



Department for Business, Innovation & Skills

Tackling exploitation in the labour market consultation response form

The Department may, in accordance with the Code of Practice on Access to Government Information, make available, on public request, individual responses.

The closing date for this consultation is 07/12 /2015.

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When responding please state whether you are responding as an individual or representing the views of an organisation. If you are responding on behalf of an organisation, please make it clear who the organisation represents by selecting the appropriate interest group on the consultation form and, where applicable, how the views of members were assembled.

	Business representative organisation/trade body
	Central government
✓	Charity or social enterprise
	Individual
	Labour provider

	Large business (over 250 staff)
	Legal representative
	Local Government
	Medium business (50 to 250 staff)
	Micro business (up to 9 staff)
	Small business (10 to 49 staff)
	Trade union or staff association
	Other (please describe)

The case for more effective enforcement

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

Yes
 No
 Not sure

Please give your reasons

Labour market exploitation is present in the global supply chains of companies in all sectors including in the UK. This phenomenon is not restricted to the edges of society or only as a result of the direct involvement of criminal gangs but importantly, it is a systemic issue often embedded within flawed recruitment and employment practices of companies.

There are a number of reasons why more needs to be done:

1. Reasonable Assumption that Exploitation Levels are Similar Across other Sectors

No one truly knows the extent of exploitation and abuse in the United Kingdom. The efforts of government enforcement bodies and in particular the Gangmasters Licensing Authority has generated important indications

of the extent of exploitation in the sectors covered in their remit. There is no reason to assume that the extent of exploitation is less in other sectors not covered by the GLA because many of those sectors have a similar structure and are dependent on large numbers of unskilled labour much of it being supplied through 3rd party agencies. Furthermore workers in many of these sectors share the same characteristics that make workers in the GLA covered sectors vulnerable to exploitation. Many of these workers are in unskilled positions, are often uninformed about their rights, face language and cultural barriers, are already among vulnerable groups (women, migrant workers), are often working through unregulated agencies, and will face many of the same challenges which the GLA seeks to prevent within its remitted sector.

2. Enforcement Across the Spectrum of Exploitation

We do not believe that enforcement of regulation should only be concerned with the most extreme forms of exploitation. Extremes such as forced labour often contain a range of exploitations along a continuum as identified by Klara Skrivankova:

<http://www.gla.gov.uk/PageFiles/1602/JRF%20-%20Between%20decent%20work%20and%20forced%20labour.pdf>
Page 19

The EU Fundamental Rights Agency (FRA) in a far-reaching report into labour exploitation across the European noted the scale and nature of the problem across Europe and similarly identified that exploitation extends along a continuum.

For example, business practices currently falling under increased scrutiny such as zero hour contracts and pressure to become self employed (bogus self employment) can engender vulnerability to exploitation and discourage workers from asserting their rights.

The FRA therefore specifically recommends that:

"EU Member States ensure a comprehensive system of inspections of working conditions that is effective enough to comply with recognised standards.

To this end, legislation must be in place clearly tasking a public authority with monitoring the working conditions of workers moving within or into the EU and with carrying out a sufficient number of inspections.

This authority must be staffed and trained to carry out inspections in

a targeted and effective manner, including having the means to overcome language barriers. It should either have its own powers and means of securing evidence relevant in criminal proceedings or be in a position to rely on effective cooperation with the police.

Staff engaged in monitoring must be trained to understand and assess risk factors for severe labour exploitation in practice, should adjust and organise their work in line with these risk factors and should regularly review their system of risk management. The strategic orientation of work place inspections should be based on all available evidence concerning relevant risk factors.

EU Member States should revise regulations that have the effect of exempting workplaces entirely from inspections, in particular as concerns private farms and domestic work.

EU Member States should design more effective and targeted strategies to bring cases of severe labour exploitation to light and offenders to justice.

