

Final stage impact assessment – Fair Work Agency

Title: Establish the Fair Work Agency (FWA) to bring together existing state enforcement functions

Type of measure: Primary Legislation

Department or agency: Department for Business and Trade

IA number: DBT-035-24-CMRR

RPC reference number: ...

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1. Summary of proposal

1. The Government's plan to Make Work Pay included a commitment to establish a single enforcement body to enforce workers' rights, including strong powers to inspect workplaces and take action against exploitation. Bringing together state enforcement for workers' rights will better support businesses who want to comply with the rules, create a strong, recognisable single brand so individuals know where to go for help, and lead to a more effective use of resources and coordinated enforcement action.
2. State enforcement of employment rights is concentrated in a few areas where workers are deemed to be more at risk. There are a number of Government bodies that have responsibilities in regulating different areas of employment law (see the 'Evidence Base' section for more detail on the current enforcement landscape).
3. Bringing state employment enforcement together will consolidate the current fragmented and complex structure of state enforcement of employment rights into a single executive agency of the Department for Business and Trade known as the Fair Work Agency (FWA).
4. This new body will bring together the enforcement bodies – HMRC's National Minimum Wage enforcement function (HMRC NMW), the Employment Agency Standards Inspectorate (EAS), the Gangmaster and Labour Abuse Authority (GLAA) and the Director of Labour Markets (DLME) strategic functions – as well as add new areas of state enforcement of employment rights including state enforcement of holiday pay (which is not currently state enforced) and statutory sick pay (SSP) where there is currently a dispute resolution service provided by HMRC.

2. Strategic case for proposed regulation

5. The current state enforcement system is complex and fragmented. The existence of multiple bodies each responsible for distinct areas of state enforced employment rights and compliance creates a number of inefficiencies for government, employers and employees.
6. The current system of employment rights enforcement is complicated for both workers and employers seeking help. Recent analysis of public attitudes¹ suggests that around a third of employees know nothing or just a little about their employment rights. Individuals may need to engage with multiple agencies depending on the circumstances and the issue they want help with. The fragmentation also diminishes the visibility of the separate state enforcement bodies' efforts, reducing their potential deterrence effect and obscuring the overall intelligence picture of the labour market.
7. Evidence suggests that non-compliance with employment rights law is persistent: ONS data suggests around 20% of workers paid at or around the wage floor were underpaid the minimum wage²; 900,000 workers reported they had no paid holiday³ despite this being a day-one entitlement; and a staggering 1.8 million workers⁴ said they did not get a payslip.
8. When it comes to distributional effects, the Resolution Foundation⁵ found that 14% of the lowest-paid workers report that they receive no paid holiday, five-times higher than the highest-paid. Likewise, a worrying 11% of low-paid workers say they do not have a payslip, twice as many as those in the highest-paid quintile. There is also evidence to suggest that low-paid migrant workers have trouble in finding information on and getting access to minimum employment rights under the current system.⁶ Additionally, analysis from Citizens' Advice⁷ suggests that lower paid employees are less likely to enforce their rights using the current employment tribunal system.
9. Employers are also expected to benefit from better regulations since it will ensure fairer competition and reduce the risk of certain businesses getting an advantage by not complying with their obligations to their employees.
10. Government is uniquely positioned to provide a uniform approach to state employment enforcement and compliance. Strong enforcement of employment regulations ensures necessary rights and protections are adhered to and provides employees with high quality jobs whilst also ensuring business operate competitively and there is a level playing field.

3. SMART objectives for intervention

11. The objective of the FWA is to enhance the protection of workers' employment rights and provide better support to businesses by establishing a unified enforcement body. This could

¹ Public Attitudes Tracker: Workers Rights, BEIS (2022)

² National Minimum Wage Report, Low Pay Commission (2023)

³ Annual Survey of Hours and Wages, ONS (2023)

⁴ Action plan to reform labour market enforcement, TUC (2024)

⁵ Enforce for Good, Resolution Foundation (2023)

⁶ UK agriculture and care visas: worker exploitation and obstacles to redress, Policy and Evidence Centre University of Oxford (2024) and Low-Paid EU Migrant Workers, Bristol University Press (2024)

⁷ From rights to reality: Designing a Fair Work Agency that delivers for the most vulnerable workers, Citizens Advice (2024)

facilitate more effective intelligence sharing and resource distribution. The FWA aims to enhance and simplify the experience for both workers and businesses seeking information or enforcement action.

12. It also intends to improve organisational efficiency. Currently, the enforcement bodies operate with separate leadership teams, distinct strategies, different operational processes, and make independent resourcing decisions. By establishing a unified enforcement body, it will act as a single source of obligations, rules and advice on how to treat workers.
13. The intended aim of the FWA is to reduce non-compliance with employment rights obligations which is delivered by:
 - Access: Employers having a single point of contact and access to better information and advice on how to comply with the law and regulations.
 - Information: Workers having better information about how to enforce their rights and being able to do this more speedily and comprehensively.
 - Efficiency: More enforcement activity taking place as investigations can be comprehensive rather than focused on specific rights and thus improved efficiency.
 - Collaboration: Better sharing of enforcement intelligence and targeting of firms that are breaching employment legislation.
 - Productivity: Benefits from economies of scale and scope which can lead to better services for workers and businesses, enhancing compliance and enforcement capability.

4. Description of proposed intervention options and explanation of the logical change process whereby this achieves SMART objectives

14. The FWA will be an executive agency, which means that it will be created through administrative action rather than legal instrument. Primary legislative provisions are required, however, to:
 - Establish the FWA's remit (i.e., the legislation it will enforce) by bringing the relevant employment legislation to be enforced within scope of an over-arching enforcement function that the Secretary of State will have. Investigatory and enforcement powers will be conferred upon the Secretary of State and enforcement officers.
 - Provide delegated powers to the Secretary of State to ensure the FWA will be able to adapt to changes in the labour market.
 - Abolish existing statutory bodies – the Office of the Director of Labour Market Enforcement (ODLME) and the Gangmasters and Labour Abuse Authority (GLAA).
 - Create a statutory data sharing gateway.
15. The preferred option is to bring together the functions of the current state enforcement bodies (EAS, GLAA, HMRC NMW and DLME strategic oversight) into scope of the Secretary of State's enforcement functions, which will be discharged through the creation and operation of the FWA. It will also extend state enforcement to include holiday pay (which is not currently state enforced) and statutory sick pay (SSP) where there is currently a dispute resolution service provided by HMRC. This impact assessment will focus on the:
 - Set up/adjustment costs of bringing together the state enforcement bodies.
 - Additional responsibility of holiday pay enforcement.

16. Stakeholder engagements suggest that stronger employment enforcement could support a more motivated and productive workforce (as employment rights are consistently applied) and create a more competitive environment as non-compliant businesses will find it harder to get an unlawful advantage at the expense of their employees.

