, NGOs).</p>	<p>By mid-2021</p> <p>To commence beginning of 2021/22 financial year</p>	<p>All enforcement bodies</p>



# Section 1: Introduction and context

## 1.1 Introduction

This is the fourth full Labour Market Enforcement (LME) Strategy and the second under my tenure. I was appointed in August 2019 as Interim Director. My contract ends after January 2021: therefore this will be my last report as Interim Director. I have been doing this role part-time (one-and-a-half days a week), supported by a small cross-departmental team. I am proud of the work that has been carried out during this time, but there is much left to do. EU exit, the COVID-19 pandemic and uncertain economic times make protecting workers' rights all the more important and urgent. I hope the next Director of Labour Market Enforcement (DLME) will pursue some of the priorities that myself, and my predecessor Sir David Metcalf, have worked to progress while in the role.

Unlike previous LME strategies, this year I did not issue a formal Call for Evidence, but instead engaged with stakeholders through a series of virtual workshops (see Annex C for a list of participants). These resulted in fascinating and wide-ranging discussions focusing on the key success factors for the future Single Enforcement Body (SEB) and on the potential risks of exploitation and non-compliance related to the new immigration system. My Office also undertook an in-depth review of risks across the labour market, working in close collaboration with the three enforcement bodies and wider law enforcement partners.

The Strategy draws on this evidence base to provide the key findings of the intelligence and risk model, summarising what we know about the scale and nature of non-compliance across sectors (Section 2). Section 3 then sets out DLME progress and future plans on research to address gaps in our knowledge in this area. I then focus on the changing economic conditions due to the pandemic and potential impact on exploitation and non-compliance (Section 4) and the potential increased risk to workers related to the new immigration system (Section 5). Section 6 builds on my initial response to the Government's Consultation on the SEB, discussing what is needed in the organisation to ensure it maximises its effectiveness, and sets out a number of workstreams that I believe should be taken forward with urgency. Finally, Section 7 proposes the Office of the Director of Labour Market Enforcement (ODLME) workplan for the next year.

## 1.2 The role of the Director of Labour Market Enforcement

The Immigration Act 2016 created the position of the Director of Labour Market Enforcement (DLME) to bring together a coherent assessment of the extent of labour market exploitation, identifying routes to tackle exploitation and harnessing the strength of the three main enforcement bodies: HM Revenue and Customs National Minimum Wage (HMRC NMW), the Gangmasters and Labour Abuse Authority (GLAA), and the Employment Agency Standards (EAS) Inspectorate.

These three bodies are very different in scale, governance, remit, powers and approaches. They all have great strengths, not least the knowledge, skills and dedication of their staff, but also each face particular challenges. Figure 1.1 sets out their remits, budgets and head counts, giving useful context to understanding how they go about their enforcement roles, how they interact with each other, and why bringing them together under the umbrella of the SEB will be a challenging task.

**Figure 1.1: Overview of the resourcing and scope of the three enforcement bodies**

Enforcement body (Responsible department)	Funding in £m (FTE staff)			Focus and scope	Geographic coverage
	2018/19	2019/20	2020/21		
<b>HMRC NMW (BEIS)</b>	26.2 (429)	26.3 (433)	26.4 (420*)	All employers and workers in scope, covering around 2m workers in low-paid jobs	UK
<b>GLAA (Home Office)</b>	6.4 (122)	7.3 (112)	7.2 (118.58*)	Over 1,000 licensed labour providers, supplying around 0.5m workers  Modern slavery: estimated 10-13,000 potential victims**	Licensing: England, Scotland, Wales and by order in Northern Ireland. LAPO coverage: England and Wales***
<b>EAS (BEIS)</b>	0.725 (15)	1.125 (27)	1.525 (28.8*)	Around 29,000 Employment Agencies, covering 1.1m workers	England, Wales, Scotland

Sources: BEIS (2020b; 2021), GLAA management information, EAS data submission to DLME

\* EAS: includes vacant posts due to be filled in 2020/21. GLAA: figure at the end of January 2021. HMRC NMW: full-time equivalent (FTE) figure for year end, excluding vacancies.

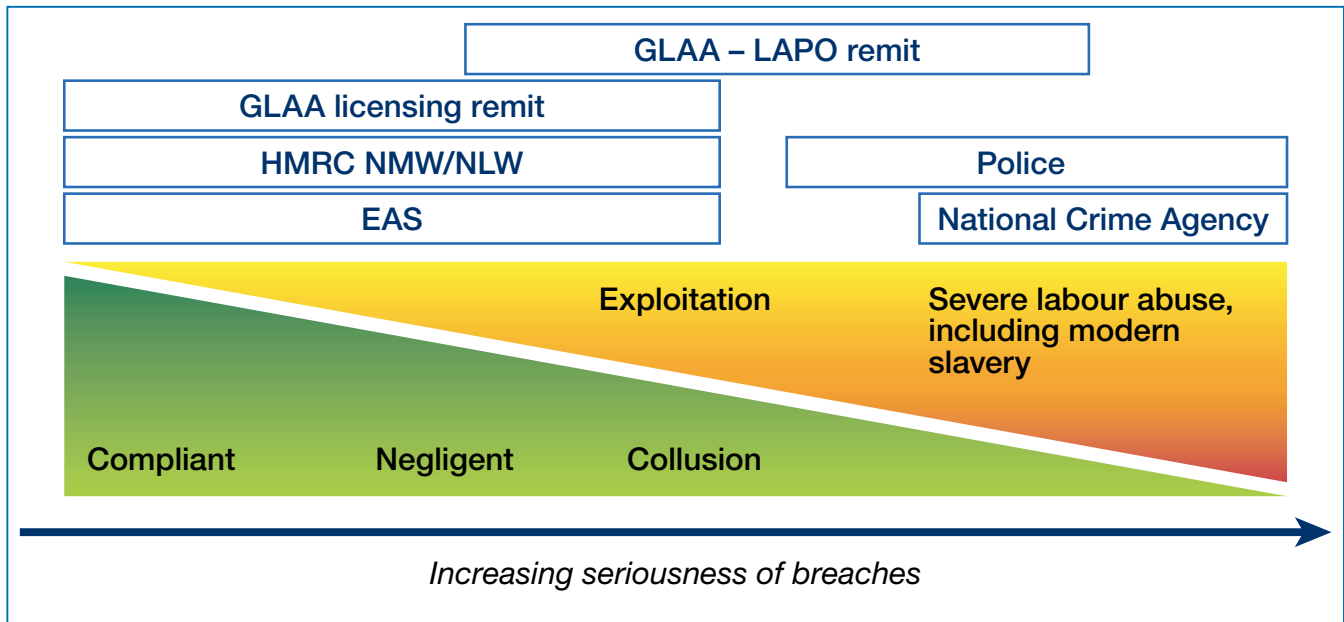
\*\* Based on an estimate of there being between 10,000 and 13,000 potential victims of modern slavery in the UK in 2013 (Silverman, 2014).

\*\*\* The Immigration Act (2016) gave the GLAA a much broader role addressing labour exploitation across the entire labour market, including modern slavery offences. The new activity is carried out by Labour Abuse Prevention Officers (LAPOs). LAPOs have powers to: investigate labour market offences; arrest suspects; enter premises; search and seize evidence.

HMRC NMW is the largest of the three bodies, with an annual budget for 2020/21 of £26.4 million. This makes it over three times the size of the other two bodies combined, with funding for GLAA at £7.2 million and EAS at £1.525 million. For 2020/21, HMRC NMW had a small increase in budget (£0.1 million), and the budget for EAS increased by £0.4 million, representing a doubling of resources over two years. However, GLAA's annual budget decreased by £0.1 million.

Figure 1.2 below sets out a high-level view of my compliance remit, and that of the enforcement bodies. My role covers the whole spectrum of labour market enforcement offences, from low level to the most severe offences.

**Figure 1.2: Spectrum of non-compliance**



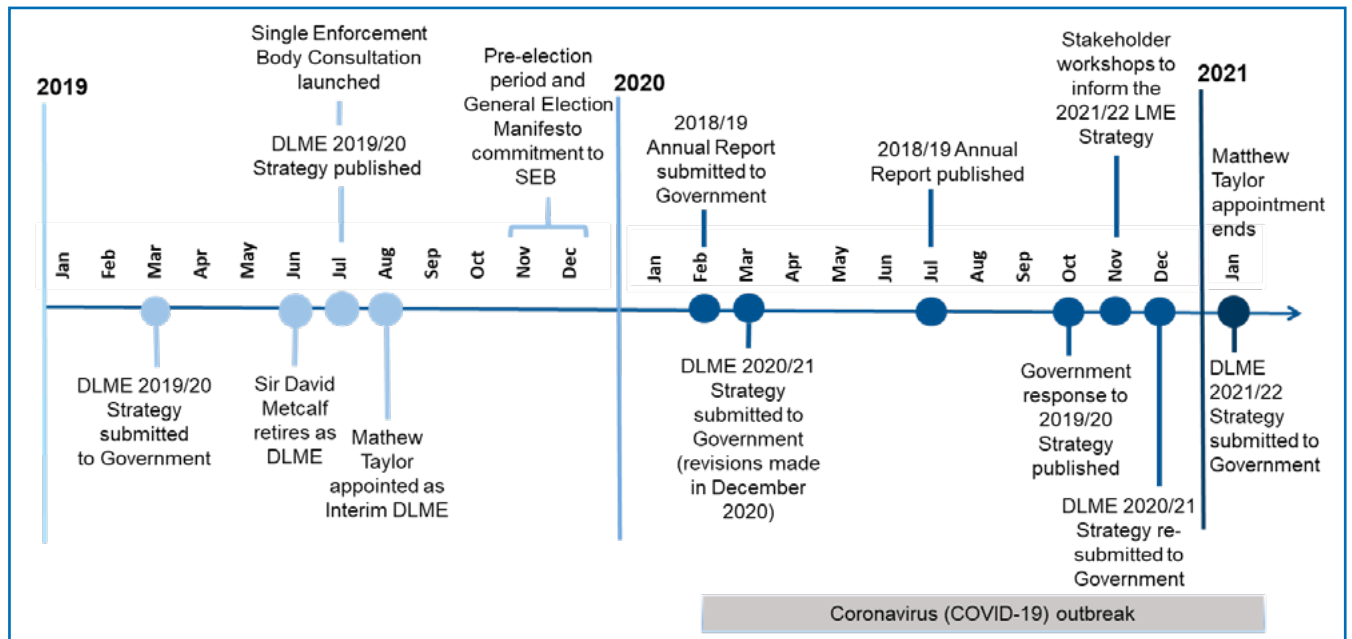
Under the legislation, the Director must:

- produce an annual labour market enforcement strategy, approved by the Department for Business, Energy and Industrial Strategy (BEIS) and Home Office Secretaries of State, to set priorities for the three main enforcement bodies;
- develop the DLME Information Hub; and
- produce an annual report setting out for Ministers how, collectively, the enforcement bodies performed relative to the ministerially agreed strategy from the previous year.

The timeline in Figure 1.3 sets out the key milestones in the work of the ODLME and wider labour market enforcement, providing important context for some of the discussion in this Strategy.

In theory, there should be a regular cycle of strategies and annual reports that are published in a timely manner, and which provide regular strategic direction for the enforcement bodies. In practice, even before the pandemic, this timescale of work has not been smooth (see Figure 1.3). Thus, at the time of writing this Strategy for 2021/22, my previous Strategy for 2020/21 has yet to be published, despite being submitted in March 2020. Having agreed recommendations at official level, this Strategy was re-submitted to Ministers in December 2020 and I hope to see it published in early 2021. Meanwhile the Government response for the 2019/20 Strategy (BEIS and Home Office, 2020) was only published in October 2020 and, as I write in January 2021, we still await the Government response to the SEB consultation, which closed over 12 months ago.<sup>2</sup>

**Figure 1.3: Timeline for ODLME and labour market enforcement work**



While I fully recognise the pressures experienced by government in the past year, COVID-19 and the impact on the economy brings the need for an effective system of labour market enforcement into even greater focus. The failure of the departments to keep to expected and effective timelines undermines the role and work of the DLME and slows progress in protecting workers. I hope to see a response to this Strategy within three months of submission, and especially as many of the recommendations are highly time sensitive.

LME strategies are produced on an annual basis, as required by the legislation. To avoid duplication of analysis and repetition of recommendations, each has had a different focus, although of course there are common themes that run through them all. Figure 1.4 gives an overview of the focus of each strategy to date.

<sup>2</sup> The Government published its response to the SEB consultation in June 2021. [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/991751/single-enforcement-body-consultation-govt-response.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/991751/single-enforcement-body-consultation-govt-response.pdf)

**Figure 1.4: Themes of LME strategies**

<b>Introductory Report</b> (Published July 2017)	Outlined role of the Director, enforcement landscape and the focus of the 2018/19 Strategy. Made no recommendations.
<b>2018/19 Strategy</b> (Published May 2018)	<p><b>Full review of Labour Market Enforcement</b> Focused on the scale and nature of non-compliance, deterrence and compliance approaches to enforcement and addressing enforcement gaps.</p> <p><b>Government response to the 2018/19 Strategy (Published December 2018)</b> Fully accepted 29 of 37 enforcement recommendations, partially accepted two, committed to consult on three and rejected three.</p>
<b>2019/20 Strategy</b> (Published December 2019)	<p><b>Technical report</b> Focused on use of resources and prioritisation, compliance approach and having a sustainable impact on employers' behaviour, and joint working to improve enforcement and address enforcement gaps.</p> <p><b>Government response to the 2019/20 Strategy (Published October 2020)</b> Accepted 5 of 12 recommendations, partially accepted 6 and rejected one.</p>
<b>2020/21 Strategy</b> (Published early 2021)	<p><b>Sectoral approach</b> Focused on four high-risk sectors: adult social care, agriculture, construction and hand car washes, to identify how enforcement could be improved through a sectoral approach. Awaiting publication but recommendations have been agreed with Government.</p>
<b>2021/22 Strategy</b> (to be published 2021)	<p><b>Risks in a changing labour market and development of the SEB</b> Focuses on emerging threats in the labour market including economic downturn, leaving the European Union, changes in immigration and COVID-19, and the steps which need to be taken to inform the design of a SEB.</p>

Due to a number of factors, this Strategy is shorter and has fewer recommendations than previous strategies. Firstly, there are immense changes currently affecting the labour market; EU exit, the economic downturn and COVID-19 mean that short- to medium-term trends are currently very difficult to predict, being dependent on when, how well, and how fast the country recovers from the pandemic and adapts to being outside the EU.

Secondly, the overlap with the 2020/21 Strategy means that all the recommendations in that report have not yet been implemented (although the enforcement bodies have already made progress on some of them). I hope that this will soon be published as an accepted Strategy not requiring a government response, and the enforcement bodies and two departments can progress its ideas at pace. In the meantime, I did not wish to duplicate or overburden the bodies with numerous further recommendations.

Thirdly, my departure from this role in January has brought forward the deadline for submitting this Strategy to government by two months, affecting the level of engagement and analysis my team have been able to do.

However, the recommendations that I make in this report are urgent. The combination of the economic downturn, lockdown of whole industries and regions for months, health and safety risks related to COVID-19, increasing individual financial hardship, a new immigration system, and new trading relationships with our nearest neighbours, raise a multitude of concerns about how vulnerable workers will be impacted.

# Section 2: Scale and nature of non-compliance: Risk model

## 2.1 Introduction

The Immigration Act 2016 sets out the requirement for the Director to assess the scale and nature of non-compliance in the labour market. Previous LME strategies have highlighted the substantial evidence gap around this, which we have been seeking to fill by means of a comprehensive piece of commissioned research, specifically designed to cover hard-to-reach populations. Progress against that goal is discussed in Section 3.