EU Member States should enhance the monitoring of recruitment agencies and ensure that legal regulations prohibiting the collecting of fees from the workers are enforced.”

http://fra.europa.eu/sites/default/files/fra-2015-severe-labour-exploitation_en.pdf Page 18

3. Leveling the Playing Field for Law-Abiding Businesses

Effective enforcement of all regulation also protects law-abiding business from being undercut by businesses that exploit workers and break the law.

The July 2014 Home Office Migration Advisory Committee (MAC) report Migrants in low skilled work point 6.93 noted_

6.93

We found that there was a low level of labour market enforcement across low-skilled jobs. Although there was legislation in place, the numbers indicate that untargeted inspections will be rare. The relatively small numbers of successful prosecutions coupled with non-application of the harshest penalties could lead employers to conclude that chance favours those willing to avoid their obligations under the legislation. The level of resources put into inspections could result in employers being reasonably sure that there was only a small chance of them being discovered to be in breach of their obligations. The opportunities afforded by non-compliance meant that this could be seen as the more attractive option by employers. We received evidence that this was the case.

The legal process available to employees to initiate action against employers who have breached employment rights are protracted, expensive and give employees little prospect of getting back what is due to them

6.94

While we did see evidence of employment rights being enforced, we question how extensive the enforcement is and whether the resources devoted to enforcement are sufficient.

Enforcement bodies, such as the GLA, the HSE and the EASI, should have the effectiveness of their enforcement activity increased through further resourcing

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/333083/MAC-Migrants_in_low-skilled_work_Full_report_2014.pdf

4. Reinforcing efforts to combat fraud and tax avoidance

Improved enforcement of the law regarding labour regulation and efforts to combat exploitation will also help the efforts of HMRC in combatting associated fraud and tax avoidance. Joint and shared investigations of criminal activity are likely to also enable greater detection and prosecution of associated financial malpractice.

Important Caveat:

Increased activity to prevent exploitation can only be effectively delivered through a properly resourced enforcement infrastructure. We do not believe that existing budgets, which are already considerably stretched, can be extended further without being detrimental to existing activity. Any increase in enforcement activity will require increased funding.

A new Director of Labour Market Enforcement and more flexible enforcement

2. Do you agree with the following statement?

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

Yes

No

Not sure

Please give your reasons

Better cohesion of the various enforcement bodies activities under a clear chain of responsibility should improve both the effectiveness of compliance activity and the accountability of the existing bodies.

- Signalling Value of the Importance of the Issue

As with the Independent Anti-Slavery Commissioner it also reflects the seriousness with which the UK government views this issue.

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

- The independence from government will be critical in fulfilling the role fairly and effectively. If not independent from government there is a danger that activity and reporting may be targeted to reflect government policy aspirations. Targeting businesses employing migrant workers above those employing nationals even if intelligence suggests more risk to workers in the latter. There will also need to be close coordination between the Director and the Independent Anti Slavery Commissioner to ensure that their actions reinforce each other rather than prompting competition.

The Director for Labour Market Enforcement should help to coordinate the move to a single Labour Market Enforcement Agency under the Home Office. We would welcome such a move but due to the current remit and operating procedures of the various enforcement bodies it is likely to take some time to achieve. The Director can help ensure a coordinated approach and smoother transition towards this objective whilst also helping to deliver more effective activity across all the enforcement bodies in the interim.

We would make two observations about the Directors role:

1. The effectiveness of the role is contingent on sufficient resources being allocated to the enforcement bodies to effectively fulfil their remits. This enforcement activity needs to be intelligence led and proactive, not merely responding to complaints.
2. Enforcement of legislation should be perceived as a public good and therefore should not involve a direct link between revenue recovered and funding for operational activity. This also has implications for Question 13 below. We believe it would be a mistake to link the resourcing of enforcement bodies to the self-generation of funds through the offer of services to business willing to pay. This risks creating a conflict of interest for enforcement agencies, sending conflicting messages to business around a serious crime, and conflicting messages from a government that has made a leadership commitment to addressing this issue in the form of the Modern Slavery Act and an Independent Anti-Slavery Commissioner. We would instead remind the government that the cost benefit of funding

increased enforcement activity is likely to be positive by preventing tax and VAT fraud.