5. Summary of long-list and alternatives

17. The Government's Plan to Make Work Pay sets out a commitment to create a single enforcement body for labour market rights. The preferred option consolidates existing enforcement bodies and widens the remit of state enforcement: decisions on further expansion of scope will be taken in due course.

18. Non-regulatory options such as information campaigns, self-regulation or codes of practice have not been included as these could not achieve the policy aims, as employment rights are set out in legislation. Primary legislation is required to confer the existing enforcement bodies' functions on the Secretary of State and extend the remit of state enforcement to cover new areas of employment rights including holiday pay.

19. The preferred option, consolidation of the core enforcement bodies and widening of enforcement remit, is expected to be applied to businesses of all sizes, including small and micro businesses, in line with the principle that all employment rights should be enforced fairly across all size organisations.

20. SMEs may face disproportionate costs of compliance with changes to employment regulations due to the resource and expertise constraints they face. These costs will be offset, to an unknown degree, by the simplified employment enforcement landscape arising from a single point of contact for state enforced employment rights.

6. Description of shortlisted policy options carried forward

21. The following shortlisted options were considered:

- **Option 1 – Business as Usual:** The business-as-usual option would constitute a continuation of the core enforcement bodies. This option acts as a counterfactual against which costs and benefits of all other options are assessed.
- **Option 2 – Consolidation of the existing enforcement bodies:** This option was previously investigated in 2021 but not taken forward. It would involve consolidating the existing enforcement bodies without widening their existing remits. This option has been discounted and will not be considered further within this Impact Assessment.
- **Option 3 – Consolidation of the core enforcement bodies and widening of enforcement remit (preferred option):** This option creates the FWA, bringing together the core enforcement bodies and their enforcement powers. The FWA remit is expanded to cover the enforcement of holiday pay regulations which are currently individually enforced through the Employment Tribunal system and Statutory Sick Pay (SSP).

7. Regulatory scorecard for preferred option

Part A: Overall and stakeholder impacts

(1) Overall impacts on total welfare	Directional rating
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<p>Description of overall expected impact</p>	<p>Overall, the introduction of the FWA is expected to increase welfare since workers will face fewer barriers when trying to enforce their employment rights – evidence suggests that a significant proportion of employees do not receive the full breadth of rights they are entitled to.</p> <p>Additionally, there are also several non-monetised benefits such as an increased awareness of employment rights for workers and employers. It is possible that clearer rules, information and advice could lessen the burden on businesses to comply with the law.</p> <p>The FWA will help to ensure all businesses are held to minimum standards which in turn will create a more level-playing field and foster a more competitive market. Whilst there is little quantitative evidence about the knock-on impacts on productivity, business stakeholders frequently tell us how important strong enforcement is for a strong business environment.</p> <p>Expansion of the remit of state enforcement to cover the enforcement of holiday pay regulations may reduce the pressures faced by the Employment Tribunal System.</p> <p>Please note that this is the relative additional impact as compared to the business-as-usual option.</p>	<p>Positive</p>
<p>Monetised impacts</p>	<p>Limited evidence and an incomplete design of the operational and organisational structure of the FWA mean that it has not been possible to quantify the impact of benefits arising from its introduction nor the majority of associated costs.</p> <p>Where costs have been calculated they are limited to the one-off costs faced by businesses in order to familiarise themselves with changes to the enforcement system. We estimate that these costs would be £33m.</p>	<p>Negative</p>
<p>Non-monetised impacts</p>	<p>The costs of the FWA are highly uncertain and have not been monetised within this IA. Costs are highly sensitive to the operational model and organisational structure of the FWA.</p> <p>In terms of the benefits, it is anticipated that the FWA will:</p> <ul style="list-style-type: none"> • Increase accessibility by providing a single point of contact, thereby making it easier for individuals to raise complaints and tackle issues that cut across remits of the existing bodies. • Extended state enforcement and compliance to protect more workers' rights and to better support businesses in understanding the regulations. • Guaranteeing a more equal environment for businesses where they won't need to worry about 	<p>Positive</p>

	<p>being unlawfully undercut by employers who are noncompliant.</p> <ul style="list-style-type: none"> • Sharing of intelligence and resources to reduce risks of duplicating investigations, help with better targeted enforcement, and adaptability in responding to changing priorities, leading to efficiency gains through economies of both scale and scope. <p>e) Extension of state enforcement to holiday pay may reduce the demand on the Employment Tribunal system.</p> <p>Based on the evidence of significant noncompliance in the labour market, we assume that even a small potential increase in efficiency of state enforcement from the FWA would deliver significant benefits to workers and create a fairer business environment. Potential additional penalty revenue from greater enforcement is likely to offset additional operational costs.</p>	
<p>Any significant or adverse distributional impacts?</p>	<p>Yes, there are likely to be significant distributional effects.</p> <ul style="list-style-type: none"> • There is an equitable dimension to this option: Analysis from Citizens' Advice⁸ suggests that higher-paid workers are 50% more likely to file a case with the Employment Tribunals compared to lower-paid individuals, despite lower-paid individuals being more likely to have their rights infringed. State enforcement could therefore make labour rights enforcement more accessible and inclusive. • It is likely that state enforcement of employment rights by the FWA will disproportionately benefit lower income households who are most likely to both not receive their complete entitlements and not be aware of how to enforce them. Economic theory and the Green Book suggest that individuals on lower incomes will value every additional £1 more, compared to an individual on higher incomes. Consequentially, there are additional societal benefits from supporting lower income workers to recover owed arrears. 	<p>Positive</p>

(2) Expected impacts on businesses

⁸ From rights to reality: Designing a Fair Work Agency that delivers for the most vulnerable workers, Citizens Advice (2024)

<p>Description of overall business impact</p>	<p>It is unclear what the total impact on business will be as a result of the creation of the FWA, this uncertainty is due to:</p> <ul style="list-style-type: none"> • The operational and organisational design of the FWA not being finalised. • Uncertain evidence on the number of employers and employees in scope of changes to labour market enforcement. • Undetermined behavioural responses by both employers and employees as a result of the creation of the FWA. <p>The main effects on businesses:</p> <p>Direct costs: Businesses will face one off familiarisation costs due to the introduction of the FWA. We estimate that the costs of these changes would be £33m. Additionally, businesses who are subject to investigation will face costs even if they are later found to be compliant with relevant regulation. It is not possible to state the total number of affected businesses, but we estimate that an investigation would cost each investigated business £770.</p> <p>Indirect benefits: There are positive effects relating to a stronger enforcement deterrent, which improves compliance of employment rights.</p> <p>A single point of contact under the FWA is expected to lead to clearer rules, information and advice which will lessen the burden on businesses of complying with the law.</p>	<p>Uncertain</p>
<p>Monetised impacts</p>	<p>The costs imposed to businesses as a result of the introduction of the FWA are driven by the familiarisation costs we expect them to face when complying with these changes. We estimate that these one-off costs would amount to additional costs to business of £33m (NPSV).</p> <p>The Equivalent Annual Net Direct Cost to Business (EANDCB) is estimated to be £4m.</p> <p>Due to uncertainties around the operational structure we were unable to conclusively model the yearly recurring cost to businesses from inspections.</p>	<p>Negative</p>
<p>Non-monetised impacts</p>	<p>It is expected that businesses will benefit from the creation of the FWA enforcing employment rights because:</p>	<p>Positive</p>