Evidencing the current scale and nature of labour market non-compliance has been an even greater challenge this year, with many of our alternative information sources severely impacted by the knock-on effects of the pandemic (see Annex A).

One of the ways my Office has progressed this work in previous strategies is through intelligence and risk assessments using the Management of Risk in Law Enforcement (MoRiLE) methodology.<sup>3</sup> This resulted in the identification of sectors that were assessed as posing the most serious risk of harm to workers.

After three iterations of MoRiLE, the team and I felt it was time to review the process and methodology. Working closely with the enforcement bodies and a range of law enforcement and regulatory partners, the DLME Information Hub carried out a full review of the MoRiLE process to date, considering:

- how alternative methodologies might enhance the analysis;
- how existing data could be better utilised for more nuance and granularity;
- which broader sources of evidence could be incorporated to fill knowledge gaps; and
- how to present these findings in the most accessible and actionable manner for policy and strategic considerations alike.

I am very pleased with the progress made here and believe that the assessment provides a more detailed insight into the complexities of the exploitation threats faced across the labour market. The model can be further refined, and information and intelligence gaps still remain. However, the new process provides a more robust and comprehensive analysis, providing a valuable step towards having an overarching assessment of risk for the SEB.

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<sup>3</sup> MoRiLE is a structured methodology applied across law enforcement agencies to support prioritisation, providing a consistent approach to identifying tactical and strategic policing. MoRiLE methodology assesses impact, physical, psychological and financial harm to individuals, the community, public expectation and environmental impact; likelihood, confidence and organisational position, taking account of an organisation's capacity and capability to address the threat.

## 2.2 Methodology

The risk and intelligence model covers the spectrum of non-compliance – from modern slavery at the high-harm end, through deliberate or serious non-compliance, to inadvertent error at the lower-harm end (see Figure 1.2). The new model allows a more multi-faceted consideration of the threats than previously, thereby highlighting a wider range of risks, including those where non-compliance is generally low-risk in terms of the harm to individual workers, but high-risk in terms of volume.

The revised method is an evolution of MoRiLE, drawing on intelligence assessed by the three bodies, complemented by strategic intelligence from other partner agencies and additional information from external stakeholders and open-source reporting.

Sectors have been assessed across three factors:

- **Impact of non-compliance** – reflects the predominant types of non-compliant behaviour encountered by the enforcement bodies in the assessment period, ranging from one end where the majority of non-compliance is an error by the employer and there is minimal impact on individuals, to the other extreme where there are high levels of deliberate non-compliance by employers and workers at risk from modern slavery.
- **Enforcement activity** – reflects the overall number of cases (from complaint or intelligence, to investigation, to penalty and sanction) for each sector across the enforcement bodies in the assessment period.
- **Population of workers** – quantifies the size of the industry by identifying the number of businesses and number of workers in each sector. This is primarily based on Office for National Statistics (ONS) data, and, where this was not available, other open-source data.

The pandemic has had a massive impact during 2020. Whole sectors (many of them employing high numbers of low-paid workers) have closed for months, while others have seen sharp increases in demand. This has impacted on the level of complaints and intelligence received by the enforcement bodies, as well as the type of enforcement and compliance activity they have been able to undertake (see Section 4). Given these dynamic changes, this risk assessment has used data from the financial year 2019/20 to establish a baseline from a year of more of ‘normal’ operations, although (wherever possible) the analysis took account of more recent changes in the intelligence picture.

Some sectors continue to be identified as high risk and require particular attention. However, as the labour market impacts of the pandemic are still unfolding and this analysis is drawing on data pre-COVID-19, I do not expect the enforcement bodies to base their priorities on the sectors highlighted in this analysis in the same way as previous years.

I encourage the enforcement bodies to be agile and responsive throughout 2021/22 and work together to address changing circumstances and emerging issues. I would like to see this analysis updated regularly (I suggest every six months), particularly during these times of rapid change. This should support the bodies to identify and analyse trends in non-compliance, both in terms of changes in the identified risks and to understand the impact of their compliance and enforcement activities.

## 2.3 Key findings from risk model

### 2.3.1 Different perspectives and assessment

This analysis process really brought to the fore that there are many areas in which the enforcement bodies have a difference in perspective or assessment about the level and type of risk and harm. While in some sectors there was alignment in the assessment across the three bodies in terms of impact of non-compliance, in others this was not the case. This reflects the different remits of the bodies, and hence the type (and volume) of cases they will each see across individual sectors.

For example, in the food and beverage sector (i.e. restaurants and pubs), because of their remit covering the higher end of labour exploitation, the GLAA receives from law enforcement partners intelligence that is more likely to involve severe non-compliance. EAS and HMRC NMW, given their remits, will deal with cases where the level of harm to the worker is lower, involving varying levels of underpayment of NMW and charges by employment agencies.

I welcome this difference of views and experience between the enforcement bodies, and this type of granularity and nuance is precisely what I wanted to capture through the risk model. It is crucial to understand the complexity in the intelligence and enforcement picture as the enforcement bodies move towards the SEB. All three bodies have their own areas of expertise and knowledge which must be brought together, but not lost, through the merger of their remits. Currently they each have different ways of capturing information, different definitions of non-compliance, operate under different legislation, and their staff have been trained to look for different types of non-compliant behaviour.

This analysis is the start of developing a shared understanding of the non-compliance picture. Going forward, this will require common definitions and language between the bodies, as well as joined-up information and intelligence systems and risking frameworks.

This work needs to be prioritised for the development of the SEB to give it a solid information base on which to sensibly allocate its resources and interventions across the spectrum of non-compliance.

### 2.3.2 Sectors with high impact of non-compliance

In terms of the impact of non-compliance, the list of at-risk sectors is broadly consistent with the sectors reported in previous strategies.<sup>4</sup> Sectors assessed as highest risk (where the assessment with the enforcement bodies concluded there were instances of highest level of impact on workers, including cases of modern slavery) are:

- food processing and packaging;
- hand car washes;
- agriculture; and
- construction.

Also assessed as high risk (including instances with substantial impact on workers, deliberate non-compliance and repeat offenders) were:

- garment and textile manufacturing;
- shellfish gathering;

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<sup>4</sup> The 2020/21 LME Strategy listed the following sectors as severe risk: hand car washes, agriculture. The following sectors were assessed as high risk: care sector, construction. The following sectors were assessed as medium risk: hospitality, shellfish, nail bars, poultry and eggs, warehouses, food processing and packing, garments and textiles.



- poultry and eggs (chicken catchers);
- modelling (specifically fraud in relation to portfolios and other services); and
- fraudulent or misdescribed online job applications.

Further details on each of these sectors, and selected others is provided in Annex B.

The consistency with previous assessments demonstrates the persistent threat of severe and deliberate labour exploitation in these sectors, and supports my argument set out in Section 6 for the SEB developing sectoral approaches, as well as my recommendation in the 2020/21 Strategy that *“Home Office and BEIS, in partnership with ODLME, should investigate a sectoral approach into the design of the Single Enforcement Body, to bring together enforcement bodies and wider stakeholders to develop ways of identifying, analysing, mapping and effectively tackling non-compliance in particular industries”* (DLME, 2021, p.10).

These high-risk sectors are all complex but highly differentiated, with structural characteristics which facilitate non-compliance and increase the risk of workers being severely exploited. Progress on tackling these areas will require the enforcement bodies to: build on the work they are already doing, but with a stronger focus on joint working; build the evidence base to accurately identify the scale and nature of labour abuses; understand the business models and financial incentives for businesses; and build effective relationships with compliant businesses, industry bodies and worker groups to promote and enforce standards in the workplace (see Recommendation 2).

There has been a change in the assessment of impact of non-compliance for some sectors. Notably:

- **Social care:** Due to the pending Supreme Court judgment on sleeping time,<sup>5</sup> social care has not been included in HMRC NMW’s Targeted Enforcement Programme, although complaints continued to be addressed. Since the pandemic, NMW teams have generally been unable to visit social care locations.
- **Food packaging and processing:** This sector has moved from low risk of harm in the 2018/19 and 2019/20 assessment to medium in 2020/21 and is now considered high. In the previous assessments, the risks of severe labour exploitation and NMW non-compliance were considered separately. As these risks have been combined in the new risk model, the assessment of the level of impact of non-compliance sector has increased. This sector has had a significant increase in demand over 2020 and continues to be closely monitored by the enforcement bodies.
- **Warehousing:** This sector has previously been rated as high risk as cases of severe labour exploitation had been reported. Such cases were reported less in this period, therefore the risk is assessed to have decreased.
- **Modelling:** This is a newly assessed risk included in the assessment due to the inclusion of more sectors in the analysis. The assessment identifies deliberate non-compliance in this area, including the charging of high up-front fees to produce a model’s portfolio to ‘assist’ the person’s jobseeking. These portfolios can be of poor quality, and jobseekers are encouraged to sign credit agreements to pay for these, resulting in financial harm and potential vulnerability to exploitation.

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<sup>5</sup> The Supreme Court delivered its judgment on 19 March 2021. See <https://www.supremecourt.uk/cases/uksc-2018-0160.html>

### 2.3.3 Sectors by level of enforcement activity

Previous risk reviews focused solely on sectors where the impact of non-compliance was high. The new assessment also focuses attention on risks where the level of harm to individuals is lower, but the volume of cases is high. This provides a more balanced assessment of non-compliance and the related enforcement activity across the span of the remits of the three bodies and across the wider UK labour market.

The sectors with the highest level of enforcement activity are:

- food and beverage service activities;
- manufacture of food products;
- hand car washes;
- retail;
- nail bars;
- hair and beauty; and
- ‘services to buildings and landscape activities’ which relates to facilities management and includes cleaning.

As I discuss further in Section 6, when the SEB is introduced, the organisation will have to balance how it allocates resources across *volume* and *severity* of issues of non-compliance. The measure of ‘enforcement activity’ within this model is one step towards being able to do this, although of course it does not (yet) take into account the varying levels of resources required to investigate different types of cases or allegations.

The intelligence picture has previously focused more on the higher harm sectors and deliberate non-compliance, due to the overlap with the potential for modern slavery or wider crime and the higher risk of harm to individuals this brings. The assessment of the intelligence picture in sectors with lower levels of harm (driven mostly by error) to individual workers but high volumes of cases has been less developed. This disparity is being addressed through the revised risk model and highlights an important area for the SEB to develop to be able to deliver across its expanded remit.

### 2.3.4 Size of sector

The risk model also considered the size of the worker population in different sectors as a proxy for the pool of workers potentially affected by non-compliance. Size of workforce would indicate differences in how the bodies might strategically target those sectors. In future versions of the model, we would like to narrow down the focus to more specifically describe the group of workers most likely to be at risk of exploitation – for example, those on low pay, in precarious work or with other risk factors for exploitation. This will rely on much more detailed information and may only be possible to explore in selected industries through the sectoral approach outlined in my previous LME Strategy.

One of the issues highlighted through this analysis is that there are some risks where the workforce affected is very small and/or difficult to quantify. For example, shellfish gathering and chicken catchers: these groups are not captured in national data and are typically a mobile and fluctuating group, often engaged in temporary and seasonal work. Similarly, as hand car washes are not a recognised ONS sector, there is no single estimate of the number of car washes in the UK, or how many workers are located at these businesses. This makes it difficult to estimate the scale of the worker population and the extent of the risk.

In other sectors, the number of people affected by a threat could be very large, such as jobseekers using online platforms. The risk of fraudulent or misdescribed online job vacancies is discussed further in Section 4. This is a cross-cutting threat rather than an industry sector. The overall scale and nature of the threat is very difficult to assess, as the market is continually changing and growing. In addition, many of the companies advertising vacancies are based offshore, outside of the remit and jurisdiction of EAS. This is an area which deserves increased attention from the enforcement bodies and wider government (see Recommendation 5).

## 2.4 Improving understanding of non-compliance within a sector: case study of Leicester garment manufacturing

To remain impartial and to ensure that they deploy resources effectively, the enforcement bodies only investigate where NMW or other labour abuse risks have been identified. These decisions are based on a combination of direct complaints, risk modelling and intelligence reports. Intelligence or information must be specific, timely and sufficiently robust to lead to an investigation, as enforcement bodies require a specific business to target for enforcement action.

We know that, for a multitude of reasons, many workers do not complain about breaches of their employment rights. If, in addition, their workplaces are not visible to customers or the public, nor accessible to third parties (particularly unions) who might raise concerns of their behalf, non-compliance can be even more difficult to identify and enforce. This affects some sectors, worker groups and types of labour abuse more than others.

One such area of long-standing concern is the textile manufacturing sector, with a particular focus on the businesses located in Leicester. Of course, textile manufacturing centres in other cities, including London and Manchester, share many of the same characteristics and risks as those in Leicester. These have also been subject to assessment and investigations by the enforcement bodies, however, here I focus specifically on the city of Leicester due to events in the latter half of 2020.

Based on risk modelling and the level of complaints received, HMRC do not assess textile manufacturing as a higher risk than other manufacturing sectors for non-payment of NMW. Similarly, the Health and Safety Executive (HSE) targets its resources on those sectors with the worst record and greatest risk (those with high levels of injuries and deaths such as construction and agriculture) and garment manufacturing does not fall into this category. However, for years there have been anecdotal and media reports of exploitation (often labelled modern slavery) in textile manufacturing, frequently focused on Leicester. These reports are in contrast to the low level of complaints from workers received by the enforcement bodies, or specific information on poor labour standards from within the industry. LME strategies have previously highlighted this issue, including recommending, and reporting on, a joint-working pilot in this area (DLME, 2019; DLME, 2020).

Since the pilot was undertaken, the enforcement bodies have continued to work together on this issue through the ODLME's Strategic Coordination Group (SCG), with the industry through the Apparel Protocol, and with the City Council through the local partnership. During this time, HMRC NMW had also been actively developing a new investigative approach to the textile sector. However, in the summer of 2020, the Leicester garment industry became the subject of intense media and political scrutiny due to reports of breaches of health and safety, poor working conditions and alleged links to increased COVID-19 infections (Labour behind the Label, 2020; Lewis, 2020; Bland and Campbell, 2020). An intense period of compliance and enforcement activity was initiated: Operation TACIT – involving the enforcement bodies, police, National Crime Agency (NCA), and HSE acting in partnership with Leicester City Council and community and

workers' groups. By the end of January 2021, more than 170 businesses in Leicester had been visited by the enforcement bodies, awareness and communications campaigns launched, and further intelligence and data across agencies had been combined.

The intense activity and focus create an interesting case study for considering a range of issues, including partnership working at a local level, the benefits and limitations of joining up data, and how to reach out to different communities. This work is ongoing, but here I explore what we can learn so far from the activity in terms of improving our understanding of the scale and nature of non-compliance in the industry and trying to reconcile the mismatch between claims of modern slavery reported in the media and by workers' groups, and the risk assessments of the sector by the enforcement bodies which indicate a lower level of non-compliance.

Overall, the enforcement bodies found that most garment businesses they visited were open to inspection and were found to be fully compliant with regulations. However, the NCA intelligence assessment (which drew together information from across law and labour enforcement bodies) and the visits conducted through the operation found evidence of some non-compliance in the industry. The most common allegations include underpayment of NMW, illegal working, and breaches of health and safety regulations, including legally required measures under COVID-19.