New offence of aggravated labour law breach

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

- Yes
- No
- Not sure

Please give your reasons

- Widespread breaches:
Routine exploitation of workers has become deeply embedded and a systemic challenge within many sectors not covered by the Gangmasters Licensing Authority (GLA). This can allow a culture of normality and lead exploitative employers to believe (often with justification) that there is little fear of prosecution. Such routine practices can then lead to more egregious abuses that would be covered by the new offence.
- Workers unable to raise concerns themselves:
The relationship between workers and exploitative employers can be complicated by a variety of external factors such as debt, tied accommodation, or deliberate misinformation being given to workers. This can mean that workers are inhibited or unable to make formal complaints or act as witnesses against employers. Enforcement by authorities may therefore represent the only possibility for vulnerable workers to escape exploitation.
- Current insufficient deterrence

As noted in the July 2014 Home Office Migration Advisory Committee (MAC) report Migrants in low skilled work cited above

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/333083/MAC-Migrants_in_low-skilled_work_Full_report_2014.pdf

Companies in sectors outside of the GLA remit also have little fear of prosecution or facing serious sanctions if found guilty. Creating a criminal law sanction can be expected to have an important deterrent effect that will far exceed the specific impact of prosecution.

If a new offence is instigated, it should be backed up by adequately resourced monitoring and enforcement activity to ensure it can be adequately enforced and prosecuted.

4. Which of the options described would be effective in tackling labour market exploitation?
- A) create an offence involving a motivation intention to deprive a worker of their rights or to exploit a worker in connection with the commission of the offence;
- B) create a new type of improvement notice;
- C) both A) and B);
- D) None of the options.

Please give your reasons

There is currently limited scope for prosecuting exploitative businesses for the systematic deprivation of a person's rights as a worker unless other criminal factors are present and this inhibits prosecution.

The new offence and improvement notice provide the regulator and CPS with a new and clearer framework within which to assess the activities of business and individuals. Improvement notices will provide a further sanction on business to improve practice within a given timescale.

5. What are the benefits of creating an offence involving intention to deprive a worker of their rights?

This would allow for more effective prosecutions of those found guilty of exploiting workers and in particular prevent serial offenders currently subject only to fines.

It would allow for those found guilty to be subject to the Proceeds Of Crimes Act.

It would send a clear message about the seriousness with which the government views this issue and would likely elicit changes to company policies and procedures around hiring and employment practices in line with the government's ambition to prevent exploitation.

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

Such an offence would help prevent those operating at a step removed from exploitative actions but still benefitting from the exploitation of workers to be considered complicit in the abuse.

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

Improvement notices will ensure changes in behaviour but are a proportionate response to less serious transgressions. They will discourage exploitative business accepting an occasional fine as a consequence of doing business whilst carrying on as normal. Such a notice will encourage business to ensure that hiring and recruitment policies and practices are compliant with the law and ensure that they cannot distance themselves from offences by simply blaming rogue individuals or 3rd parties.

Information sharing

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

- Yes
- No
- Not sure

Please give your reasons

The intelligence led approach has been the bedrock of the success of the GLA and there are clear benefits in sharing this approach. Doing so will aid enforcement of regulation, enable more prosecutions and will promote intelligence led, proactive rather than reactive interventions.

A key task for the new Director will be to ensure that adequate resource is allocated to the infrastructure necessary to make this data sharing as easy and seamless as possible across all the enforcement agencies.

Business, trade unions, other civil society organisations and the general public too have a role to play in ensuring accurate information ends up in the hands of those able to assess and act upon it if necessary. A mechanism for this input should be established

Reforming the GLA

9. Do you agree with the proposal to expand the role of the Authority or should we retain the current model?
- Yes, expand the role of the Authority
 No, retain current model
 Not sure

Please give your reasons

The Gangmasters Licensing Authority is a unique and effective enforcement body admired in many other countries. GLA staff are regularly asked to speak on international platforms. It is something of which the UK should be rightly proud. This positive view of the GLA's effectiveness and desire to see its remit extended were clearly expressed by many other organisations and businesses in the letter to the Modern Slavery Bill Consultation from the Ethical Trading Initiative and British Retail Consortium which included a large number of business signatories.