	<ul style="list-style-type: none"> • Businesses will face fewer informational and access barriers when attempting to both understand and interpret labour market regulations leading to improved compliance. • A robust, proactive and joined up enforcement body should increase compliance across all businesses and thereby reduce the risk of unfair competition driven by businesses avoiding full compliance with labour market regulations. <p>Also see points described on business environment below.</p>	
<p>Any significant or adverse distributional impacts?</p>	<p>The Fair Work Agency seeks to create an enforcement and compliance environment where all businesses are treated equally. Further analysis is needed on this topic, but it is possible that certain sectors, which are more likely to be non-compliant, will be disproportionately affected.</p>	<p>Neutral</p>

(3) Expected impacts on households

<p>Description of overall household impact</p>	<p>Evidence suggests that not all employees received the rights and benefits they are the entitled to. The FWA aims to help address this and will have the following expected effects on employees:</p> <ul style="list-style-type: none"> • The familiarisation costs faced by households due to the changes in employment legislation and regulations arising from the introduction of the FWA is unknown. This is due to the operational design of the FWA not being fully developed at this stage. Nevertheless, it is expected that the operational design of the FWA will aim to minimise familiarisation costs faced by both businesses and households. • The FWA should raise workers' awareness of labour rights and provide easier access to information, thereby putting them in a better negotiating position with their employers. • A reduction in the barriers faced by an employee when raising a complaint by simplifying the process. Additionally, unlike those decisions reached by ETs, decisions made by state enforcement bodies can be applied to a wider workforce leading to a further reduction in labour market non-compliance by employers. 	<p>Positive</p>
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Monetised impacts	We expect workers to benefit from the increased compliance with employment regulations by their employers, because should workers need to raise a complaint the creation of the FWA will provide a simplified enforcement landscape. These impacts have not been monetised due to data limitations and scope uncertainty and as such no EANDCB has been calculated.	Uncertain
Non-monetised impacts	Increase accessibility by providing a single point of contact, thereby making it easier for individuals to raise complaints and tackle issues that cut across remits of the existing bodies. Workers will benefit from better enforcement of labour market regulations and where appropriate the payment of arrears owed to them.	Positive
Any significant or adverse distributional impacts?	It is likely that lower income households will benefit from the Fair Work Agency. Details are provided in the general distributional section above.	Positive

Part B: Impacts on wider government priorities

Category	Description of impact	Directional rating
Business environment: Does the measure impact on the ease of doing business in the UK?	Overall, it is believed that implementing the FWA will have a positive impact on doing business in the UK because: <ul style="list-style-type: none"> • The business environment would be more equal across firms. A strong enforcement body with expanded remits would help ensure a more competitive market by reducing labour market non-compliance. • Businesses and workers will face fewer information and access barriers when accessing labour enforcement services, thereby allowing businesses to check if they understand legislation correctly. • A stronger enforcement landscape is expected to incentivise and promote businesses and could encourage greater business investment. 	Supports
International Considerations: Does the measure support international trade and investment?	We expect that there is no or negligible impact on trade and investment as a consequence of establishing the FWA.	Neutral

<p>Natural capital and Decarbonisation:</p> <p>Does the measure support commitments to improve the environment and decarbonise?</p>	<p>We expect that there is no or negligible impact on the environment as a consequence of establishing the FWA.</p>	<p>Neutral</p>
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8. Monitoring and evaluation of preferred option

22. The Government will review the FWA after 3 years by undertaking a post-implementation review. Ministers are committed to monitoring the impact and performance of the FWA and making necessary operational and delivery changes as required.
23. The Secretary of State will, through the FWA, deliver a 3-year labour market enforcement strategy and an annual report to Parliament. The annual report should transparently set out the extent to which enforcement functions were exercised in accordance with the enforcement strategy, and an assessment of the extent the strategy has had an impact on the scale and nature of non-compliance with labour market legislation. By its nature both non-compliance and the effect of deterrence measures will be difficult to quantify.
24. We will monitor the impacts of the FWA against its stated objectives using the rich array of labour market survey and administrative datasets as well as bespoke research should that be required. The datasets utilised will include national statistics such as the Labour Force Survey, HMRC's RTI data and the Annual Survey of Hours and Earnings as well as data collected by relevant bodies on cases, arears and penalty payments. This official data will be supplemented through engagement with thinktanks, research organisations and stakeholder groups. Findings from this analysis will be used to inform and shape the operation of the FWA as it evolves.
25. KPIs will be developed, in collaboration with stakeholders, for assessing the performance of the FWA and the alignment of its activities with regards to wider labour market objectives. Particular emphasis will be placed upon understanding the impact of the FWA on SMEs and households due to the risk of unintended consequence on these groups.
26. Additionally, analysis will be undertaken to understand and pre-empt potential unintended consequences arising from the FWA. This analysis will focus on the impact of the FWA on rights which were previously not enforced by state enforcement bodies on both the impact its creation has on the performance of the previously separate enforcement bodies and the wider labour market landscape.

9. Minimising administrative and compliance costs for preferred option

27. A single point of contact for workers and businesses will reduce the complexity faced by employers seeking to comply with labour market regulations as well as employees seeking to ensure they receive their rights.

Summary: Analysis and evidence

Price base year:

2023

PV base year:

2026

	Option 1. Business as Usual	Option 3. Preferred way forward: Consolidation existing bodies and widen remits
<p>Net present social value (with brief description, including ranges, of individual costs and benefits)</p>	<p>Used as baseline for the analysis</p>	<p>It has not been possible to estimate the monetised value of all benefits and some of the costs associated with the creation of the FWA. This is because of the following:</p> <ul style="list-style-type: none"> • The operational and organisational design of the FWA not being finalised. • Uncertain evidence on the number of employers and employees in scope of changes to labour market enforcement. • Undetermined behavioural responses by both employers and employees as a result of the creation of the FWA. <p>We estimate that it would cost employers in the region of £33.1m to familiarise themselves with changes to the employment regulation enforcement landscape.</p>
<p>Public sector financial costs (with brief description, including ranges)</p>	<p>Used as baseline for the analysis</p>	<p>It has not been possible to quantify the impact of the FWA on public finances. The rationale for this is set out above in the NPSV section.</p> <p>Costs will arise from the consolidation of existing enforcement bodies and the DLME, related IT costs</p>