However, at the time of writing and from the information I have access to, there is little evidence to date of modern slavery or serious labour exploitation on the scale suggested by media reports. This does not mean that there are no instances of serious labour exploitation – indeed, in one case, workers were found sleeping at a factory making counterfeit garments (see e.g. Adegeest, 2020) – but the scale and severity of the issue appears to be at odds with that reflected in media reports. This is important, as enforcement resources need to be deployed effectively, in a manner proportionate to the actual threat.

That said, the suggestion of other threats, including the production of counterfeit textiles goods, tax evasion, VAT fraud and avoiding debt through phoenixing<sup>6</sup>, demonstrate the complexity of the situation and the need for a concerted enforcement response.

Cases being investigated will take several months to conclude; therefore, it is too early to fully assess the operation. The Home Office and BEIS will be undertaking a review to identify lessons learnt, not least to feed into thinking about how the SEB can deal with geographically concentrated industries. From discussions with the bodies and the NCA to date, I am encouraged that from this intense activity:

- the enforcement bodies have demonstrated effective joint working involving a wide array of enforcement partners, both in terms of intelligence sharing and on-the-ground operational activity;
- the programme of 'promote' activity being taken forward, both by HMRC's extensive targeting of textile workers and businesses, and through the partnership with the City Council, Hope for Justice, Citizens Advice and others, combined with the media attention, should result in an increase in awareness of workers' rights and encourage complaints to the enforcement bodies. Although, to be most effective, the focus of this activity needs to be in line with the types of non-compliance being found to be happening in the industry, rather than solely focusing on modern slavery and severe exploitation; and
- the media focus has also forced the industry to look at its own supply chain, and to become more open to sharing information with the enforcement bodies, boosting interest and momentum behind the Apparel Protocol coordinated by the GLAA.

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<sup>6</sup> Phoenixing is where directors dissolve their company in order to avoid having to pay fines or arrears only to re-emerge soon afterwards under a different legal company but usually operating the same problematic business model. Where this is used as a tactic to continue non-compliance, there is an argument to make the law stronger in this area to tackle it.

It should be noted that this operation has been extremely resource intensive for the enforcement bodies. It will be important to understand whether the activity has been effective and good value for money. Conflicting views between media reports and intelligence assessments will continue to occur and it is important that this experience is used positively to identify how to best deal with this type of situation.

The impact of this scrutiny and enforcement activity will be reflected in the next risk review and enable a more robust analysis of the risks within the garment manufacturing industry.

## 2.5 Conclusion and recommendations

I welcome the progress of this revised risk model and look forward to seeing it evolve further as the data improves and the understanding of non-compliance in different sectors continues to develop.

The concern with the previous system was both a lack of *nuance*, by not distinguishing different types of risks and their prevalence, and *dynamism*, by not being able to reflect changes in the risk levels. This reduced its impact as a strategic tool. I hope this new system allows us to communicate important information and ultimately guide resource allocation and strategy without simplifying the complexity of risk in sectors and subsectors.

One of the key tasks for the SEB will be to bring together the differing systems, perceptions, data and priorities of the three bodies to achieve an overall assessment of risk across the labour market. The work to date, done in close partnership with the enforcement bodies and other partners, has demonstrated greater granularity in understanding the risks and threats for different sectors, but has also uncovered some of the challenges to producing an overall assessment. Work on both the process and content of the assessment needs to be further progressed to explore how the SEB will overcome these challenges to understand and prioritise threats of non-compliance across its large and expanded remit.

### Recommendation 1

I recommend that the enforcement bodies, together with the ODLME Information Hub and external experts, continue to develop the risk model, including widening the information sources used and improving the robustness of the data. This evolving model should feed into the development of the Single Enforcement Body's approach to assessment and prioritisation of risk. The assessment should be reviewed every six months. *Lead: all enforcement bodies with ODLME. Timescale: review assessment every six months, model development to feed into the SEB development until it becomes operational.*

### Recommendation 2

I recommend that the enforcement bodies should work with ODLME through the Strategic Coordination Group (SCG) to adopt a more strategic, sector-based joint-working approach to tackle non-compliance in high-risk industries. A two-year programme of work should be developed with appropriate interim milestones, to commence at the beginning of the 2021/22 financial year. The learning and progress from this programme of work will feed into developing an effective sectoral approach for the SEB. *Lead: all enforcement bodies with ODLME. Timescale: two-year work programme to commence beginning of 2021/22 financial year.*

## Section 3: Improving the evidence base

As set out in Section 2, the ODLME Information Hub has developed a new and improved risk and intelligence model in partnership with the enforcement bodies. The analytical process of this new model is more robust and comprehensive, with a more nuanced exploration of the data, intelligence and information base than the previous risk models.

Despite these enhancements, and the efforts of the enforcement bodies to improve their intelligence and analytic capabilities, there is still insufficient evidence to make a robust assessment of the true scale and nature of labour market non-compliance in the UK. As set out by Cockbain et al. (2019), this is due to a range of reasons, including the hidden nature of violations and associated difficulty in reaching and engaging with vulnerable populations. Relying on complaints data from the enforcement bodies does not fully capture the scale of non-compliance as most workers do not make official complaints. Equally, data from targeted enforcement is, by its nature, unrepresentative as it focuses on particular geographical areas, sectors or worker groups. While this is, of course, entirely appropriate for enforcement activity, it does not produce an unbiased, robust baseline of overall non-compliance.

In addition, the knowledge gaps around non-compliance have been exacerbated by the COVID-19 pandemic and the consequent upheaval in the labour market and the economy, both in the UK and globally, leaving us even more “flying blind in terms of really understanding the extant threat of labour market non-compliance” (DLME, 2021).

An understanding of the true scale and nature of non-compliance is vital for several reasons. Firstly, to support effective allocation of resources to enforcement and compliance activities, enabling cost-effective targeting of resources to areas (industries, geographies, worker groups) identified as having a higher prevalence of labour violations, and/or to the most severe cases where investigations are inherently resource intensive. This will be particularly important for the SEB with its wider remit. Secondly, such an understanding is required to robustly evaluate the effectiveness of the activities of the enforcement bodies on labour market non-compliance and provide a baseline for the eventual monitoring and evaluation of the SEB.

A major piece of research is needed to resolve this critical evidence gap. Given the difficulties of conducting such an assessment in a meaningful, comprehensive, and ethical way, my Office has previously commissioned small, discrete projects to explore feasible methods to achieve this aim.

In 2018/19, my Office commissioned a scoping study to explore potential methods for undertaking this research. This report compared five methodological approaches and recommended a mixed-methods research design using worker surveys, worker interviews and stakeholder interviews (Cockbain et al., 2019). The authors recommend targeting precarious workers for the survey element, which Cockbain et al. define as “*those groups of workers believed to be most*

*affected by non-compliance, such as low-wage workers or those in the most precarious forms of employment*" (2019, p.24). In 2018/19, my Office therefore commissioned research which sought to test the feasibility of this proposal. This research (Posch et al., 2021) assessed the scale and nature of precarious work in the UK, seeking to further our understanding of this particularly vulnerable worker population.

In 2019/20, as part of the evidence base for the 2020/21 LME Strategy, my Office also commissioned four small research projects<sup>7</sup> looking at workers' experiences across social care, hand car washes, construction and agriculture. Although findings were not representative due to the small scale of the research, these studies still provided valuable qualitative additions to the evidence base.

Building on the ideas and findings of these research projects, my Office has been working on both refining the methodological approach and progressing the procurement requirements to commission this project. The research will be resource intensive by nature, and I was therefore very pleased that the Government committed to provide the funding for this research project in its response to the 2019/20 LME Strategy (BEIS, 2020).

In my 2020/21 Strategy, I was pleased to announce that the Economic and Social Research Council (ESRC) agreed to co-fund the research. The ESRC is the UK's largest organisation for funding research on economic and social issues. Their aim is to support high-quality research which has an impact on business, the public sector and civil society. In the past 12 months, the ESRC has provided valuable insight into our complex research question, and I would like to thank them for their invaluable support to date.

In August 2020, my Office and the ESRC jointly hosted an online international research conference to further refine our research specification. Experts<sup>8</sup> from a range of disciplines presented their views and insights in the potential use of a respondent-driven sampling methodology to assess the scale and nature of labour market non-compliance in the UK, followed by open and constructive discussions with a diverse range of academics, practitioners, and government officials. These multidisciplinary discussions raised important questions and considerations that fed into the development of a research specification.

In December 2020, my Office hosted an online supplier event in partnership with ESRC to engage prospective tenderers for this important research contract. Conducting this pre-market engagement helped to further refine our specification and I was pleased with the interest and constructive questions from potential contractors.

At the time of writing (January 2021), my Office is working towards launching an Invitation to Tender which will seek to commission this research project, answering this critical question: *'What is the scale and nature of labour market non-compliance in the UK?'* I anticipate this project to commence in 2021/22 and deliver within a period of two to three years, which I hope will provide timely input to the SEB implementation discussions.

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<sup>7</sup> These are published alongside the 2020/21 Strategy.

<sup>8</sup> Krisztian Posch (University College London), Nicky McCreesh (London School of Hygiene and Tropical Medicine), Guri Tyldum (Fafo), Siobhan McGrath (Durham University).

# Section 4: COVID-19, economic change and non-compliance

## 4.1 Introduction

The COVID-19 pandemic and the resulting economic fallout have had a profound effect on the labour market and on enforcement activities since March 2020. At the time of writing (January 2021), it is expected that the UK will remain in national lockdown until March 2021 at least, a full year since the pandemic first took hold.

This section considers the potential impact on labour market compliance and hence the work of the enforcement bodies in the near term. It does so by recognising both the changing nature of work generally during the pandemic and ensuing economic downturn, and the risks this produces, along with increasing concerns I have for jobseekers using online recruitment platforms. I make recommendations around each of these.

## 4.2 Impact of pandemic on employment

The economic shock currently being experienced is unprecedented, well surpassing that of the 2008 financial crisis. The impact of the pandemic has been a sharp fall in economic growth and rise in unemployment. Its effect across different areas of the economy has been uneven, with output falling by 70 per cent in accommodation and food services and by 30 per cent or more in areas such as construction, wholesale and retail and transportation (OBR, 2020, p.10). Uncertainty around when things might return to normal clearly makes it difficult to predict the scale and duration of the economic impact, but certainly the economic and labour market context is vastly different from 12 months ago.

In November 2020, the Office for Budget Responsibility (OBR) estimated that the economy will have contracted by at least 10 per cent in 2020 (OBR, 2020) and they do not expect output to return to end of 2019 levels until late 2022.<sup>9</sup> Depending on the lockdown measures taken and the speed and efficacy of the roll out of COVID-19 vaccines, they estimate that unemployment could, in the worst-case scenario, potentially more than double to reach 11 per cent by the end of 2024. As yet, the labour market effects have yet to be fully exposed.

Latest data indicate unemployment at 5 per cent, its highest since spring 2016, but still well below the recent peak of 8.5 per cent in autumn 2011 (ONS, 2021b). Much of this subdued impact on job losses is no doubt due to the effectiveness of the Government's Coronavirus Job Retention Scheme (CJRS) launched on 20 April 2020 (effective from 1 March) and currently due to run until

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<sup>9</sup> At the time of publication of this Strategy, updated estimates from the OBR suggest GDP will return to pre-lockdown levels by the end of 2021 or early 2022. Unemployment in the three months to August 2021 was 4.5 per cent, well below their March 2021 forecast of 5.2 per cent. Some 1.3 million people were still on furlough at the end of September 2021.



the end of April 2021.<sup>10</sup> This scheme has supported employee earnings by up to 80 per cent, up to a maximum of £2,500 per month and has acted as a safety net that enabled millions to remain employed, mainly through furlough.

At its peak in May 2020, some 8.9 million employments were furloughed (HMRC, 2021). Of these, 1.81 million were in wholesale and retail, 1.63 million in accommodation and food, 0.89 million in manufacturing and 0.69 million in construction. By the end of September 2020, there were still 2.8 million workers away from work, falling to 2.4 million by the end of October. Following the re-introduction of COVID-19 restrictions in early November 2020, claims under the scheme increased once again to 3.8 million by year end (HMRC, 2020). Over a million of these were in the hospitality sector, with almost half of all employees in the sector subject to furlough. There were a further 690,000 employments furloughed in the wholesale and retail sector.

The government contribution to the CJRS was reduced initially in September 2020 and then further in October 2020. Consequently, the first signs of the true unemployment effects of the pandemic became apparent, with a record increase in redundancies of 370,000 in the three months to October 2020 (ONS, 2020c). Job losses were concentrated in lower-paying work, particularly in food services, food manufacturing, residential care and construction. Half the overall fall in employment was in food-related sectors, with job losses in food manufacturing explaining all the decline in manufacturing employment (IES, 2021).

The effects of the sectoral shutdowns have been disproportionately felt by lower earners, who are more likely to be young, women and ethnic minorities (IES, 2020; IFS, 2020). In December 2020, it was reported that 15 per cent of workers in sectors which had shut down because of the coronavirus were from a Black, Asian and Minority Ethnic background, compared to 12 per cent of all workers; 57 per cent were women, compared to a workforce average of 48 per cent; and nearly 50 per cent were under 35 years old. Low-paid workers are more likely to work in shut-down sectors and be less likely to be able to work from home (House of Commons, 2020).

Recent research by Institute for Employment Studies (IES) suggests that two-thirds of low-paid workers currently remain either temporarily laid-off or working reduced hours: twice the rates of those in higher earning occupations (IES, 2021). The same research also highlighted worrying signs of poorer treatment at work and increased risk of exposure to coronavirus for low-paid workers, including being denied furlough and having to work without adequate protection.

At the time of writing, we do not know the full economic and employment impacts of the most recent lockdown and the CJRS extension.

### 4.3 Implications of the economic downturn for the labour market and workers

Early in the pandemic, there was hope for a short ‘V-shaped’ recession, with the economy bouncing back quickly and relatively minimal impact on job losses compared with previous recessions. It is difficult to forecast how the labour market will evolve over the coming months, but there is a heightened risk that the impact of reduced employment and higher unemployment will be significant. While unemployment tends to rise steeply at the beginning of a downturn, it can take much longer to fall and return to pre-recession levels; it took over seven years for the unemployment rate to return to the pre-2008 crisis level of 5.2 per cent.