<http://www.ethicaltrade.org/sites/default/files/resources/ETI%20BRC%20Letter%20to%20PM.pdf>

However, GLA's limited remit impacts on its overall effectiveness within its current sphere of operations whilst also leaving other sectors disproportionately exposed to exploitation. It is a fact that inspection and adequate enforcement of employment regulations is far from consistent in sectors not covered by the remit of the GLA. We believe the GLA has proved to be an effective body in preventing exploitation within its remit. Extending that remit will enable workers and responsible businesses in other sectors to enjoy similar protections. It will also allow for more effective, cross-sectoral enforcement activity and help to prevent agencies barred from operating in the GLA sector, including those who have had a licence revoked for non-compliance, operating outside of the GLA remit.

The Fundamental Rights Agency Report Severe Labour Exploitation rP18 notes -

EU Member States should revise regulations that have the effect of exempting workplaces entirely from inspections.

http://fra.europa.eu/sites/default/files/fra-2015-severe-labour-exploitation_en.pdf

Whilst we would strongly support the extension of the GLA's remit this would be under the clear proviso of a matched increase in resources. Without additional funding an extended remit will see a dilution of the GLA's effectiveness across both its existing remit and any additional sectors.

The objectives and remit of the new Authority

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

Yes
 No
 Not sure

Please give your reasons

We believe this emphasis is correct and will be best achieved by enforcement activity and associated publicity. Although we see a clear role for business we believe that enforcement should take precedence over the GLA spending time and resources encouraging voluntary business led initiatives. (see Question 11). There are other actors that are willing and able to support voluntary business led initiatives; this is not where the government or government authorities add the most value or where it should allocate sparse resources.

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

Yes
 No
 Not sure

Please give your reasons

This training and guidance is much needed by many businesses within all sectors of industry however we do not believe that this should be the role of the Authority. There are a number of voluntary initiatives such as Stronger Together (supported by the GLA) and legitimate business

consultancies highly experienced and capable of delivering this training or the development of certification schemes.

<http://stronger2gether.org/>

There is also a clear danger that such business-orientated relationships might compromise the independence of the Authority.

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

Yes
 No
 Not sure

Please give your reasons

Although we would wish to see close liaison between the Authority and those it regulates we don't believe this is a useful role for the Authority (see answer above) and for the reasons set out below:

- Any attempt to charge for these services rather than offer free advice would privilege larger, better resourced businesses over SME's.
- Businesses may also feel obligated to use the training services of the Authority that is regulating them even if that is not the best fit for their business.
- The attraction of earning fees for these services will impact on the prioritisation of the authority's activities particularly during times of financial constraint.
- Delivering these services will put the authority, a state body, in direct competition to private providers and result in unfair competition to those businesses.
- The most effective tool to prompt prevention of exploitation is prosecution or fear of prosecution. The Authority's primary role is to enforce the law and prosecute illegal activity and we would prefer to see it concentrate its efforts on that.

13. What other tasks might the new Authority perform?

There is a clear role for the Authority in educating business about the risks they face through ignorance or negligence within their operations. However this can be done through broader educational efforts, leveraging other's actions and making clear information and guidance available, rather than providing specific services to business.

Where we believe the Agency can add real value is in educating those that consultants or other business groups cannot reach, such as front line staff in other front line operations such as the police, about exploitation at work. The Agency can play a key role in educating and leveraging other government services in eliminating exploitation. However, we would re-emphasise the primary role should be detecting and prosecuting breaches of the law.

Powers of the New Authority

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

- Yes
- No
- Not sure

Please give your reasons

We believe such a mandate will help prevent exploitation and ensure proper enforcement of the law. As noted above, exploitation happens along a continuum. Providing the Agency with the powers to address the full range along the spectrum will help improve the preventive role of the Agency. It will also protect law-abiding business from having to compete with those who are not compliant with the law.