		<p>associated with the transfer of enforcement responsibilities from the existing bodies to the FWA and the costs required to enforce holiday pay and statutory sick pay regulations.</p> <p>These costs to public sector finances will be offset to an unknown degree should a decision be made to impose penalties on employers who fail to comply with employment regulations related to holiday pay.</p>
<p>Significant un-quantified benefits and costs (description, with scale where possible)</p>	<p>Used as baseline for the analysis</p>	<p>Costs:</p> <p>It has not been possible to estimate the following costs:</p> <ul style="list-style-type: none"> • The setup costs of the FWA associated with bringing together existing enforcement bodies. • The costs associated with new state enforcement responsibilities including the enforcement of holiday pay regulations. • Costs to business arising from complying with FWA initiated investigations into employment practices. <p>Benefits:</p> <p>It has not been possible to estimate the following benefits:</p> <ul style="list-style-type: none"> • Any savings to the Employment Tribunal system arising from the responsibility for enforcing holiday pay regulations moving to the FWA. • Payment of arrears owed to employees by non-compliant employers and the payment of penalties from non-compliant employers to HMG. • Benefits arising to compliant businesses through improved deterrence leading to improved compliance with employment rights regulations and the creation of a level playing field.

<p>Key risks (and risk costs, and optimism bias, where relevant)</p>	<p>Does not satisfy manifesto commitment</p>	<p>Key risks of the FWA include uncertainties regarding:</p> <ul style="list-style-type: none"> • The specific operational and organisational design of the FWA. • The volume of likely holiday pay cases, the value of arrears owed, and the subsequent number of additional enforcement staff required is uncertain. • The behavioural response of employers and employees as a result of the creation of a more streamlined state enforcement structure with a wider enforcement remit.
<p>Results of sensitivity analysis</p>	<p>NA</p>	<p>N/A</p>

Evidence Base

Policy Background

28. The enforcement of employment rights ensures workers receive the rights and protections they are entitled to in a workplace. Enforcement also delivers a level playing field for employers, so that the majority of employers who comply with the law are not undercut by those who try to avoid their legal obligations.
29. The majority of employment rights are individually enforced and rely on affected individuals to bring a claim before an Employment Tribunal. Where a workplace dispute cannot be resolved internally, an employee may look to file a claim before the ET. However, the parties to a potential claim are usually first required to explore the possibility of early conciliation and should refer the dispute to the Advisory, Conciliation and Arbitration Service (ACAS).
30. There are some exceptions where enforcement bodies have a role in protecting particularly vulnerable workers and guarding against exploitation in the workplace. State enforcement of employment rights is concentrated in a few areas where workers are deemed to be more at risk. There are a number of government bodies that have responsibilities in regulating different areas of employment law. These include:

Table 1: Summary of Enforcement Bodies and their respective remits

Enforcement Body	Area of enforcement	Geographical coverage
HM Revenue and Customs (HMRC) on behalf of Department for Business and Trade (DBT)	National Minimum Wage	UK wide
Gangmasters and Labour Abuse Authority (GLAA) (sponsored by the Home Office)	Labour Exploitation and modern slavery related to worker exploitation	England and Wales
	Gangmasters licensing scheme for suppliers of labour in high-risk sectors in agriculture and the fresh food supply chain	England, Wales Scotland and Northern Ireland
Employment Agency Standards Inspectorate (EAS) (part of DBT)	Employment agencies and employment businesses	England, Wales and Scotland
HM Revenue and Customs Statutory Payments Dispute team	Statutory payments (including statutory sick pay and maternity pay)	UK wide

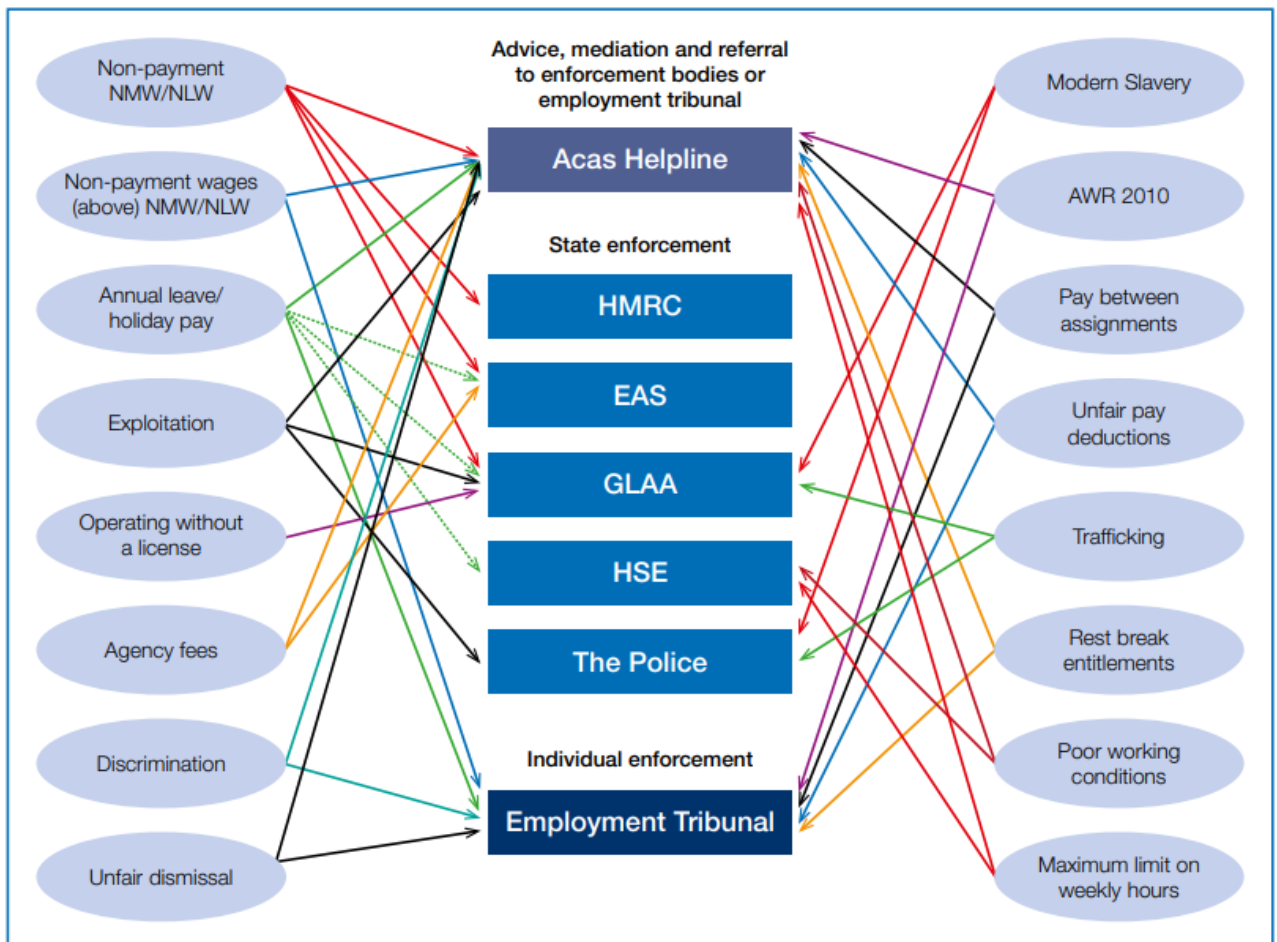
31. In 2016, the independent Director of Labour Market Enforcement (DLME) was established to set the strategic direction for the core employment rights enforcement bodies and provide a more joined up approach for EAS, GLAA and HMRC National Minimum wage (HMRC NMW) whilst also reviewing the performance of enforcement bodies and estimating the scale of labour market non-compliance.
32. The Director's work has made significant progress in developing the understanding of labour market state enforcement in its current form, improving the coordination, response to non-