As well as considering the *quantitative* impact on employment (i.e. the number of jobs lost and the increase in unemployment), it is also important to consider and monitor the *quality* of jobs. Experience tells us that significant labour market shocks, such as this, are likely to lead to changing patterns of employment and greater challenges to the enforcement of employment

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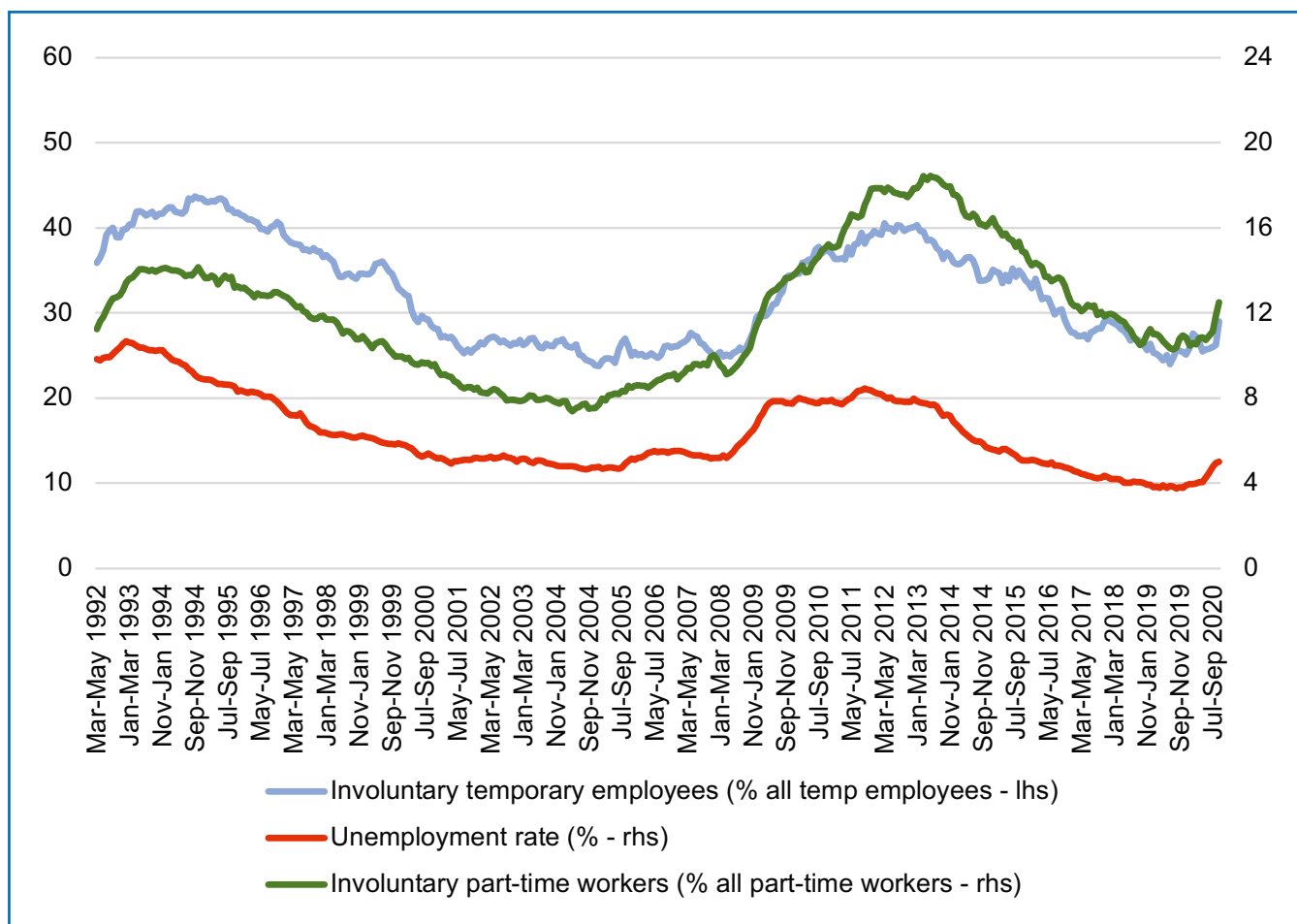
<sup>10</sup> Subsequently extended to the end of September 2021.

rights. Financial pressure on businesses, increased unemployment, personal financial hardship and consequent weaker position of workers have previously been linked to shifts towards non-standard or atypical forms of employment and an increase in employer non-compliance.

Therefore, one of the warning signs around the quality of jobs is an increase in atypical working. Not all atypical work is negative, but it does often coincide with reduced rights for workers, reduced ability to challenge problems of pay and conditions of work, less stability and predictability of income, and therefore an increase in vulnerability for low-paid workers.

Box 4.1 and Figure 4.1 point to the pro-cyclical relationship between the unemployment rate and atypical work. Figure 4.1 demonstrates how involuntary part-time and temporary working tends to rise with the unemployment rate, as people are increasingly forced to take temporary jobs because permanent ones could not be found, or people work part-time for lack of full-time opportunities. In the coming months (or even years), we may well see an increase in these forms of working, potentially leading to greater insecurity in the labour market and greater risk of non-compliance.

**Figure 4.1: Unemployment and involuntary part-time and temporary working, March–May 1992 to September–November 2020**



Source: Office for National Statistics, Labour Market Overview, January 2021 – Data tables A01 and EMP01SA (ONS, 2021b).

## Box 4.1: Trends in atypical work and unemployment

**Self-employment** has risen markedly over the last two decades, accounting for 8 per cent of total employment around 2000 but rising to 15 per cent by late 2019. All of this growth has been due to so-called ‘solo self-employed’ (that is sole traders or company owner-managers without employees). By 2019 the ‘solo self-employed’ accounted for one in eight of total employment. The self-employed already have weaker employment rights (see DLME, 2018) and recent research highlights that the solo self-employed very often have lower earnings than their employee counterparts. Those entering solo self-employment are also more likely than employees to have come directly from unemployment or inactivity and it is often taken up because suitable alternative work cannot be found. There is a concern, too, that this significant rise in self-employment is due to businesses finding new employment models where risks and costs are passed to the workers. Overall, self-employment has fallen markedly (by 500,000 or 10 per cent) during the pandemic (ONS, 2021b, Table EMP01SA), believed to be largely as a result of exclusions from the Self-Employment Income Support Scheme (SEISS) (IFS, 2021).

**Temporary jobs** tend to exhibit a cyclical pattern. Prior to the 2008 crisis, around 9 per cent of part-time workers and a quarter of temporary workers were undertaking this sort of work because of difficulty finding either full-time or permanent jobs. Following the 2008 crisis, these measures rose to 18 per cent and 40 per cent respectively. Only as the labour market tightened did this begin to fall again. A similar pattern was seen following the recession of the early 1990s. Latest labour market data suggest another increase in involuntary atypical working as unemployment begins to rise again (Figure 4.1 above).

**Agency working and zero-hours contracts** may follow a similar pattern. From April to June 2020, there were around a million people working on zero-hours contracts (ONS, 2020a),<sup>11</sup> a fivefold rise in the past decade. Zero-hours contracts are prevalent among low-paid workers in the hospitality, healthcare and wholesale/retail sectors. Agency working also rose after 2009 and only started its downward trend from summer 2016 once the unemployment rate returned to pre-2008 crisis levels.

Even in times of low unemployment, a significant minority of people experience employment rights problems. Almost a third of employees interviewed through the BEIS Public Attitudes Tracker survey in September 2020 stated they had personally experienced a problem with employment rights at work during the previous two years, up from just under a fifth in both 2018 and 2019 (BEIS, 2018; BEIS, 2019; BEIS, 2020a). Younger employees (54 per cent) and those on non-permanent contracts (58 per cent) were more likely to have experienced problems. Overall, 18 per cent had experienced three or more problems, though this rose to 30 per cent or higher for those under the age of 35 (BEIS, 2020a, Table 61). Around four in ten had experienced a work problem since March 2020, and 71 per cent of these believed this to be related to the coronavirus outbreak.

It is more difficult to directly identify evidence of changed employment rights problems related to the areas that fall within my remit in the UK context. However, findings from a recent US study of minimum wage violations during the 2008 crisis found that the share of low-wage workers suffering such violations rose and fell significantly along with unemployment (Fine et. al, 2020). The study found that each percentage point increase in a US state’s unemployment rate predicts, on average, almost a full percentage point increase in the probability an individual worker would experience a violation. The study also found that minimum wage violations disproportionately impacted on women, ethnic minorities and non-US citizens.

11 In the period April to June 2020.

Although comparable research for the UK is not available, the scenario described above is highly plausible in our own context. Weaker worker voice, due to both low unionisation in low-paid sectors and an increased reluctance to raise issues for fear of jeopardising their own jobs, raises concerns about the potential risks ahead and our ability to respond to these.

## 4.4 The challenge to labour market enforcement during the pandemic and its aftermath

Inevitably the restrictions required due to the pandemic have had a marked impact on how the labour market enforcement bodies have been able to operate. Overall, I have been continually impressed by the dedication and flexibility shown by the enforcement bodies in these difficult circumstances. They have responded remarkably well to the challenges they have faced, and the adaptations required to continue to carry out their duties. Their activities have been impacted in several ways:

- Face-to-face compliance and enforcement visits to employers have been severely curtailed to ensure protection for compliance officers and because many businesses will have had to close temporarily during periods of lockdown. However, GLAA and the HMRC NMW Serious Non-Compliance teams have continued to conduct in-person investigations where intelligence suggests potential high harm to individuals.
- As with other government agencies, wherever possible, staff have been working from home. As a result, investigations and licensing processes have been mostly desk-based and opportunities for joint working with other agencies have been significantly affected. In some areas (e.g. right to work checks) a shift to electronic rather than physical methods of compliance and enforcement have both helped and hindered the work of the bodies.
- Some reduced workforce capacity due to COVID-related illness and need for self-isolation (although this was thankfully limited by having most staff work from home), and, in addition, some HMRC compliance and enforcement personnel were temporarily redeployed for up to six weeks to aid the roll out of the CJRS.
- The number of complaints and volume of intelligence reported have declined. This increases the challenge for the enforcement bodies of having a timely picture of non-compliance and being able to respond as a result.

Again, at the present time, it is uncertain when the enforcement bodies will be able to resume normal business. As and when they do, they will face several direct challenges, not least dealing with investigations they have been unable to undertake remotely. Moreover, this is likely to be against a backdrop of tighter public sector budgets that, consequently, will likely impact on resources available for enforcement too.

There will no doubt be an opportunity to learn lessons from how the bodies have had to adapt, at pace, over the past year. This should be mined fully, especially in the run-up to the SEB.

I am particularly concerned about the decline in both worker complaints and the flow of intelligence that the enforcement bodies have consistently reported during the pandemic.

A similar decline was seen at the time of the 2008 crisis. The Low Pay Commission (LPC, 2010) noted that enquiries received by the national minimum wage helpline in 2008/09 were down by a quarter on the previous year and by a third compared to 2006/07. Complaints of underpayment also appeared to peak in 2007/08 and then trended downwards before increasing again from 2013/14.

Once again, we are seeing fewer worker complaints at the current time. On one level this appears to be a continuation of a recent trend: in 2019/20 not only had calls about minimum wage to the Advisory, Conciliation and Arbitration Service (Acas) helpline declined year-on-year since 2016/17 (BEIS, 2021 Table 7), but so too had HMRC's minimum wage investigations resulting from the online complaints form (BEIS, 2021 Table 15b). There will be a variety of reasons for this – not least better employer compliance generally – but it may signal a reluctance of workers to come forward when they experience rights violations, as the decline in complaints seems to be at odds with what wider intelligence is telling us.

It is unknown how much of this decline in complaints is due to reduced economic activity with the closure of whole sectors and furlough of millions of workers, and how much is due to workers being less confident to complain. It may also be that exploitation is even more hidden as people stay at home, impacting on reporting from third parties. Previous research (IES, 2021) and LME strategies have reported about the barriers to reporting problems: insufficient knowledge and understanding of employment rights for low-paid workers, not knowing who to complain to, and fear of employer reprisal. It is quite understandable that workers in the current climate might be even more reticent to come forward.

Achieving greater compliance at this time, especially for complaint-led cases, will rely on raising awareness of rights, signposting the available pathways to raise concerns or complaints, and providing sufficient protections and reassurances for those who need to do so. I believe this is an area where in the bodies should amplify their efforts over the next period.

However, I am aware that the communications channels available to both HMRC NMW and EAS are currently restricted as they are subject to the limits of communications strategies by their wider organisations. While GLAA have more freedom to conduct communications campaigns, develop their own website and focus on whatever messages they wish, EAS and HMRC NMW are hampered in their ability to raise the public profile of their work and reach those who need their advice and support. Especially at the current time, where agile, targeted communications campaigns are essential to responding to a time of change, there is a real need for the enforcement bodies to be in control and maximising the effectiveness of their own communications.

Important observations and recommendations made in previous LME strategies have been around improving the communications capacity of the three bodies (and especially EAS and HMRC NMW). The fact that this remains an issue, and that staff are unable to put their ideas into action, highlights the importance of getting the right structural and governance arrangements in place for the SEB, to enable staff to make the most of their enthusiasm, expertise and contacts to explore and develop ways of communicating with industry and hard-to-reach worker groups. To advance this issue, I recommend that both HMRC NMW and EAS are given the resources and ability to utilise more timely and impactful communications approaches (see Recommendation 3a).

Fewer complaints from workers will also mean greater reliance on targeted enforcement activity, an area that previous LME strategies have sought to strengthen. Reduced intelligence flows will make this task more difficult for all enforcement bodies and will impact on their ability to maintain their effectiveness in this regard. Of the three bodies, HMRC NMW have the most advanced system for targeted enforcement, informed by HMRC's risk model. This uses data from a range of sources including PAYE, Tax Credits information, information from other labour market enforcement bodies, NMW intelligence and complaints data, and ministerial priorities to identify workers most at risk of underpayment. HMRC NMW were already making much greater use of targeted enforcement even before the pandemic, with over 70 per cent of cases opened in 2019/20 being identified in this way (BEIS, 2021). I understand that this trend has continued over 2020/21 and how the use of the risk model impacts on enforcement as it has become proportionately larger in terms of source of cases.

Operation TACIT, focusing on tackling non-compliance in the Leicester garment trade (see Section 2), has shown the value of multiple law enforcement agencies and other bodies working together to share data and intelligence. I would like to see lessons and good practice being identified from this, and an expansion of this type of analysis (with appropriate Memoranda of Understanding) to improve the flow of intelligence.

The bodies, but particularly HMRC NMW, should also look to maximise the opportunity to draw on intelligence related to employer fraud of the CJRS. By late August 2020, it was estimated that up to 10 per cent of the scheme's £35 billion cost to date had been claimed fraudulently or had been paid out in error (BBC, 2020). HMRC was looking into 27,000 cases involving incorrect amounts claimed by employers. This may be an opportunity to identify employers who may be non-compliant in other areas.

Last, but not least, the bodies should also be looking to work more closely with third parties to mine information and intelligence. As I also highlight in Section 5 of this Strategy, looking at immigration system changes at a time when data and information have been impacted by the pandemic, linking into other sources on the ground (such as NGOs, unions, etc.) is likely to play an enhanced role in identifying labour market non-compliance.

One of my formal recommendations is therefore that all three bodies seek to overcome current intelligence and information gaps by maximising the use of new and alternative data sources (e.g. from fraud investigations into CJRS) to identify potentially non-compliant employers (see Recommendation 3b).

The issues and recommendations set out above reflect some of the areas where the three bodies will need to re-focus their efforts in the near future. In most cases, these are measures that can be taken forward by the enforcement bodies on an individual basis. However, they will also be faced with a common set of challenges, where closer working between the three bodies could prove beneficial. In particular: the changing nature of the labour market induced by both economic and policy factors; the prospect of tighter, and possibly reduced, budgets to carry out their work; and preparation for the move to the SEB.

I make a recommendation below that, in much the same way as the SCG seeks to promote opportunities for intelligence sharing and joint operational activity, the heads of HMRC NMW, GLAA and EAS convene, with coordination from the ODLME, to identify issues of common concern and to find joint solutions wherever possible. This forum could address issues such as resourcing, use of innovation, training and operational cultures, and potentially involve time-limited and measurable workstreams (see Recommendation 4).

## 4.5 Countering the increasing threat from online recruitment

My second area of focus is around the threat posed by online recruitment. This is an area where DLME has made recommendations in the past, including in the 2019/20 Strategy where my predecessor called for BEIS to lead a comprehensive review of the threat of online and app-based recruitment. This recommendation was accepted (BEIS and Home Office, 2020). I understand that this work is currently being taken forward and I look forward to seeing the outputs from that.