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

- Yes
- No
- Not sure

Please give your reasons

As previously stated labour exploitation is likely to occur across all sectors of industry and it is right that all industry sectors are subject to effective and adequate supervision. It will also enable cross-sectoral enforcement activity, which will more effectively target illegal activity.

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

Yes
 No

If No, which ones should not be designated?

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

Please give your reasons

We believe these additional powers will aid investigation and effective prosecution of criminal activity.

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

We would favour administrative fines and penalties for low-level and technical minor offences, including some form of Repayment Mechanism to achieve rapid reimbursement to an exploited worker of wages or other monies owing. We believe that ensuring effective access to remedy for

workers is vitally important and we would like to see some emphasis on delivering appropriate mechanisms for redress for workers who have been exploited.

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

Yes
 No
 Not sure

Please give your reasons

This will allow the authority to operate effectively. It will also send out clear messages about the seriousness of the offence which will help raise awareness of labour exploitation and the consequences of being involved.

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

There will clearly be competing demands on the resources available to other organisations and in particular the police. Criminality however seldom exists in a vacuum and it is likely that those engaging in criminal activity relating to labour exploitation will also be undertaking criminal acts in other spheres.

If this power were not granted the work of the Authority may not receive the support needed in order to undertake its role effectively. We agree that the power to ask should stop short of that awarded to the National Crime Agency and should not be able to override serious operational priorities identified by Police and Crime Commissioners however this should be monitored in order to assess the operational reality during the first 2 years of the Authority.

We believe that a programme of engagement with both regional police forces and with Police and Crime Commissioners should form part of the action plan of the new Director of the Authority to build strong relationships and understanding between the respective bodies, which will aid and encourage joint working.

20. Which organisations should this new power apply to?

All listed.

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

Yes
 No
 Not sure

Please give your reasons

Criminal activity is seldom restricted to one sector and sharing information is a useful way that the authority can contribute to an overall reduction in crime across all areas. There is particular expertise within the Authority, which should be made available to other agencies along with specific information on individuals and organisations provided that the rights of defendants are respected.

Licensing

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

Yes
 No
 Not sure

Please give your reasons

We believe the current remit of the GLA is too narrow. In particular businesses supplying agency staff to the hospitality, construction and care sectors should be required to hold a GLA licence (or a licence from a successor agency). **As stated previously however this extension should only be made if additional funding is allocated to the Gangmasters Licensing Authority.**

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

The current licensing regime works well, is not onerous and is broadly supported by businesses who were involved in its creation. We would not make any changes to the process.

Extension of the licensing remit however will ensure a common standard across all sectors.

We have serious concerns that there are currently no representatives of workers on the board of the GLA and believe that this would be best served by a place being reserved for a TUC board member.

<http://www.gla.gov.uk/PageFiles/921/GLA%20Board%20Members%202015%20%28oct%29.pdf>

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

Yes
 No
 Not sure

Please give your reasons

The licensing regime is transparent and easy for all agencies, user enterprises including high street brands and other stakeholders to understand and to work within its parameters.

Business always likes clarity and a simple licensing regime provides the predictable, level playing field that business needs to thrive. We believe any major changes to the current system would undermine the clear simple system that is the foundation of the GLA's success. Introducing a risk based approach would interject a good deal of uncertainty into the system.

Licensing is also a cost effective form of regulation compared with undertaking criminal investigation and prosecution

The key request is to see a properly resourced extension of the licensing regime to other sectors

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

Yes
 No
 Not sure

Please give your reasons

The GLA is an effective regulator of its remitted sector and has reduced exploitation by working closely with all stakeholders. It is a system that works and is not onerous for business as demonstrated by the support of the businesses that signed the letter from (ETI / BRC).

<http://www.ethicaltrade.org/sites/default/files/resources/ETI%20BRC%20letter%20to%20PM.pdf>

Governance and oversight of the new Authority

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

- Yes
- No
- Not sure

Please give your reasons

We believe that the new authority will operate best as a non-departmental government body.

BIS/15/549