compliance and identifying enforcement gaps, but creating a new approach to enforcement would allow the system to respond more effectively to the changing nature of work.

Problem under consideration

33. The current state enforcement system is complex and fragmented. The existence of multiple bodies each responsible for distinct areas of state enforced employment rights creates a number of inefficiencies for government, employers and employees.

Figure 1: Fragmentation of labour market enforcement system (DLME, 2019).



34. The current system of employment rights enforcement complicates the process for both workers and employers seeking help. Individuals may need to engage with multiple agencies depending on the circumstances of the employment and the issue they want help with.
35. The fragmentation diminishes the visibility of the separate state enforcement bodies' efforts, reducing their potential deterrence effect and obscuring the overall intelligence picture of the labour market. Moreover, the existing framework makes it difficult to extend state enforcement to additional rights or groups without establishing new structures and bodies.

Rationale for Intervention

36. An independent review of modern working practices (2017)⁹ advocated for the strengthening of labour market enforcement in the UK. Other evidence from Resolution Foundation¹⁰ recommends the creation of a single enforcement body.
37. The Government intervenes in the labour market to extend individual employment rights for efficiency and to address inequity – evidence suggests lower paid workers are both more likely to not receive the full extent of their labour rights and face greater barriers to enforcing them. Strong enforcement of employment regulations ensures necessary rights and protections are adhered to, provides employees with high quality jobs whilst also ensuring business operate competitively and there is a level playing field.
38. Government is uniquely positioned to provide a uniform approach to state employment enforcement. The Government in its Plan to Make Work Pay set out its commitment to creating a single body responsible for the enforcement of certain state enforced employment rights, which would also take on state enforcement in new areas. This single body would aim to address the identified issues by consolidating the existing state enforcement landscape, widening the remit of state enforcement and wielding the power to inspect workplaces and take action on non-compliance and labour exploitation.

Compliance

39. The enforcement of holiday pay regulations is the responsibility of Employment Tribunals, which address around 1,800 unauthorised deduction cases annually (of which a significant proportion are thought to be holiday pay related). However, evidence suggests that this is an under-served market with a substantial, but unknown, number of individuals who are at risk of not receiving their entitlements. Analysis conducted by the Resolution Foundation¹¹ suggests that 900,000 UK workers per year have their holiday pay withheld, valuing around £2.1bn (£2,300 each). Similar analysis undertaken by the Trades Union Congress¹² estimates 2,000,000 affected individuals amounting to £3bn per year (£1,550 each). DBT analysis of the Annual Survey of Hours and Earnings (ASHE) dataset identifies around 850,000 workers who were at risk of being underpaid a total of £0.6bn annually (£690 each).
40. The under-served market for holiday pay case resolution is strong evidence for the need for state enforcement to play a role due to its ability to initiate investigations (compared to the more reactive approach of individual enforcement) and the lower barriers faced for employees wishing to initiate an investigation.

Policy Objective

41. The objective of this proposal is to ensure the protection of workers' employment rights and provide the support needed for businesses to comply with relevant employment regulations. This will be done through the establishment of a joined-up enforcement body for labour market regulations – the Fair Work Agency – as an executive agency of the Department for Business and Trade. This new body will bring together core state enforcement bodies – HMRC NMW, the EAS, the GLAA, and the DLME and augment them with additional areas of employment rights following consultation and further analysis. The establishment of a unified enforcement body will enable this through effective intelligence sharing and resource distribution.
42. Evidence shows that the remit of the FWA should be initially expanded to include the state enforcement of statutory sick pay (SSP), where it will replace the dispute resolution service provided by HMRC, and holiday pay (for which there is no state enforcement).

⁹ Good work: the Taylor review of modern working practices, gov.uk (2017)

¹⁰ Enforce for Good, Resolution Foundation (2023)

¹¹ Enforce for Good, Resolution Foundation (2023)

¹² Action plan to reform labour market enforcement, TUC (2021)

43. Bringing state enforcement together and creating the FWA will:

- Increase accessibility by providing a single point of contact, thereby making it easier for individuals to raise complaints and tackle issues that cut across remits of the existing bodies.
- Provide a strong recognisable brand so individuals and business know where to go for help, improving the user journey.
- Better support for business who comply with the rules and coordinated guidance and communications.
- Pooled intelligence and effective use of resources to help with better targeted enforcement and adaptability in responding to changing priorities, leading to efficiency gains through economies of both scale and scope.
- Coordinated enforcement action with new powers and sanctions to tackle the spectrum of non-compliance.

44. The FWA aims to enhance and simplify the experience for both workers and businesses seeking information or enforcement action. It also intends to improve organisational efficiency. Currently, the enforcement bodies operate different operational processes and make independent resourcing decisions. The FWA will provide an opportunity to streamline the existing system and explore how rights for workers can be more effectively enforced through cross-functional teams.