As described in Section 2, the risks of online recruitment are very difficult to quantify; however, from a number of reports and the data from JobsAware (formerly SAFERJobs), it seems that risks to workers in this area have worsened during the pandemic (e.g. see, Bennett, 2020; Hannah, 2020). JobsAware,<sup>12</sup> a non-profit organisation to support jobseekers, has estimated that around

12 JobsAware (formerly SAFERJobs) is supported by DWP, BEIS, the Metropolitan Police and other government and industry organisations. See their website for further information: <https://www.jobsaware.co.uk/>

2,000 victims are affected by online scams each month, but believe this is an underestimate given they are made aware of only a fraction of actual instances. They report seeing a 70 per cent increase in fake job advertisements since March 2020.

The online jobs sector is poorly regulated and current economic conditions will exacerbate risks from online jobs scams as more people are seeking work. There is also a greater shift generally to online job advertising. Whereas previously far more jobseekers would have actually visited prospective employers or recruitment agents, in recent times operating solely in a virtual environment has become accepted as both the norm and legitimate.

As well as advertising jobs that do not actually exist, common scams involve charging fees of up to £5,000 for bogus services including for fake background checks, fake qualifications and payments for CV writing services. There is also widespread identity theft.

JobsAware report encountering the following during the pandemic:

- during the summer of 2020, a large number of fake agriculture roles charging for Disclosure and Barring Service (DBS) checks advertised on a jobs website which was almost identical to the official government Pick for Britain site;
- a rise in scams targeting key workers, especially healthcare assistants and specific roles aligned to the response, such as COVID-19 testers. In some cases, volunteer roles were advertised that defrauded people who were simply offering their time to help; and
- since September 2020, a rise in logistics scams, including pharmaceutical delivery scams; and most recently, a big rise in training scams promising (non-existent) jobs at the end of the course, and charging significant amounts of money.

Of course, some of the above would fall within the remit of the police and Serious Fraud Office rather than that of the EAS legislation. Even where EAS does have responsibility for investigating, their underpinning legislation came into force in 1973, long before the online age. While the 1973 Employment Agencies Act is still relevant, there are some gaps that may not be fully addressed before the creation of the SEB.

I believe government and the recruitment industry must urgently make progress to counter what appears to be an increasing threat in this sector.

Currently, much of the intelligence around jobs scams relies on reports on individual cases to JobsAware. I believe other, more powerful, approaches can be used to identify such scams. For instance, machine learning techniques could be used to automate the process to identify simple inconsistencies (e.g. where fees are being advertised or where the wage rate is below the national minimum) or more elaborate models to scan for bogus job advertisements (in much the same way as an email spam filter works). I therefore recommend that BEIS and EAS, working with the recruitment industry and JobsAware, explore how they can better use innovative technologies to identify fake and fraudulent jobs advertised online (see Recommendation 5a).

Finally, the online threat clearly spans a much wider space than the jobs market. Similar difficulties and debates are happening around how to effectively regulate a whole range of online activity including gambling, fraud, sexual exploitation and bullying. This is also an international problem being faced by other countries, as operating online opens the door to businesses and platforms based in other countries, therefore out of the reach of national laws. I therefore further recommend that BEIS prioritise the completion of the review of online recruitment and use the findings to feed into broader government and industry discussions around regulating online activity, with a view to identifying practical safeguards and remedies for job seekers affected by this threat (see Recommendation 5b).

## 4.6 Conclusion and recommendations

The challenges currently facing both the labour market as a whole, and its compliance and enforcement landscape, require a particularly agile and timely response. The way the enforcement bodies have already responded and adapted during the pandemic has been impressive. However, the recommendations I have made here are pressing: most need action within this calendar or financial year and will necessitate some prioritisation of enforcement resources.

### Recommendation 3

To monitor and mitigate the potential risk to workers related to a changing labour market, I recommend:

- a) that both HMRC NMW and EAS are given the resource and ability to utilise more timely and impactful communication approaches; *Lead: HMRC NMW and EAS. Timescale: by end 2021.*
- b) that all three bodies seek to overcome current intelligence and information gaps by maximising the use of new and alternative data sources (e.g. from fraud investigations into the Coronavirus Job Retention Scheme) to identify potentially non-compliant employers. *Lead: all enforcement bodies. Timescale: by 2022.*

### Recommendation 4

To support the three bodies in dealing with shared challenges and rapid changes ahead, I recommend that the heads of HMRC NMW, GLAA and EAS convene, with coordination from the ODLME, to identify issues of common concern and to find joint solutions wherever possible. This forum could address issues such as resourcing, use of innovation, training and operational cultures, and potentially involve time-limited and measurable workstreams. *Lead: all enforcement bodies with ODLME. Timescale: to commence by the beginning of the 2021/22 financial year.*

### Recommendation 5

To understand better and develop ways of tackling heightened risks in online recruitment, I recommend:

- a) that BEIS and EAS, working with the recruitment industry and JobsAware (formerly SAFERJobs), explore how they can better use innovative technologies to identify fake and fraudulent jobs advertised online; *Lead: BEIS and EAS. Timescale: by the end of 2021/22 financial year.*
- b) that BEIS (i) prioritise the completion of the review of online recruitment accepted from the 2019/20 LME Strategy to evidence better the online harms threat and (ii) feed the findings into broader government and industry discussions around regulating online activity, with a view to identifying practical safeguards and remedies for jobseekers affected by this threat. *Lead: BEIS. Timescale: complete review by end of 2021/22 financial year.*



# Section 5: Future risks related to changes in the immigration system

## 5.1 Introduction

One of the consequences of the UK's departure from the European Union is a fundamental shift in our immigration system. Free movement of EEA nationals to the UK has ceased, and EEA and non-EEA citizens are now treated equally by the points-based immigration system. This will restrict the flow of workers to those who can meet the required skill and salary thresholds. These changes will have a particularly significant impact on labour supply into several low-skilled sectors where, since 2004, UK employers have benefited from a continuous supply of labour, predominantly from eastern Europe.

Questions around immigration policy and system design are beyond my remit. However, I do have concerns – first raised in my 2020/21 Strategy – around how these changes may impact on non-compliance in the labour market, including on more severe forms of labour exploitation and human trafficking. My concerns are further heightened by the backdrop of a poorer economic and labour market climate triggered by the COVID-19 pandemic, as discussed in the previous section.

The public debate around the impact of the change to the UK's immigration system on labour market enforcement (LME) has thus far been muted. To help address this, in autumn 2020 I convened two virtual workshops to explore the near-term impacts expected from the changes to the immigration system and the longer-term issue of interaction between LME and immigration enforcement. The first workshop involved a broad set of stakeholders including business, NGOs, academics as well as UK and international government representation (see Annex C for list of participants). The second involved the three enforcement bodies, immigration enforcement and related government agencies. The fundamental questions discussed were:

- What are the labour compliance challenges and risks for workers, employers and the enforcement bodies?
- How might these challenges and risks be managed and mitigated?

The main concerns raised in these fora are summarised here, along with ideas proposed for how to address them. My formal recommendations are at the end of this section.

## 5.2 Changes to the immigration system and supply of EEA workers

The future supply of EEA labour will be affected by three factors: how many new migrants (legally) arrive; how many leave; and how many current migrants choose to stay.

In January 2021, a new points-based immigration system was introduced that now requires EEA,<sup>13</sup> as well as non-EEA citizens, who wish to come to the UK for work to have a job offer from a licensed sponsor employer (UK Visas and Immigration, 2021). Job offers must be at A level or equivalent skill level and are subject to minimum English language and salary requirements. Aside from the Seasonal Workers Pilot (currently allowing in 30,000 temporary migrants for the horticulture sector for 2021), **there are no other dedicated routes of entry for work in low-skilled sectors.**<sup>14</sup>

Employers will, to some extent, be able to draw on alternative sources of immigration via other routes such as students, temporary workers (see, HM Government, n.d.) and overseas British Nationals from Hong Kong, but the volumes, skills and ambitions of these migrants are unlikely to match the previous flows of workers from the EU. In addition, from 2021 there will no longer be an immigration route for self-employed workers, which has previously been used extensively in sectors such as construction (ONS, 2018).

Since mid-2018, EEA nationals residing in the UK have been able to apply for settlement under the EU Settlement Scheme (EUSS), for either *settled* status (for those residents in the UK for five years or longer) or *pre-settled* status (those resident for less than five years who may be able to apply for settlement once they have completed five years' residency). The deadline for applications was the end of June 2021.

By the end of September 2020, there had been 3.79 million scheme applications from nationals from the EU27 member states, of which 3.65 million had been concluded (Home Office, 2021).<sup>15,16</sup> Of these, 57 per cent had been granted settled status. The highest volumes of applications have been from people from Poland (749,000, with 80 per cent granted settled status) and Romania (640,000, with 34 per cent granted settled status).<sup>17</sup> A further 925,000 concluded applications were from people from Italy, Portugal and Spain, with around half attaining settled status. The majority of the rest of applications were granted pre-settled status, with only 2 per cent of applications overall being refused, withdrawn or found to be invalid.

While the EUSS data suggest that millions are intending to stay, we do not know what proportion of EEA migrants currently in the UK have actually made an application for settled or pre-settled status. Estimates suggest that a significant minority, particularly among some nationalities, have yet to apply and risk being left with no right to stay and work in the UK until they regularise their status (Sumption, 2020; Sumption and Fernandez-Reino, 2020).

Already there are far fewer EEA migrants working in the UK. Net EEA immigration (traditionally mainly for work purposes) fell sharply following the 2016 referendum. Between 2013 and 2016, net inward migration of EU nationals to the UK averaged 150,000 a year but fell year-on-year to 50,000 by 2019 (ONS, 2020d). Separately, official labour market statistics show that employment of EEA-born workers fell significantly (by more than 385,000) over the year to July to September 2020 (ONS, 2021a). Total employment for EU8-born and EU2-born reduced by 25 per cent and

13 Excluding Irish nationals.

14 At the time of publication of this Strategy, the government had introduced temporary immigration routes for butchers, poultry workers and HGV drivers.

15 There is no accurate measure of how many resident EU nationals there are in the UK who have not yet applied.

16 At the time of publication of this Strategy, there had by the end of June 2021 been 5.57 million applications from EU nationals, of which 5.07 million had been concluded. This included 1.11 applications from people from Poland (1.07 million concluded, 77 per cent granted settled status) and 1.08 million from Romania (950,000 concluded with 57 per cent granted settled status).

17 Rounded to the nearest thousand.

22 per cent respectively (MAC, 2020, Table 1.22).<sup>18</sup> In addition, early evidence from the Labour Force Survey suggests that the pandemic and its economic disruption has led a large number of EU workers to leave the UK, although the data and future trends here remains uncertain (Portes and O'Connor, 2021).

In summary, the new immigration system will no doubt (and is explicitly designed to) reduce the number of EU nationals migrating for low-skilled work. A large number of EU migrants have regularised their status and will continue to have the right to work in the UK, but a significant minority have not yet done this. Combined with the impact of the pandemic, sectors that have traditionally relied on EEA labour are likely to experience labour shortages.

### 5.3 Impact on EEA labour

Many sectors of the UK economy rely heavily on migrant workers, either from the EEA or beyond. In 2019, EEA-born workers accounted for 7.4 per cent of total employment in the UK (up from 2.9 per cent in 2004) (MAC, 2020, p.5). Non-EEA born migrants accounted for 10.2 per cent of total employment (6.9 per cent in 2004). However, in food manufacturing and processing, in 2019, 25 per cent of all workers were EEA-born and a further 11 per cent non-EEA born. Similarly, warehousing (21 per cent EEA-born; 11 per cent non-EEA born) and accommodation and hospitality (12 per cent EEA-born; 16 per cent non-EEA born) are also migrant intensive sectors (MAC, 2020, p.11). Separately, it has been estimated that 99 per cent of seasonal workers employed in edible horticulture are from the EU (MAC, 2020, p.20).

Research by the Resolution Foundation (2020) confirmed that, as expected, a large proportion of recently arrived EU workers in the UK would not have qualified for a work permit under the new immigration system. This trend is unevenly spread geographically and across sectors, including five per cent of all employment in London and the East Midlands, and one in 10 employees in food manufacturing. They conclude that this is likely to result in pinch-points in labour shortages.

Sectors with disproportionate numbers of migrant workers are often characterised by a high proportion of low-skilled, low-paid and precarious job roles. For example, 58 per cent of jobs in the manufacturing of food and beverages are low skilled (RQF1-2), and 46 per cent of the workforce at this qualification level are migrants. Similarly, in warehousing, 65 per cent of the jobs are low skilled and 41 per cent of the workforce are migrants (MAC, 2020, p.12). In hospitality, the respective proportions are 52 per cent and 25 per cent.

Workers in these sectors are also often more likely to be on atypical and temporary contracts (ONS, 2020a), which provide a lower level of rights, protections and predictability of work and income.

My concern in relation to labour market compliance and worker protections is that a labour supply shock to sectors using large numbers of migrants in low-skilled, low-paid and often precarious work will impact on behaviours both of employers and migrants seeking work in these sectors. The reduced availability of migrant workers, and the requirement to have settled or pre-settled status to be able to work in the UK, could have a number of consequences.

Employers may:

- increase pay and conditions to attract workers, resulting in improved standards for workers, or find ways of innovating and reducing their workforce through automation or other process changes;

<sup>18</sup> MAC tab 1.22; The data here should be interpreted with some caution. In the year to July–September 2020, employment among EU-born migrants fell by 386,000, mostly from eastern Europe.

- alternatively, they may find their margins squeezed due to a harder economic climate and additional costs involved in the immigration system, and therefore seek to drive down rates of pay and worker rights further to remain viable, avoid complying with regulations, thereby increasing the risk of exploitation to workers; and/or
- deliberately turn to more vulnerable workforce groups who will accept lower pay and conditions (including migrants without the right to work in the UK).

Workers may:

- find their bargaining position strengthened in conditions of reduced migrant worker supply, although this may be offset in the short and medium term by a substantial increase in unemployment;
- be more desperate for work in circumstances of high unemployment, and therefore accept conditions and pay they might not have done otherwise, including informal working arrangements. For example, a recent report from the Institute for Public Policy Research (IPPR) highlighted cases where migrants were experiencing poor health and safety conditions at work and being subject to illegal deductions of wages as a result of informal work arrangements (IPPR, 2020).
- EU workers may have greater difficulty in finding employment and are more likely to accept poor conditions, as employers may be apprehensive about employing EU workers for fear of breaking the law;<sup>19</sup> and/or
- workers may become more vulnerable due to either not having applied for settled/pre-settled status, therefore no longer have the right to work in the UK; or, even if they have been granted pre-settled status, they may be confused or misled about their rights.

In addition, without low-skilled immigration routes, migrants wanting to work in the UK may come without the right to do so. This would present an additional challenge to immigration enforcement, where neither the current extent of illegal migration nor the effectiveness of enforcement interventions is well understood (NAO, 2020; Public Accounts Committee, 2020).

While some migrants may resort to clandestine entry to the country, entering via a visitor (or student) route would also be a strong possibility. Under the new system, EEA and Swiss citizens can travel to the UK for holidays or short trips (in most cases up to six months) without needing a visa (HM Government, 2020). They will not have the right to work, however some people may still decide to do so. As well as being subject to immigration enforcement, by working illegally, these individuals will not be entitled to full workers' rights, including the national minimum wage, as they would not be covered by the legislation. As we know, people working illegally are at greater risk of severe exploitation as they are less likely to ask for help or have options to leave their employment, however poorly paid and badly treated they are.

Of course, these impacts are, to some extent, speculative, but rules changes can result in unintended consequences and some people being inadvertently left in a vulnerable position.