Options Considered

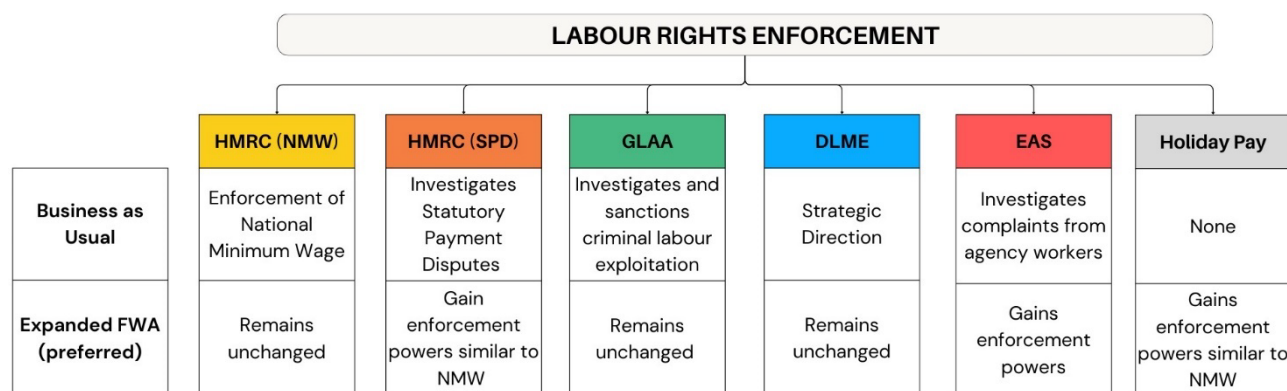
45. This impact assessment considers the state enforcement of labour market regulations under the following shortlisted options:

- **Option 1 – Business as Usual:** The business-as-usual option would constitute a continuation of the core enforcement bodies. This option acts as a counterfactual against which costs and benefits of all other options are assessed.
- **Option 2 – Consolidation of the existing enforcement bodies:** This option was previously investigated in 2021 but not taken forward. This option has been discounted and will not be considered further within this Impact Assessment.
- **Option 3 – Consolidation of the core enforcement bodies and widening of enforcement remit (preferred option):** This option creates the FWA, bringing together the core enforcement bodies and with a single set of enforcement and investigatory powers. The FWA remit is expanded to cover the enforcement of holiday pay regulations which are currently individually enforced through the Employment Tribunal system and Statutory Sick Pay (SSP) where HMRC currently settle disputes through the statutory payments dispute service.

Summary and preferred option with description of implementation plan

46. Option 3 creates the FWA and brings together the EAS, GLAA, HMRC NMW and DLME strategic oversight. State enforcement will also be extended to include holiday pay (which is not currently state enforced) and statutory sick pay (SSP) where there is currently a dispute resolution service provided by HMRC.

Figure 2: Roles and responsibility of the core state enforcement bodies.



Cost Benefit Analysis

47. This section assesses the relative costs and benefits of the options considered within this IA. Where possible both costs and benefits have been monetised. Monetised costs and benefits are presented in both real and discounted terms using a price base year of 2023 and present value year of 2026. They are appraised over a ten-year period. Assessments of these costs and benefits have been made using the best available information and remain under review while we continue efforts to improve the evidence base.

Option 1: Business as usual

48. Option 1 is a continuation of the status quo and maintains the core enforcement bodies – HMRC NMW enforcement, the GLAA and the EAS, with the DLME maintaining its current strategic oversight role. Subsequently it is assumed that the current operating costs of these bodies, including staffing costs, will remain unchanged from recent trends over the course of the appraisal period for this impact assessment.

HMRC Enforcement Costs – NMW Enforcement¹³

49. Enforcement costs for NMW incurred by HMRC are expected to continue at approximately £31.2m per annum. The real revenues from penalties issued is estimated to be around £14m per year. Based on HMRC outturn data, we have based the penalty figures on the latest 2022/23 values, given the decreasing values of penalties collected over the baseline period. Combining the costs and revenues results in a real net cost of around £170m, and a time-discounted real net cost of around £145m, over the ten-year appraisal period.

HMRC Enforcement Costs – Statutory Sick Pay (SSP)

50. Enforcement costs for SSP incurred by HMRC are expected to continue at approximately £1.2m per year. Based on HMRC outturn data, the average real revenue raised from SSP was approximately £200,000 per year. Combining the costs and revenues results in a real net cost of around £12m, and a time-discounted real net cost of around £9m, over the ten-year appraisal period.

¹³ National Living Wage and National Minimum Wage: government evidence on enforcement and compliance, gov.uk (2023)

Gangmasters and Labour Abuse Authority (GLAA) Enforcement Costs

51. Estimates based upon recent operating budgets (2017-2024) of the GLAA suggest expected real annual costs of £7.9m. Based on GLAA outturn data, we estimate that the GLAA received revenues of approximately £1.2m per year. Combining the costs and revenues results in a real net cost of around £68m, and a time-discounted real net cost of around £58.1m, over the ten-year appraisal period.

Employment Standards Agency Inspectorate (EAS) Enforcement Costs

52. Cost estimates for EAS enforcement and the embedded Employment Tribunal Financial Penalties Team (ETP) are based upon recent operational budgets (2020-2023), these suggest estimated annual real costs of £1.7m. The EAS and ETP do not have the remit to issue penalties, however it should be noted that they help workers recover around £1.5m a year. Combining the costs and revenues results in a real net cost of around £17m, and a time-discounted real net cost of around £15m, over the ten-year appraisal period.

Director of Labour Market Enforcement (DLME) Costs

53. Operational costs are expected to continue at the current real average (2018-2023) of approximately £0.7m per annum resulting in total real and net preset discounted costs of c.£7.4 million and £6.4 million respectively over the ten-year appraisal period. DLME provides strategic direction and oversight for the other enforcement bodies and hence does not directly collect arrears or issue penalties.

Total Costs

54. Total costs for option 1 (business as usual) over the ten-year period are presented in table 2 below.

Table 2: Summary of total costs across enforcement bodies for option 1 (business as usual)

Enforcement body	Total Net Discounted Costs
HMRC - National Minimum Wage	-£145.0m
Director of Labour Market Enforcement	-£6.4m
Employment Standards Agency Inspectorate	-£14.9m
Gangmasters and Labour Abuse Authority	-£58.1m
HMRC - Statutory Sick Pay	-£8.6m
Total	-£232.9m

Option 3 – Consolidation of the core enforcement bodies and widening of enforcement remit

55. Costs and benefits presented within the analysis of Option 3 are changes relative to those presented for Option 1. Standard HMG appraisal methodology assumes that employers are in full compliance with relevant legislation.

Enforcement system costs and benefits

Unmonetised Costs

One-off set up costs

56. The costs associated with consolidating the core enforcement bodies into a single agency will include estate costs, capital costs including IT, office equipment, staff recruitment and training, central functions such as HR, finance and communications. These costs are likely to be significant, but it is difficult to estimate these costs at this stage as costs will depend on the operational model selected.
57. Setup costs for the Fair Work Agency are contingent upon the specific operational and organisational model selected. With the operational and organisational model for the FWA having not been developed it is not possible to provide an accurate assessment of the setup costs for the FWA.
58. That withstanding an initial assessment based upon previous instances of organisational restructuring suggests that it could cost approximately £0.5m to consolidate the EAS, GLAA and DLME into a singular organisation.
59. The costs associated with moving existing HMRC enforcement and compliance functions into the FWA is substantially more uncertain, these uncertainties are driven by organisational and operational design decisions which have yet to be determined. Estimates developed by HMRC in 2021 suggest that a more complete integration of the FWA and HMRC's enforcement and compliance functions would be in the region of £54m and require additional operational costs of £0.5m per annum.