The Migration Observatory (Sumption and Fernandez-Reino, 2018) has highlighted three areas in particular where low-skilled EEA workers could be at risk of labour exploitation:

- where workers are tied to their employer for their legal right to live and work in the country;
- where workers with non-secure residence status face risk of deportation if unemployed, and can therefore act as deterrents for workers making complaints; and
- both migrants and workers become more reliant on recruitment agencies and other intermediaries.

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<sup>19</sup> Employers who fail to carry out right to work checks can be fined up to £20,000 per illegal worker employed.

The challenges of addressing illegal employment and also preventing labour exploitation are by no means confined to the UK. A cross-country analysis carried out by the Organisation for Economic Co-operation and Development (OECD) in 2018 demonstrated just how common, and at the same time how complex, this issue is. We should look to learn from this international experience, including how compliance and enforcement challenges might be addressed (see Box 5.1).

### **Box 5.1: OECD findings on addressing the illegal employment of foreign workers (OECD, 2018, p.165–166)**

The illegal employment of foreign workers is a complex, multi-faceted issue. It may come about through non-compliance with either migration rules (foreign workers with no residence permit, not in full conformity, or no longer valid, e.g. in breach of their residence status) or labour rules (foreign workers with no work permit, not in full conformity, or no longer valid, e.g. in breach of their work status). In light of the wide spectrum of illegalities this may entail, it is likely to include people in very different circumstances.

In order to design adequate policy responses, it is crucial to differentiate between the illegal employment of foreign workers and informal employment. On the one hand, foreign workers in breach of their residence status may have formal jobs. On the other hand, both the native-born and immigrants may work informally.

Estimates suggest that there were about 11.3 million unauthorised immigrants in the United States in 2016 (3.5 per cent of its total population) and between 1.9 million and 3.8 million irregular migrants (between 0.4 and 0.8 per cent of the total population) in the European Union (EU27) in 2008. Unfortunately, a more recent estimate is not available for the European Union, although it would be reasonable to presume that the current number is higher than in 2008, though still far below the US figure.

Despite the scarcity of comparable data, the available information – obtained from sources such as regularisation registries – suggests that illegal employment of foreign workers is most likely to affect men of fairly young age. Such illegal employment is most likely in agriculture, construction, manufacturing and domestic services.

Policies for combatting the illegal employment of foreign workers should draw on a broad set of measures, including both labour market and migration policies to reduce informal employment and facilitate legal pathways, as well as measures specifically designed to enhance compliance and enforce existing regulation in the workplace.

When the issue has become prominent or structural, regularisation programmes may appear as an unavoidable solution. However, they must be carefully designed and backed by policy changes that address the root cause of the phenomenon.

Status verification involves employers checking to ensure that a foreign worker's right to work has been duly authorised. To that end, some governments provide a verification service which may be optional or mandatory for employers to use. Such systems can help raise employer awareness and facilitate inspections, though efforts to develop them are still modest in OECD countries. Nevertheless, some countries have introduced secured online verification platforms that allow employers to check free-of-charge the employment authorisations of their foreign employees and job applicants. Such systems may offer good practices to emulate.

Labour inspection practices in most OECD countries involve combining targeted inspections in specific sectors with broader, random controls. Inspections are generally infrequent, however, and therefore unlikely to deter employers from illegal employment of foreign workers. Improving the efficiency of inspections requires closer, better coordination and

cooperation between the different government agencies which work to curb the illegal employment of foreign workers – for example, the police, immigration authorities, tax and customs administration, and labour inspectorates.

OECD countries adopt very different approaches to sanctions and penalties against illegal employment of foreign workers, with the level of fines and the severity of criminal charges varying widely. Nevertheless, sanctions against employers are a crucial part of efforts to deter them from hiring foreign workers with irregular legal status. How effective sanctions are depends both on their severity and whether employers believe they are likely to be enforced.

## 5.4 Potential labour market enforcement action

Overall, I am struck by the absence of preparation and conversation across government to date to anticipate and properly manage the labour market changes related to the new immigration system. COVID-19 will have naturally diverted attention and resources from this issue, but a stronger focus from the centre of government to consider these risks and how they may be mitigated is now needed.

Although the Home Office has established several advisory groups to support the development of new immigration policy, including one focused on vulnerable groups, I feel more needs to be done to consider the potential risks, and improve the preparedness of the bodies to respond to these. Enforcement bodies, both those under my remit and beyond, seem to have done little to assess the risks to migrant workers in their own areas and could have done more to target those groups (whether by nationality or by the sectors they work in) to ensure they are receiving clear communications on this policy change.

As outlined above, the changes in the immigration system could have a number of impacts on employers and workers. I would expect the enforcement bodies, working with immigration enforcement and wider Home Office to be actively assessing the potential effect on non-compliance and worker exploitation in order to prepare and deploy resources effectively.

With all these risks, there are specific sectors or groups of migrant workers that may be anticipated to be at greater risk. As of January 2021, none of the enforcement bodies have undertaken any specific assessments of the potential risks in their areas arising from the immigration policy changes. However, I understand and welcome the fact that GLAA will be working closely with the Joint Slavery and Trafficking Analysis Centre (JSTAC) in early 2021 to examine possible impacts around labour exploitation.

While there have been communication campaigns around the important changes happening following EU exit, feedback from migrant and workers' rights groups is that there remains a lack of awareness among pockets of workers, employers and the general population. For example, research by the Joint Council for the Welfare of Immigrants (JCWI, 2021) found that, of care workers surveyed online: one in seven did not know or were not sure what the EUSS was; and one in three did not know that there was a deadline for the EUSS. This research, corroborated by reports from stakeholders, highlighted a lack of awareness in particular migrant communities as well as marginalised and vulnerable groups such as looked-after children, adults with limited mental capacity and Roma communities (JCWI, 2021). This is pressing considering the June 2021 deadline for applications to the EUSS.

A further concern is that, even once registered for EUSS, there is no official documentary proof of status that people can tangibly hold and present, although individuals can view and prove their status to employers via [GOV.UK](https://www.gov.uk). I understand the reasons for this and, for compliant employers,

this will work effectively and ensure confidence in the system. However, migrants dealing with less scrupulous employers will be more vulnerable to being questioned about their status and pressured to work for lower pay or in harsher conditions.

Stakeholders who attended our workshops in autumn 2020 wanted greater support and advice from government and the enforcement bodies for both workers and employers as the new system comes into effect. They specified that communications campaigns must be developed with workers' voice and accessibility in mind and using targeted channels to amplify this message.

However, increased worker awareness alone is not the solution. Prevention campaigns targeting workers in high-risk sectors, along with active enforcement activity, should be planned along with effective monitoring.

As the new immigration system beds in and the mid-June 2021 cut-off date for EUSS applications is reached it will be vital to have as complete a picture as possible of any emerging non-compliance threats. Gaps in information and intelligence around the scale and nature of non-compliance have always been a problem. The pandemic has resulted in a reduction in timely and meaningful information just when having a detailed and up-to-date picture on developments is most needed.

Workshop attendees highlighted existing organisations and structures that could provide a key source of timely information, ranging from unions and NGOs to local and regional partnerships. There is a strong case for much closer and focused working by the enforcement bodies with such stakeholders. This may require a step change in approach, especially around the sharing of intelligence. Without this, I fear that many vulnerable migrant workers will be left unprotected.

## 5.5 Future interaction between labour market and immigration enforcement

An underlying issue for the DLME has always been the balance between labour market and immigration enforcement and how these two areas interrelate. Stakeholders have consistently voiced concern over labour market enforcement passing on details of migrants with unclear immigration status to immigration enforcement, particularly when undertaking joint operations. This concern is understandable. Although the focus of the labour market bodies is on protecting vulnerable individuals, it is also the case that, where they uncover illegal working, they have a duty to report this to immigration enforcement.

There is a tension here between two policy aims: ensuring compliance with immigration rules and protecting exploited workers who may often have insecure migration status. Workers fear (validly or not) that if they complain to (or cooperate with) labour market enforcement bodies, they will come to the attention of immigration enforcement. Fear of speaking up means that some poor working practices remain hidden and employment protections remain unenforced. These workers lack any real voice, especially as union presence is usually minimal in low-skilled sectors with transient workforces. Indeed, this has been one of the issues highlighted by NGOs over the past year on garment manufacturing in Leicester but is true in many other industries and locations as well.

I believe there is the potential here to clarify and achieve a better balance between the policy objectives of immigration and labour market enforcement.

Some stakeholders have put forward proposals to create a safe reporting environment for workers with insecure immigration status (e.g. see FLEX, 2020). This would involve, among other things, an explicit rebalancing of the prioritisation and data sharing between immigration and labour market enforcement bodies.

More widely, this issue is also being considered in relation to victims of crime. A joint investigation by HM Inspectorate of Constabulary and Fire & Rescue Services (HMICFRS), the College of Policing (CoP) and the Independent Office for Police Conduct (IOPC) found that victims of crime with insecure or uncertain immigration status are fearful that, if they report crimes to the police, their information will be shared with the Home Office (HMICFRS, 2020). The investigation looked at migrant victims in highly vulnerable circumstances, usually arising from crimes of domestic abuse or modern slavery and human trafficking. It raised concerns about the effect of sharing immigration information between police and the Home Office and recommended:

- where officers only have concerns or doubts about a domestic abuse victim's immigration status, they should not share information on those victims with immigration enforcement;
- the Home Office should review the relevant legal framework and policy to establish sound and fair priorities regarding migrant victims of crime and migrant witnesses to crime, with insecure or uncertain immigration status;
- the Home Office and the National Police Chiefs' Council should develop a safeguarding protocol about the police approach to migrant victims and witnesses of crime; and
- the police should establish safe reporting pathways for all migrant victims and witnesses to crime.

This investigation sets a precedent that should be explored further in the context of the work of the labour market enforcement agencies. This is particularly timely given the development of the SEB, where there is an opportunity to review ways of working and start afresh to build trust with groups who are reticent about reporting exploitation and non-compliance.

## 5.6 Conclusion and recommendations

The UK's new immigration system could pose serious challenges for labour market compliance and enforcement, and as yet I am not convinced we are fully prepared to manage and respond to this threat. The mid-2021 deadline for the EUSS makes the necessary planning, preparation and action all the more urgent. Several of the recommendations I make below require swift acceptance and implementation by government if we are to avoid seeing many of the risks outlined above.

### Recommendation 6

To increase the focus and build the evidence base around the impact of the new immigration system on labour market enforcement, I recommend that:

- a) a strategic oversight group be established involving relevant government departments and enforcement agencies focusing on the potential labour market enforcement implications arising from the new immigration system. To be implemented by the end of June 2021, before the deadline for applications for the EU Settlement Scheme; *Lead: Home Office. Timescale: to be established by the end of June 2021.*
- b) the Home Office and BEIS commit to regular and ongoing monitoring of the impact of the new immigration system on labour market compliance, building on existing structures such as its Vulnerability Advisory Group. In addition, there should be an independent evaluation of these impacts after 18 months of the new system; *Lead: Home Office and BEIS. Timescale: monthly monitoring and evaluation to report by the end of 2022.*



- c) the Home Office and BEIS, working with the enforcement bodies, should review the interaction between labour market and immigration enforcement to ensure sufficient protections for migrant workers and improve intelligence flows via safe reporting structures. This should feed into development of the SEB. *Lead: Home Office, BEIS and enforcement bodies. Timescale: by end of 2021/22 financial year.*

## Recommendation 7

The labour market enforcement bodies should urgently act to mitigate the labour exploitation risks of the new immigration system. For all three bodies I recommend that they:

- a) identify sectors and locations with high numbers of European Economic Area migrant workers and issue communications targeting both workers and employers to raise awareness about the immigration changes: *Lead: all enforcement bodies. Timescales: by mid-2021.*
- b) better monitor emerging risks from the new immigration rules to be able to respond in a timely manner, by increasing their working with: (i) other enforcement bodies; and (ii) third-party organisations (such as unions, and non-governmental organisations). *Lead: all enforcement bodies. Timescales: to commence beginning of 2021/22 financial year.*

# Section 6: Future enforcement with the creation of the Single Enforcement Body

## 6.1 Introduction

The economic changes and new potential risks of labour exploitation discussed in Sections 4 and 5 make it imperative that the Single Enforcement Body (SEB) acts as a turning point for labour market enforcement.

At the time of writing, the SEB is at an early stage of development. The Consultation on the SEB and other issues was carried out over a year ago but results and ministerial decisions around remit, direction and powers are yet to be published.<sup>20</sup> My response to the consultation is publicly available and here I build on the ideas I set out back in autumn 2019 (Taylor, 2019). Governance structures to support the development of the SEB exist on paper, but the dedicated team for taking this forward is yet to be established, although a Deputy Director has been appointed in BEIS to lead on SEB delivery.

As an independent Director, I have not been party to the ongoing discussions between Home Office and BEIS policy officials and Ministers, so to a certain extent my team and I are working in the dark around the preferred direction for the SEB. Therefore, the views set out below need to be seen in this context.

There are many variables in the type of organisation the SEB could become, how it operates, and its effectiveness in improving protection for workers and ensuring a level playing field for compliant businesses. Without knowing its formal remit, legal standing, overall approach or likely budget, discussions with even the most knowledgeable and engaged stakeholders can only advance ideas so far.

The SEB is an unusual phenomenon – a policy shift which has almost universal support. It is a massive opportunity to redesign the systems to achieve a step change in compliance and enforcement, addressing many long-standing issues for workers and businesses alike. To maximise its potential, I firmly believe, and have pushed for, the need for an open and collaborative SEB development process; one which welcomes a wide range of views and input into its design and decision making.

To support the two departments in this endeavour, and to develop ideas around the SEB further, ODLME ran three online stakeholder workshops in November and December 2020, including participation from the LME bodies and sponsor departments. The resulting fascinating and broad discussions included views from unions, academics, businesses, sector bodies, other enforcement bodies, community organisations, local authorities and devolved administrations.

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<sup>20</sup> The Government response was published in June 2021.

They demonstrated the breadth and depth of expertise around this complex area, as well as a tangible enthusiasm and willingness to feed into the SEB to ensure it meets the common goal of protecting workers.

In this Strategy, I have not made recommendations for the SEB itself. Given the current stage of development of the SEB and my lack of sight on discussion with Ministers or future direction, it did not seem appropriate to set out recommendations that would be assessed through the DLME Annual Report process. Instead, in this section, informed by the stakeholder engagement workshops, I explore the key success factors for the SEB and make the case for an acceleration of preparatory work in these areas.

In particular, I believe it is important to carry forward the work started in the three workshops. These discussions will be an opportunity to continue improving mutual awareness, clarity and collaboration both between the agencies (a core part of my remit) and with wider partners. They will also help to develop a more detailed picture of how the SEB might work in practice, which can inform and accelerate the work of an incoming SEB Board.

**My office would be keen to take these conversations forward, identifying specific questions that will need to be resolved by the leadership of the SEB and proposals that have broad support. To do so, the Office will need some additional capacity and for this work to be aligned with DLME's statutory outputs in 2021/22.**

## 6.2 Critical success factors for the development of the SEB

### 6.2.1 Ethos, culture, engagement

The SEB should be a high-profile, outward-facing agency seen as a user-friendly resource to workers and compliant employers. To get this right, it should engage closely with stakeholders when developing and evaluating its policies and practices and invest in its communication capacity.