Recurring costs, holiday pay enforcement costs

60. The FWA will take responsibility for state enforcement of holiday pay, which is not currently state enforced. Expanding the remit of the FWA could result in a significant, but highly uncertain, increase in demand for FWA enforcement activity.
61. Estimating the cost of this additional enforcement activity is difficult due to the significant variations in estimates of the number of individuals affected by holiday pay underpayments, and the unknown degree of overlap with other enforcement areas. For illustrative purposes, it is assumed that there are broad similarities in both the complexity and anticipated staffing requirement for both holiday pay and NMW enforcement. These enforcement costs have not been included in the NPSV for this Impact Assessment due to the very high degree of uncertainty, and further work is being undertaken to determine refined cost estimates.
62. The cost of enforcing holiday pay regulations under the FWA is highly uncertain. This uncertainty is driven by an incomplete understanding of the magnitude of non-compliance with holiday pay regulations across the economy and the prospective productivity of state enforcement officers in an area which has not previously being under the jurisdiction of state enforcement.
63. Analysis conducted by the Resolution Foundation¹⁴ suggests that 900,000 UK workers per year have their holiday pay withheld, valuing around £2.1bn (£2,300 each). Similar analysis undertaken by the Trades Union Congress¹⁵ estimates 2,000,000 affected individuals

¹⁴ Good work: the Taylor review of modern working practices, gov.uk (2017)

¹⁵ Action plan to reform labour market enforcement, TUC (2021)

amounting to £3bn per year (£1,550 each). DBT analysis of the Annual Survey of Hours and Earnings (ASHE) dataset identifies around 850,000 workers who were at risk of being underpaid a total of £0.6bn annually (£690 each). This contrasts with data from Employment Tribunal data which shows approximately 5,600 cases annually pertaining to the unauthorised deductions (non-payment of holiday pay entitlement is expected to account for a substantial proportion of this). This presents a range of between 5,600 (current annual ET estimates) and 2m (TUC estimate of total number of individuals) cases of holiday pay non-payment in the UK. It is not possible to ascertain accurately the annual equivalent figure for the TUC estimate, for the purpose of this analysis we have assumed that these are spread uniformly over a ten-year period.

64. Anecdotal evidence also suggests that there is a degree of analogousness between the state enforcement of NMW regulations and that of holiday pay regulations. As a result, insights gathered from management information pertaining NMW enforcement can be used to establish estimates for holiday pay enforcement.
65. Analysis of management information data for NMW enforcement from 2017/18 – 2022/23 provides the following insights:
- The average NMW enforcement officer identified in the region of 400 underpaid employees annually.
 - The average annual cost of an NMW enforcement officer is approximately £66,700 (budget per employee).
66. Based on these assumptions we estimate that the total annual cost of holiday pay enforcement would be between £1m and £33m, with an additional training cost of between £0.5m and £17m (assuming 6 months of training time). It is not possible at this stage to say with any confidence where within this range is the most likely outcome.

Unmonetised Benefits

Savings to Employment Tribunal system

67. Holiday pay is not currently enforced through the state enforcement system, instead individual employees are required to raise concerns through the Employment Tribunal system. This is a lengthy and complex process, and a result is costly. Expansion of the role of FWA to capture the enforcement of holiday pay regulations is likely to result in savings to HMG.
68. The majority of employment rights are individually enforced and rely on affected individuals to bring a claim before an Employment Tribunal. The parties to a potential claim are usually first required to explore the possibility of early conciliation and should refer the dispute to the Advisory, Conciliation and Arbitration Service (ACAS) for early conciliation.
69. A reduction in the demand placed upon the Employment Tribunal System could lead to a per case HMG saving of around £2,200 (assuming a cost of £2,400 per case¹⁶ and state enforcement costs of around £200 per underpaid workers, based on NMW data). There are 22,910 claims in unauthorised deductions, which corresponds to 5,591 ET1 cases or 1,175 actual ET hearings. The difference (4,416) represents the number of ACAS mediated cases

¹⁶ Introducing fees in the Employment Tribunals and the Employment Appeal Tribunal, Ministry of Justice (2024) 22/23 Average cost per case figure- estimated by dividing the total cost of the system in 22/23, £80m, by the number of ET1 cases, 33,000, rounded to avoid giving false accuracy.

which are estimated to cost HMG around £202 per case. Hypothetically, if all the identified holiday pay cases currently enforced through the Employment Tribunal service are mediated through ACAS, were to be resolved through the FWA, this could lead to total savings to HMG of around £3.7m per year.

70. The Advisory Conciliation and Arbitration Service (ACAS) provide dispute resolution service to individuals and employers. According to the latest annual report, 6.7% of helpline calls are related to holiday and working time. With the FWA taking responsibility for enforcing holiday pay, this may ease enquiries to ACAS.

Penalties issued by HMG and payment of arrears

71. Should an employer be found by HMRC to have underpaid NMW, they are required to reimburse arrears to employees. Alongside this HMRC also imposes penalties on employers of 200% of arrears. This figure is reduced to 100% of all arrears if the penalty is paid in full within 14 days and capped at £20,000 per worker. In reality, few employers pay the 200% rate, it is possible that a similar penalty system could also apply to employers found to be in breach of holiday pay related employment rights.
72. Any holiday pay arrears collected by the FWA from businesses would be an economic transfer from business to households and individuals, the total value of these arrears is highly uncertain.

Equity Benefits

73. Analysis undertaken by Citizens' Advice¹⁷ suggest that higher-paid workers are 50% more likely to file a case with the Employment Tribunals compared to lower-paid individuals despite lower-paid individuals being more likely to have their rights infringed. The FWA should reduce this discrepancy by increasing awareness of employment rights amongst both employers and employees whilst also reducing the barriers faced by those wishing to raise concerns by providing a single point of contact. Furthermore, the FWA will be able to proactively initiate investigations into potentially non-compliant employers.

Improved Compliance with Employment Regulations

74. As the single responsible body for state enforced employment regulations the FWA will help increase compliance by acting as the single point of contact and providing holistic training and guidance to employers. Additionally, it will also have a deterrent function, as the FWA will have the ability to initiate investigations into potential breaches of the law. There is insufficient evidence to quantify the magnitude of these effects.

Pooled intelligence and effective use of resources

75. By bringing together existing state enforcement bodies the FWA is expected to improve both economies of scale and scope. The consolidation of enforcement bodies would reduce overlapping areas of activity and also facilitate the diffusion of best practice across former organisational boundaries.

¹⁷ From rights to reality: Designing a Fair Work Agency that delivers for the most vulnerable workers, Citizens Advice (2024)

76. The FWA would have a more coherent picture of risks across the employment landscape. It could align compliance and enforcement approach which could result in more business-friendly engagement and reduce duplication and demands on businesses.

Level playing field for employers

77. Effective enforcement is key to a well-functioning labour market. Currently, there are a minority of businesses that have had opportunities to do wrong by their workers, giving them an unlawful advantage over their compliant peers.