#### **Critical success factors**

- A strong brand identity and mission
- Effective and targeted marketing and communication capacity
- Effective processes for stakeholder engagement and responsiveness

The SEB is an opportunity to elevate and harness political and public pressure to improve labour market protection for vulnerable workers. Its creation should be used to send out a strong message that compliance matters, that there is help and support for workers and compliant businesses, but that those committing severe and deliberate breaches will be found out and the consequences will be significant. In addition, the SEB can play an important part in the reshaping of the UK labour market and business context post EU exit, helping to demonstrate that the UK is both a fair place to do business and a good place to work.

In order to achieve all of these things, the SEB will need a unified identity and clear objectives, and to consolidate and project a coherent narrative around labour market enforcement. Clearly it will need a strong, positive name and publicly stated mission. Stakeholders at the workshops felt it especially important that the organisation was (and was seen to be) independent and transparent. Its remit, focus and culture must be well thought through, communicated, and ingrained in the structure of the SEB, building on a principle of openness around activities and

policies. It must also be clear what is outside of its remit, and what powers it has to manage expectation and demand. In this way, it will build up its reputation and trust with workers and compliant businesses.

Its branding, marketing and communications strategy must be targeted and effective. Key here will be access to data, new communication technology and expertise to:

- identify and understand the target audience, be this vulnerable workers, businesses seeking compliance support or employers requiring firmer enforcement interventions;
- develop and adapt its communication gateways so it is both heard and listening to its target groups – that is, accessible to workers who may be reticent about coming forward with complaints and actively helpful to businesses who are trying to do the right thing;
- publicise its enforcement successes to increase deterrence; and
- monitor and assess the effectiveness of its communications to ensure efficient use of resources and constant improvement.

Each of the three bodies has strengths, experience and good practice to build on in these areas, but there is also significant expertise on which the SEB should draw in other enforcement bodies and further afield. The SEB will need to really understand its target groups to be able to deliver specific messages that effectively result in behaviour change. As discussed in Section 4, the SEB needs the right structural and governance arrangements to support rather than hinder its efforts to communicate with businesses and workers. This includes having control over their communications outlets, enabling agile responses to emerging threats and experimentation with different ways of getting messages to target groups.

As discussed in Section 5, an important issue for improving reporting and engagement with migrant workers and organisations will be the relationship between the SEB and immigration enforcement. The SEB provides an opportunity to review and balance the information and operational links between these two enforcement areas, resetting the relationship and being transparent about the competing priorities and statutory duties of each. The outcomes of Recommendation 6 in this Strategy can provide the base for this.

The palpable enthusiasm and multitude of ideas at the stakeholder workshops demonstrates the absolute necessity of engaging with stakeholders to develop and communicate the organisation's ethos, aims and culture. It is well understood that the SEB is potentially a major turning point for labour market enforcement, and stakeholders want to offer their knowledge and input to make it the best it can be. To maximise the value here, the SEB must build in effective mechanisms for genuinely engaging with worker organisations, academics, business groups, employers and international experts, both into the *design* and the *ongoing operation* of the organisation.

Formal structures and agreements around the role of stakeholders and how their input will be used (be this at strategic, operational, policy or case level) would provide a solid base for mutual understanding and long-term effective relationships. Stakeholders were clear that this relationship must involve two-way communication, with feedback on decisions, actions and progress resulting from information and expert opinion provided. There was wariness of a 'black hole' of engagement, where they provide information and opinions but rarely hear anything back about how this has been considered and the resulting decisions. Of course, the SEB will need to work within data protection obligations and operational sensitivities, but on the whole it should adopt an attitude of openness and willingness to listen and engage with external views. The basis for this will be determined in the agreed values, ethos and character of the organisation.

The workshops run by my Office were a good start here but very much the beginning of the discussion. Going forward, ODLME is in a strong position to support BEIS/Home Office with developing this engagement, using its independent position to broker the relationships between stakeholders and policy makers, should it be given the mandate and resources to do so.

As I stated, I am not making recommendations on the SEB. However, I would expect to see the sponsor departments and enforcement bodies urgently taking forward the following types of work to advance this debate:

- Take advice from experts in organisational change around how to develop and embed a working culture within a new organisation. Developing the aims and guiding principles will take thought and engagement from across the three bodies and partners. It will need to be an ongoing, high-priority workstream to successfully bring these three organisations together into one entity.
- In the first instance, develop an effective mechanism for engaging with partners in the *development* of the SEB, drawing on examples of good practice. Then, use this to determine how to effectively engage external partners in the *operation* of the organisation in the longer term.
- Identify the basic requirements that would give the SEB the capacity and capability to maximise its use of communications, both large-scale and targeted. Build these into the organisational framework to avoid recreating similar barriers to the ones experienced by the current bodies.

### 6.2.2 Capacity, methods and resources

The SEB should have sufficient capacity to fulfil its mandate but focus its resources on areas with the greatest prevalence and severity of risk. Drawing on successful practice within and beyond the agencies, it should use the best available methods to deter, identify and respond to non-compliance.

#### Critical success factors

- A strong research base on underlying patterns and forms of non-compliance
- A comprehensive and robust framework for assessing risk and allocating resources
- Evidence-based methods to gather and act on information of non-compliance

As highlighted in previous LME strategies, current capacity of the three enforcement bodies is well below the level of one inspector per 10,000 workers<sup>21</sup> recommended by the International Labour Organization (ILO, 2006). The increase in resources for the three bodies in recent years is welcome but must be seen in the context of growing demand and remit: a growing proportion of the workforce earning NLW/NMW as rates have increased (projected to increase further as rates rise<sup>22</sup>); the rapidly expanding number of employment agencies and the future prospect of regulation of intermediaries; and the expanded role of the GLAA. The resource allocated to the SEB must cover the operational costs involved in ongoing enforcement (including the administrative and HR functions currently provided by host departments for EAS and NMW teams), but also provide resources for the process of developing the organisation. While the SEB

21 ILO measures include Health and Safety inspectors but, even if these are included, the UK is still below the recommended level of resource for inspectors.

22 At the time of publication of this Strategy the government had announced in its autumn 2021 Budget a further uprating of national living/minimum wage rates. Also, the age of entitlement to NLW in 2021/22 has been lowered from 25 to 23. The aim is to reduce this further to 21 by 2024 at the latest.

may lead to improved performance and efficiencies in time, this should not be expected before it is fully bedded in. Any attempts to create and run this organisation on a shoestring will undermine the entire project.

One of the cornerstones of the SEB will be the need for a strong research base, access to data (in particular, but not limited to, HMRC wider data), analysis capacity and partnership networks to generate practical knowledge. Currently there are many gaps in the evidence base which enforcement bodies have not had capacity to fill, and the use of data is highly variable across the three bodies. The SEB should aim to become renowned for its research and collaboration with academics and expert groups, for using the best techniques in behavioural science, for being at the forefront of combining datasets and exploiting big data. In so doing, the SEB would be able to target its resources and communication efforts more effectively and identify and respond to emerging trends and risks in the labour market, such as those related to changing economic conditions and immigration policy discussed earlier in this Strategy.

From discussions with the enforcement bodies, it seems to me that use of data is currently being seen solely as a problem rather than an opportunity. The legal issues around the access to HMRC wider data are absolutely vital to resolve, but I have yet to hear any discussions about the exciting potential presented by the joined-up capacity of the SEB to enable the combining of data and research expertise to inform practice. To my mind, this should be a core focus of the organisation as it aims to achieve better protection for workers through improved effectiveness of its prevention and enforcement activities.

As discussed in Section 2, developing a joint and comprehensive overview of the risk across the spectrum of non-compliance, and across sectors, will be a major step forward for the SEB. My Office has started this work, but this must be developed further to provide a much more sophisticated and nuanced understanding of risk, bringing together the information and expertise across all three agencies and reaching out to other sources of data and intelligence. This would provide the foundation for allocation of resource across its new broader remit, and the basis on which to develop a measured sectoral response to deal with industries which, for various structural reasons, result in either high propensity for non-compliance, extreme severity of exploitation, or conditions that make identification and enforcement of non-compliance difficult.

The final element of ensuring effective enforcement methods is to value and embed the testing and continual improvement of interventions. The SEB must build a culture of being free to test and try new things. Some of these will fail but, if the relevant information is gathered throughout to allow robust evaluation, the SEB can build an increasing array of powerful interventions (whether enforcement or compliance focused) that are proven to work. Yet again, openness and engagement are key to success, including openness of ideas, partnerships and operational performance. I have previously noted (DLME, 2021) that the quality of performance metrics for the enforcement bodies is improving but that, overall, it remains difficult to connect agency performance with evidence of reducing labour market non-compliance overall. The SEB has to provide and consider this evidence base in order to deliver (and demonstrate that it delivers) better protection for workers, support for compliant businesses and tough behaviour-changing penalties to non-compliant businesses.

While none of this is easy, it is in fact a continuation of the direction in which the enforcement bodies have already been travelling and have made significant progress in recent years. Looking ahead, in the next two years, the enforcement bodies and two departments have the opportunity to start implementing some of the characteristics and ways of working that they want to see in a fully operational SEB. The bodies do not have to wait for the SEB to become increasingly open, to further innovate and test out new techniques, to maximise the information and expertise available in-house and more widely, and to improve the evidence base to understand 'what works'.

To advance this, I would expect to see the sponsor departments and enforcement bodies urgently taking forward the following type of work:

- Together with ODLME, further develop the process and content of the risk model, expanding on the information gathered and exploring ways of analysing the data to get balanced overview of risk across the range of non-compliance;
- Develop collaborations with academics and pursue research using both data from enforcement bodies and outside expertise to develop better understanding of workers at risk and the sectors in which they work; and
- Establish an expert group, including external input, to investigate how different forms of data could be used in an innovative way within the SEB.

### 6.2.3 National and local collaboration

The SEB should develop and sustain national and local relationships critical to maximising compliance and minimising non-compliance.

#### **Critical success factors**

- SEB-led and resourced national forums focusing on key issues, bringing together other agencies with an interest in labour market compliance and enforcement.
- A thorough and consistent approach to high-risk sectors based on working with employers and other stakeholders to adopt responsive sector-based strategies and interventions.
- A comprehensive but flexible local presence ensuring the SEB exists as a relevant and influential force in all areas, able to allocate frontline resources to places facing particular enforcement challenges.

Even with its expanded remit and joined-up powers, the SEB cannot possibly successfully promote compliance and tackle exploitation across the labour market working in isolation. Defining its place within the ecosystem of national and local organisations and negotiating its relationships with a myriad of partner agencies will be an important part of establishing the body.

One of the key roles of the new SEB should be as a convenor of interested parties whose work affects, or is affected by, issues of labour market non-compliance and exploitation. At a national level, this can serve to raise the profile of labour exploitation and promote joint thinking, strategy and action. The SEB will have to prioritise and be strategic about what it aims to achieve with the resources at its disposal. An obvious focus of some of these strategic forums would be on the high-risk and difficult-to-enforce sectors identified through the joint risk reviews.

From the 'deep dives' my team and I conducted into four high-risk sectors for my previous Strategy, I concluded that effectively tackling these high-risk sectors requires dedicated resource and approaches to develop knowledge, data, relationships, enforcement processes and intelligence sources. This is long-term work and resolving entrenched problems in certain sectors will require patience and innovation. The enforcement bodies have already done excellent work in some areas, in particular the protocols developed by GLAA in partnership with sectors, the targeted project-based approach of HMRC, and the work of EAS in public procurement. The SEB must build on this expertise and focus on developing relationships with other bodies and industry groups or employers to take advantage of the commitment of the compliant employers within the sectors to ensure good practice within their industries. Again, this will require experimentation, testing and constant evaluation of impact to develop sophisticated and effective interventions that can change behaviour.

Of course, there may be other themes and issues that national forums and partnerships brought together by the SEB will want to address – these might include online recruitment, apprenticeships and holiday pay – with the aim of bringing together expertise and decision makers in policy, operations, research, campaigning and business representation.

In addition, I believe that there are significant benefits of the SEB having a strong local presence. This may take varying forms in different parts of the country according to context, industry and risks but, again, its focus would be on convening effective partnerships, identifying and analysing data to understand local problems and priorities, and bringing together activity on compliance and enforcement to maximise impact. Ideally the local SEB should be able to apply to draw on additional resource where particular issues are discovered that need specific skills or enforcement resource.

Alternatively, a different model would be for the ‘local SEB’ to have a much greater outreach role, having a physical base somewhere accessible for workers and employers who need support, perhaps co-located with existing enforcement bodies or community organisations. This could have a whole host of benefits, including improving accessibility and support for workers, but it would also be resource intensive.

Whatever the shape of the local SEB, there would be important decisions to be made about how it fits within the existing complex infrastructure (including with local authorities, policing structures, devolved administrations, the NCA, Local Enterprise Partnerships, and Modern Slavery Partnerships). It will need to build on existing structures but avoid duplication. Whatever form the local engagement takes, this needs to be centrally directed and regionally delivered, so that engagement is consistent, with the same bodies, in the same way, nationally. Clarity of purpose and expectations of engagement with local partnerships will be essential to building effective long-term relationships, particularly balancing and negotiating between national and local priorities, and considering differences in devolved administrations. I would expect to see the sponsor departments and enforcement bodies urgently taking forward the following strands of work to advance these issues:

- Assign one of the sub-groups of the SEB governance programme to lead on developing options for how the SEB could exist at a local level;
- Review different models of local and national working implemented by similar bodies, and also engage with organisations dealing with similar structural issues (e.g. Local Safeguarding Children Boards and Modern Slavery Partnerships); and
- Commission an independent review of the partnership work within Leicester garment factories, identifying relevant lessons from a strongly localised, focused operation.

## 6.3 Conclusion

There is much to be excited about with the commitment from the Government to develop a new, joined-up enforcement body for protecting workers and ensuring compliance. However, since the election in December 2019, progress has been slow. This delay should of course be seen within the context of changes in Ministers, EU exit and of course the COVID-19 pandemic. However, the two departments and the enforcement bodies now have an opportunity to focus on what type of organisation they really want the SEB to be, how it will operate, how workers and businesses will interact with it, and how it will work in partnership with other organisations.

Discussions on ethos and culture, methods and resources, and national and local collaborations need to be happening **now**, and with engagement from as many interested parties as possible. Over the next two years, prior to the SEB becoming fully operational, we should all be working together to develop the attributes, evidence base and ways of working that would make the SEB an effective compliance and enforcement organisation.



I have set out above some of my ideas and thoughts, aided by the wide-ranging conversations with stakeholders, but this only scratches the surface. I expect the functions of the current ODLME to be subsumed into the new body and, consequently, the current DLME role to become redundant. This position means that the DLME and their team are well placed to examine the SEB developments from an impartial position, and the independence of the position enables the DLME to support partnerships and discussion between outside partners and government bodies.

**I therefore repeat and urge the Home Office and BEIS to take up the offer for my Office to support the departments to have these conversations around the development of the SEB, but only if the mandate and capacity is made available for this to happen.**

## Section 7: Director of Labour Market Enforcement workplan 2021/22

While it is standard in these strategies to set out a workplan for the Director and their Office for the following year, this is somewhat difficult this year until a new Director is appointed. He or she will clearly have their own priorities and issues of focus that they will wish to pursue, therefore it is not fitting for me to set out a detailed workplan for the Office beyond its statutory requirements and ongoing projects.

However, I urge BEIS and the Home Office to prioritise the **publication of this 2021/22 Strategy**. Although this Strategy contains fewer recommendations than previous years, recognising the current labour market challenges means that many of them require swift implementation. Ideally, the Government response to the recommendations herein should be published within three months of submission.