78. The FWA provisions included in the Bill seek to put an end to the loopholes and further improve the UK's enforcement system, such that those who choose to do right by their workers are no longer being undercut by unscrupulous competitors. This will ensure all businesses are held to minimum standards which in turn will create a more level-playing field and foster a more competitive market. Whilst there is little quantitative evidence about the knock-on impacts on productivity, business stakeholders frequently tell us how important strong enforcement is for a strong business environment.

Costs and benefits to business calculations

Monetised Costs

One off, familiarisation Costs

79. We expect it will take businesses between 30 and 60 minutes (with a central assumption of 45 minutes) to familiarise themselves with the changes to the enforcement landscape brought about by the creating of the FWA. Analysis suggests that this would cost each business between £16.05 and £32.10 with a central estimate of £24.08. Applying this familiarisation cost to the number of businesses estimated to be within scope of FWA enforcement suggests total familiarisation costs to businesses of £33.1m.

Table 3: Annual Net Discounted Cost to Businesses across business sizes for FWA (rounded values)

Business size	Number of businesses	Hourly uplifted costs to businesses¹⁸	Average familiarisation time (45 minutes)	Cost to Business
Small & Micro	1,323,570	£32.10	0.75h	£31.9m
Medium	42,405	£32.10	0.75h	£1m
Large	10,895	£32.10	0.75h	£0.3m
Total cost				£33.1m

Non-monetised Costs

Recurring costs, Inspection costs

80. Employers investigated on suspicion of non-compliance with holiday pay regulations will likely face costs even if they are later proven to be fully compliant. These costs are non-

¹⁸ The hourly cost to business was computed by using the average hourly wage for an HR manager/director which according to the Annual Survey of Hours and Earnings (ASHE 2023) equals to £26.31. This was then uplifted by 22% for non-wage labour costs resulting in the final figure of £32.10.

recoverable and include the requirement for inspected employers to provide inspectors with requested documentation as well the provision of access.

81. We estimate that the time taken for an average employer to comply with investigative requests would be 24 hours and estimate that the cost of this compliance would be £770 (assuming hourly costs of £32.10). The total cost of compliance across all businesses is dependent on both the operational design of the FWA and the number of employees in scope. Further exploration is required to both develop the preferred operational design of the FWA, and to evidence and identify the scale of affected employees.

Non-monetised benefits

82. A single point of contact under the FWA is expected to lead to clearer rules, information and advice which will lessen the burden on businesses of complying with the law and help creating a level playing field where all businesses comply with employment regulations.

Net Present Social Value (NPSV)

83. The lack of certainty on the specific organisational and operational design of the FWA in combination with the vast range of estimates of employees potentially in scope of state enforcement of holiday pay regulations mean that our NPSV figures will only tell part of the story. As such, more weight should be given to our qualitative assessment of benefits and costs, covered in the Regulatory Scorecards rather than a partial focus on what has been quantified.
84. It is estimated that the total cost to businesses of familiarising themselves with the changes brought about by the creation of the FWA will be £33.1m. This figure represents an incomplete estimate of the cost to business as it does not capture other compliance costs they may face. The NPSV for the preferred option is -£33.1m, as set out this represents an incomplete picture of cost faced by all stakeholders and does not include any subsequent benefits.

Impact on small and micro businesses

85. The FWA will enforce employment rights across businesses of all sizes, including small and micro businesses, in line with the principle that all enforcement must be clear, fair and efficient for both workers and employers. It should deliver a level playing field for employers, so that the majority of employers who comply with the law are not undercut by those who try to avoid their legal obligations.
86. While it is recognised that smaller businesses may face disproportionate challenges due to their limited resources, the FWA aims to prevent potential abuses that may disproportionately affect employees in small and micro businesses, where employment practices may be less formal.
87. Micro and Small businesses would not be exempt from labour rights investigations and related penalties in case of non-compliance. This is because the law would apply to all businesses and individuals equally, and exemptions for any non-compliant businesses would go against the objectives of the policy itself.

88. In order to mitigate this impact the FWA will continue the practice of existing enforcement bodies in providing training and guidance to help businesses understand labour market regulations and best practice.

Costs and benefits to households' calculations

89. The creation of the FWA will mean that households will be required to familiarise themselves with the FWA and undertake the complaint filling process as appropriate. Lack of data means that it has not been possible to quantify the magnitude of these costs.

90. Increased access to a more streamlined labour market enforcement is however likely to result in a net benefit to households. This is due to a reduction in workers not receiving their employment rights and the reduced complexity, and time, taken for a complaint to be raised.

Trade implications

91. The creation of the Fair Work Agency is not expected to have any adverse trade or investment implications.

92. From a legal standpoint, the policy does not impact international trade as it is compliant with international obligations and does not have any implications for trade partners or foreign businesses operating in the UK.

93. Furthermore, the preferred option will not introduce requirements on foreign-owned companies that go above and beyond those which are UK-owned. There is limited empirical evidence to suggest that there is a correlation between labour standards and enforcement and the ability to attract foreign capital, with some evidence even suggesting that higher labour standards are associated with better export performance.

Environment: Natural capital impact and decarbonisation

94. Based on our current assessment, we expect that there is no or negligible impact on the environment as a result of establishing the FWA. We will continue to consider this assessment as the policy detail develops.

Public Sector Equalities Duty

95. An expected increase in awareness and access to labour enforcement suggests that creating the FWA and expanding the remit of state enforcement of labour market regulations will result in a fairer system for employees across all protected characteristics.

96. Lower paid workers are more likely to have their rights infringed. They are also less likely to enforce their rights through employment tribunals.¹⁹ Research from the Low Pay Commission²⁰ suggests that lower paid individuals are more likely to have one or more

¹⁹ From rights to reality: Designing a Fair Work Agency that delivers for the most vulnerable workers, Citizens Advice (2024)

²⁰ The NLW and protected characteristics: difference in employment and minimum wage coverage by ethnicity, disability, and gender, Low Paid Commission (2023)

protected characteristics. These groups are expected to, especially, benefit from the creation of the FWA.

Risks and assumptions

97. The specific detail of the shape and form of the FWA is uncertain at the primary legislation stage. As a result, many of the costs and all benefits are unmonetised and only qualitatively described. We have presented and monetised costs where there is supporting evidence. We have had to make a range of assumptions on the likely impacts and these assumptions will be refined and tested with stakeholders as the policy detail becomes clearer.
98. Evidence gaps around how stakeholders will respond to the policy will continue to be tested as the design and implementation of the FWA is developed. In addition, DBT will continue to engage with relevant stakeholders, such as business, Trade Unions, professional organisations, legal representatives and public sector bodies, to gather relevant insight. Where feasible and proportionate, DBT will also commission external research to continue to build the evidence base on the wider employment enforcement landscape.