To meet its statutory obligations, the Office will need to produce the **2019/20 Annual Report**, assessing progress made against the recommendations in the 2019/20 LME Strategy that was submitted in March 2019. The Government response to that Strategy was published in October 2020. That annual report should also provide an opportunity to make an initial assessment of the impact that the pandemic has had on the activity of the enforcement bodies in more detail.

The **recommendations in the 2020/21 Strategy** have been agreed with Government prior to publication<sup>23</sup> and, as such, no formal Government response is expected. The Office will continue to work with the enforcement bodies to support progress against the recommendations within this Strategy. In turn, this includes the enforcement bodies supporting ODLME to: review cases of severe exploitation; understand how victims are first identified to inform future communications strategies; and develop the evidence base around construction to inform the development of a sectoral approach in the SEB. This should be taken forward in tandem with Recommendation 2 in this Strategy, that the SCG is used to develop and take forward a two-year programme of work to develop a more strategic approach to sector-based working.

As discussed in Section 3, the Office will also be seeking to commission the **research project** on the scale and nature of non-compliance in spring, in co-funding partnership with ESRC. This is a major project and will take at least two years to complete. The aim is to commence project work early in the 2021/22 financial year.

Over the summer, in partnership with the enforcement bodies, the risk assessment should be reviewed 'to understand the impact of the pandemic and other economic and policy changes on the risks and trends in non-compliance.

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<sup>23</sup> The 2020/21 Strategy was originally submitted in March 2020 and revised in December 2020 in light of the pandemic. The Strategy is awaiting publication.

As I set out in Section 6, I very much hope that the new Director is provided with a substantial and clear role in the **development of the SEB**. The ODLME is well placed to support the two departments and enforcement bodies in their work to determine the shape and form of this new organisation should they be provided with the remit and capacity to do so. This should be a major part of the ODLME workplan for 2021/22.

# Annex A: Data sources on labour market non-compliance during the pandemic

One of the statutory requirements of the Director as set out in the Immigration Act 2016 is to report on the scale and nature of non-compliance. As well as drawing on the risk review (Section 2) and progressing the research discussed in Section 3, Labour Market Enforcement (LME) strategies have previously used a number of data sources to provide analysis to meet this requirement. However, the pandemic has severely impacted many of these data sources in 2020 and robust data has not been available this year.

This Annex provides an update on key data sources on labour market non-compliance for 2020.

## Minimum wage

The pandemic has severely impacted the ability to collect robust and reliable survey evidence to inform estimates of underpayment of the minimum wage. Although we continue to draw on the estimates produced by the Low Pay Commission (LPC), all survey data conducted during 2020 should be treated with caution.

Fieldwork for the Annual Survey of Hours and Earnings (ASHE) takes place in April, but in 2020 this coincided with high levels of furloughing (peaking in May) related to the first national lockdown. Unsurprisingly, this impacted on response rates and has meant less reliable data as a result.

Consequently, the LPC has not been able to produce a central estimate of the number of workers underpaid the minimum wage. Instead, the LPC provided two estimates for 2020, with one including, and the other excluding, workers who were furloughed at the time of the survey (see Table A.1).

The lower end estimate for underpaid workers in 2020 is 347,000. This is lower than the 408,000 identified in 2019 (LPC, 2020). However, the LPC makes it clear that this will likely underestimate the true figure because it excludes some workers who would otherwise be underpaid. By contrast, the upper estimate of 2.04 million (including those on furlough) is likely to be a significant overestimate because many of the furloughed workers would not normally be paid below the minimum wage.

Therefore, at this time it is not possible to gauge the extent of underpayment for 2020 with any accuracy. With another lockdown in early 2021, there remains the risk that similar data challenges will also hamper any improved measurement in 2021.

**Table A.1: LPC estimates of underpayment of minimum wage workers by rate population, UK, 2019–2020**

	Workers underpaid (thousands)			Underpayment (percentage of population)		
	2019	2020 exc. furlough	2020 inc. furlough	2019	2020 exc. furlough	2020 inc. furlough
Adult rate/NLW	345	297	1,619	1.4	1.3	6.4
Adult rate/20–21-year-old rate	32	25	229	1.6	1.8	12.2
18–20-year-old rate	19	18	136	1.9	1.4	14.4
16–17-year-old rate	3	3	31	1.2	1.2	12.6
Apprentice rate	9	5	26	4.6	2.4	13.8
<b>Total</b>	<b>408</b>	<b>347</b>	<b>2,041</b>	<b>1.4</b>	<b>1.2</b>	<b>7.2</b>

*Low Pay Commission (LPC) estimates using ASHE 2010 methodology, standard weights, UK, 2019–2020 Source: LPC (Table 3.3., 2020)*

## Labour exploitation

In the UK, potential victims of labour exploitation identified by ‘first responders’ are referred to the National Referral Mechanism (NRM) which assesses each case and provides the victims of exploitation with appropriate support. Data from the NRM therefore provides an important proxy measure of risk for labour exploitation in the UK.

Since its introduction in 2009, the number of potential modern slavery victims entering the NRM has grown almost continuously each quarter, reaching 3,345 by Q4 2019 (Home Office, 2020). Although this upward quarterly trend reversed in 2020, most likely due to the wider impacts of the pandemic, the overall number of potential victims for Q1–Q3 2020 was still higher than for the equivalent period in 2019 (Home Office, 2020).

Labour exploitation has been the most prevalent form of modern slavery recorded in recent years, accounting for over half of all referrals. The NRM recording methodology has recently changed to allow for better identification of the different types of exploitation. Among other things, criminal exploitation has now been separated from labour exploitation (earlier data tended to include exploitation associated with County Lines drug trafficking) and potential victims can now be recorded against multiple exploitation types, meaning a ‘primary’ exploitation is no longer identifiable.

Improvements in the NRM data are welcome, but it makes comparisons of the data on labour exploitation victims over time more challenging.

Since Q4 2019, when re-categorisation was introduced, 39 per cent of adult potential victims were subject to labour exploitation alone, but a further 23 per cent involved multiple exploitation (mostly criminal exploitation) including labour exploitation (DLME analysis of Home Office, 2020a, 2020b, 2020c). It remains the case that labour exploitation is more prevalent among men.

Future trends here are difficult to predict but, given the discussion in the main report around increased risk for workers due to economic change and the new immigration system, one might expect to see a rise in referrals to the NRM.

## Employment agencies

Data issues have also impacted on updates to our proxy measures of risk in the employment agency sector. As such, the best available estimate is taken from the Office for National Statistics (ONS) Annual Business Survey from 2018, which recorded 17,523 placement agencies and 11,738 temporary employment agencies (ONS, 2020b).

Deriving an estimate of the scale and growth of employment agencies at the current time remains a challenge, in particular because the sector will have been impacted by the broader economic slowdown. However, the annual industry survey carried out by the Recruitment and Employment Confederation suggests that, in the first half of the 2020/21 financial year, the sector as a whole contracted by about a fifth, with the volume of temporary assignments down by 30 per cent (REC, 2020).

## Future analysis

In times of labour market flux, it is even more important to have a timely and robust understanding of the scale and nature of non-compliance so that enforcement bodies can address emerging issues and prioritise their resources effectively. Circumstances in 2020 have interfered with the data sources the Director of Labour Market Enforcement (DLME) would usually draw on to support the enforcement bodies in this regard. As further information becomes available and the impact of the pandemic becomes clearer, DLME will continue to source and analyse the most up-to-date and robust data sources.

## Annex B: Scale and nature of non-compliance – sectors

**Table B1: Sectors judged to be at highest risk of non-compliance**

The table below provides some further information on the sectors assessed as having a high impact of non-compliance, and/or a high level of enforcement activity within the assessment period.

Sector or risk	Notes on the sector or risk
Food processing and packaging	This sector ranks high due to the severity of non-compliant behaviour seen within the sector by both HMRC and GLAA, the significant enforcement resource dedicated to this sector (in line with it being a GLAA licensed sector) and the size of the workforce indicating a large potential pool of workers who could be impacted.
Hand car washes	The population of workers in the sector is small, but it figures highly in the level of activity of the enforcement bodies due to the level of non-compliance and assessment that there are cases of severe labour exploitation. This sector was examined in the 2020/21 Strategy.
Agriculture	This is a GLAA sector and ranks highly on impact of non-compliance due to the indicators of modern slavery, including arrests in various locations during the summer. This sector was examined in the 2020/21 Strategy.
Construction	The risk of modern slavery in this sector is regarded as high, evidenced by identified cases of severe exploitation. The construction sector is also a high-risk for illegal working and health and safety infringements. There are many subsectors in this industry which each require assessment due to different types of work and employment types. This sector was examined in the 2020/21 Strategy.
Garment and textiles industry	This sector has been the subject of substantial public scrutiny in the past year (see Section 2). The worker population is small. HMRC risk modelling does not assess there to be a significantly higher NMW risk than in similar manufacturing sectors. The enforcement bodies have had low levels of complaints or information from the sector. The impact on workers could be substantial, although there is currently little evidence of modern slavery level exploitation. Assessment will be reviewed post Operation TACIT.
Shellfish gathering	This is a GLAA licensed sector. There is anecdotal information to suggest displacement into shellfish gathering during the pandemic and the sector was a priority for Operation Aidant in 2020. There is still an intelligence gap as to whether some gathering activity is labour exploitation with the abuse of personal allowances (for gathering of shellfish) or social activity. This continues to be a sector of high health and safety risks.
Poultry and eggs	This is a subsector of the agriculture industry and a GLAA licensed sector. The threat is related to 'chicken catchers' – mobile groups of workers going from location to location to work. No advance knowledge of their whereabouts makes it difficult for the GLAA to identify and engage with workers.

Sector or risk	Notes on the sector or risk
Modelling	This is a new sector included in the risk assessment. The assessment identifies a high level of deliberate non-compliance. A key threat within this sector is the charging of high up-front charges to produce a model's portfolio to 'assist' the person's jobseeking. These portfolios can be of poor quality and jobseekers are encouraged to sign credit agreements to pay for these, resulting in financial harm and potential vulnerability to exploitation.
Fraudulent or misdescribed online job applications	See Section 4 for discussion of online recruitment threats. The population of workers at risk is not known. There is very little intelligence leading to cases that can be taken forward by the enforcement bodies, but the level of (financial) harm to workers is substantial. The full scale of the threat is unknown because it is believed there is significant under-reporting by victims.
Food and beverage service activities (includes restaurants/pubs)	This is a very large sector accounting for a high number of cases and intelligence reports for the enforcement bodies. The types of exploitation seen here are across the range of non-compliance. The food and beverage sector has been massively impacted by the pandemic, with some areas such as takeaways being able to continuously operate, and others such as pubs and restaurants subject to forced closure. The impact of this on the level of non-compliance is not yet known.
Retail trade	A very large and diverse sector, in which a range of non-compliance is seen. Accounts for a significant number of cases for the enforcement bodies.
Nail bars	The SIC code is shared with other hair and beauty businesses, which has a lower non-compliance threat. The enforcement bodies see non-compliance; however, nail bars are a risk of higher harm due to illegal working and potential modern slavery.
Care sector	Due to the pending Supreme Court judgment on sleeping time, <sup>24</sup> social care has not been included in HMRC NMW's Targeted Enforcement Programme although complaints continued to be addressed. Since the pandemic, NMW teams have generally been unable to visit care locations. Pressures related to the pandemic, and immigration changes are highly likely to impact on the assessment of risk for this sector in the next iteration of the analysis. This sector was examined in the 2020/21 Strategy.
Services to buildings and landscape activities	This sector relates to facilities management and includes cleaning, which is a low-paid, low-skilled occupation.
Warehousing	This sector has previously been rated as high risk as cases of severe labour exploitation have been reported. In this reporting period such cases were not reported, therefore the risk is assessed to have decreased.

<sup>24</sup> Judgment was delivered in March 2021.



# Annex C: List of organisations engaged in workshops

The following organisations were represented at the virtual workshops in November and December 2020, discussing issues around the Single Enforcement Body and the new immigration system.

Aspire Business Partnership  
Association of Convenience Stores  
Association of Labour Providers (ALP)  
Association of Professional Staffing Companies (APSCO)  
British Cleaning Council  
British Institute of Recruiters  
Bulgarian Embassy  
Car Wash Association (CWA)  
Care Quality Commission  
Chartered Institute of Payroll Professionals (CIPP)  
Chartered Institute of Personnel and Development (CIPD)  
Citizens Advice  
Ernst & Young LLP  
Federation of Small Businesses  
Focus on Labour Exploitation (FLEX)  
Freelancer & Contractor Services Association (FCSA)  
Greencore  
G's Fresh  
Hertfordshire Modern Slavery Partnership  
Health and Safety Executive (HSE)  
Human Trafficking Foundation (HTF)

International Partnership for Human Rights (IPHR)  
Investor Forum  
Latin American Women's Rights Service (LAWRS)  
Leicester City Council  
Local Government Association (LGA)  
Migration Observatory  
Modern Slavery and Human Rights Policy and Evidence Centre (MSPEC)  
National Farmers Union  
Nottingham Rights Lab  
Nottingham Trent University  
Organisation for Economic Cooperation and Development (OECD)  
Office of the Independent Anti-Slavery Commissioner  
Personal Social Services Research Unit – University of Kent  
PricewaterhouseCoopers (PwC)  
Recruitment and Employment Confederation (REC)  
Resolution Foundation  
Responsible Car Wash Scheme  
Scottish Government policy representative  
Security Industry Authority  
Shiva Foundation  
STOP THE TRAFFIK  
Tesco  
The Pensions Regulator (TPR)  
Trust for London  
Trades Union Congress (TUC)  
UKHospitality  
Unison  
Unite  
University of Leicester  
Unseen  
Welsh Government policy representative  
West Midlands Anti-Slavery Network

# Acronyms

**ASHE:** Annual Survey of Hours and Earnings

**BEIS:** Department for Business, Energy and Industrial Strategy

**CJRS:** Coronavirus Job Retention Scheme

**CoP:** College of Policing

**DLME:** Director of Labour Market Enforcement

**EAS:** Employment Agency Standards

**EEA:** European Economic Area

**ESRC:** Economic and Social Research Council

**EUSS:** European Union Settlement Scheme

**GLAA:** Gangmasters and Labour Abuse Authority

**HMICFRS:** HM Inspectorate of Constabulary and Fire & Rescue Services

**HMRC:** HM Revenue and Customs

**HO:** Home Office

**HR:** Human Resources

**HSE:** Health and Safety Executive

**IES:** Institute for Employment Studies

**IFS:** Institute for Fiscal Studies

**ILO:** International Labour Organization

**IPPR:** Institute for Public Policy Research

**IOPC:** Independent Office for Police Conduct

**JCWI:** Joint Council for the Welfare of Immigrants

**JSTAC:** Joint Slavery and Trafficking Analysis Centre

**LAPO:** Labour Abuse Prevention Officer

**LFS:** Labour Force Survey

**LME:** Labour Market Enforcement

**LPC:** Low Pay Commission

**MAC:** Migration Advisory Committee

**MoRiLE:** Management of Risk in Law Enforcement

**NAO:** National Audit Office

**NCA:** National Crime Agency

**NGO:** non-governmental organisation

**NMW:** National Minimum Wage

**NRM:** National Referral Mechanism

**OBR:** Office for Budget Responsibility

**ODLME:** Office of the Director of Labour Market Enforcement

**OECD:** Organisation for Economic Co-operation and Development

**ONS:** Office for National Statistics

**REC:** Recruitment and Employment Confederation

**SCG:** Strategic Coordination Group

**SEB:** Single Enforcement Body

**SEISS:** Self-Employment Income Support Scheme

**SIC:** Standard Industrial Classification

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