



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
x	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)

CORE is the UK civil society coalition on corporate accountability. Our coalition partners are human rights, development and environmental NGOs, trade unions, academics and legal experts. CORE works with partners to develop and promote shared policy solutions to improve corporate accountability.

For more information on any aspect of this submission, please contact Marilyn Croser: marilyn@corporate-responsibility.org

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

To tackle all forms of labour exploitation, labour inspection that upholds labour standards is key to ensuring that unscrupulous employers do not seek to profit from gaps in labour enforcement. This is necessary to achieve the goals of the Modern Slavery Act 2015.

Clear guidance on the definition and indicators of forced labour (reflecting ILO guidelines) is needed for agencies which may have interactions with those who are being exploited. Efforts should be made to address the role of all relevant agencies including local police forces and the judiciary, local authorities, health and education bodies, job centres and relevant NGOs.

Any extension of remit must be matched by an appropriate increase in resources; the expectation that significant regulatory initiatives and improvements will come from either static capacity or static budgets is wholly unrealistic.

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

The proposal for an annual strategy including an analysis of the risks posed in the labour market is welcome, and a coordination mechanism for all labour inspection agencies has the potential to generate improved understanding of the link between indicators of forced labour that fall within the remit of all inspection agencies.

For this to be effective, it would have to be informed by evidence of the impacts of current regulatory and other interventions, with regard to prevention of abuses, detection and follow-up. Important factors in making progress will be accumulating a knowledge-base of crucial information, drawing on lessons learned of successes and failures, ensuring policy coherence across government departments and building momentum around this. A range of relevant agencies should be involved to ensure coherence, including the Independent Anti-Slavery Commissioner, trade unions and NGOs with expertise in this field.

Any diversion or redirection of policy and resources should reinforce and not impede these elements. A Director with a limited budget is not going to be able to accomplish this wide-reaching and complex task.

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

See answer to Q2, above.

New offence of aggravated labour law breach

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

Yes

No

Not sure

Please give your reasons

There are currently very few investigations or prosecutions for forced labour or for labour law breaches, and an absence of effective penalties for repeat breaches of labour law and for breaches involving coercion or abuse of vulnerability. This creates a culture of impunity for labour exploitation.

An assessment should be made of whether this could be addressed most effectively by increasing the available penalties for existing labour law offences, and making a greater effort to prosecute such offences, rather than by introducing a new offence. Measures could include issuing sentencing guidelines that make a) the commission of a previous labour offence, and/or b) the commission of a labour offence using one of a list of coercive means (withholding passport, threat to report to police, etc.) aggravating factors warranting an increased penalty in the sentencing of any labour offence.

Regardless of the approach adopted, it is essential to ensure that there is parity of redress for victims of forced labour to receive the same level of protection and assistance as that afforded to victims of trafficking, with entitlement to assistance (including better access to legal redress and compensation) provided in law. There must also be a strict division between immigration control and labour inspection.

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

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

Please give your reasons

See response under Q8.

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

See response under Q8.

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

See response under Q8.

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

The benefits of a new type of improvement notice include better protection of workers; sending stronger signals to employers of the Government's intent to stamp out abuses; and developing intelligence to prevent such violations in the future.

Undertakings given by employers to comply with improvement notices can only work in combination with other measures. Companies that offend cannot be expected to comply voluntarily unless there are enforcement measures in place. Without ongoing monitoring of employers issued with improvement notices, there will be limited incentives for employers to change their behaviour.

Information sharing

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

- Yes
 No
 Not sure

Please give your reasons

Information sharing on patterns and trends in labour abuses, for example the bogus self-employment of workers in a particular sector and the impact of such practices on incidences of exploitation would be useful.

Any new powers to act must be managed effectively, in a way that ensures the proper use of these powers. The overall framework has to be sufficiently integrated to enable the whole to be greater than the sum of the parts. Any 'information hub' would have to have as its primary purpose the intention of protecting vulnerable workers and preventing exploitation, rather than furthering immigration non-compliance aims.

Any information hub drawing from a selection of government departments would have to be broadened in the form of a steering or consultation group with participation from NGOs and other informed sources on the ground, in order to retain and factor in solid and evolving expertise.

Reforming the GLA

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

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

Please give your reasons

The GLA should under no circumstances have its remit expanded without a matched increase in resources. The Consultation document clearly states that all amendments to the role of the labour inspection agencies will be made "within the total envelope of available funding". Therefore the proposal to

expand the role of the GLA represents a watering-down of its functions, requiring it do more with less.

The GLA currently has considerable expertise in detection and reporting of the practice of forced labour and labour violations within its remit and any attempt to extend this remit may lead to the GLA overreaching itself in a way that may diminish its effectiveness.

Answers given below in relation to the new Authority should not be read as an endorsement of its proposed creation; this is not possible to consider until issues of governance, capacity and resources are properly detailed.

The objectives and remit of the new Authority

11. Do you agree that the mission of the new Authority should be to prevent, detect and investigate worker exploitation, in support of the Director's annual plan?
- Yes
 No
 Not sure

Please give your reasons

With additional resourcing, it could be possible for the initiating of enforcement measures to become an element of the Authority's mission. This could also include regulatory oversight over social auditing firms to ensure quality control and an obligation to report incidents of forced labour.

The Director's annual plan would have to be coherent with this mission for the Authority to be effective, but we reiterate that this is only possible with realistic resourcing.

12. Should the new Authority work with business to provide training, and develop codes of conduct and voluntary accreditation schemes?
- Yes
 No
 Not sure

Please give your reasons

The Authority's vital objectivity in its relationship with business would be compromised if it were dependent on business for its funding. Many other

organisations provide such training, and Authority's added value in this regard is unclear. Such additional work could act as a distraction from the Authority's core license monitoring function.

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

- Yes
- No
- Not sure

Please give your reasons

The Authority should not become a training agency or consultancy as there are others with greater expertise in these areas. If the Authority is required to budget for training provision as an income stream, the pressure to generate income will distort its activities and risk subverting its mission.

14. What other tasks might the new Authority perform?

No comments.

Powers of the New Authority

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

- Yes
- No
- Not sure

Please give your reasons

While there could be a role for the new Authority in investigating labour market breaches and offences that it encounters in a license monitoring and inspection capacity, its role in these cases should be to facilitate and support the agencies with primary responsibility for such breaches, not to take their place. Such an extension of powers should not operate to transform the GLA into a law

enforcement agency. Any new power must be met with adequate resources to fund this additional activity, so as not to undermine existing functions.

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

- Yes
- No
- Not sure

Please give your reasons

Given the success of the GLA in the few sectors in which it operates, it would be desirable to extend its remit to allow investigation in other sectors of the labour market. Such extension cannot occur without a substantial increase in resources.

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

- Yes
- No

No comment.

If No, which ones should not be designated?

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

Please give your reasons

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

a) Ensuring policy coherence by working with key government departments and agencies.

b) The new Authority needs the powers to examine those areas of the political economy where recruitment practices or business operations (such as the use of highly flexible labour) or government policies (including some of the proposals in the UK immigration Bill) may result in increased worker vulnerability to labour exploitation, and to determine how these might be mitigated.

c) A new Authority should possess the power to monitor supply chains and also compliance with Modern Slavery Act's reporting duties for businesses.

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

Yes

No

Not sure

Please give your reasons

No comment.

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

No comment.

21. Which organisations should this new power apply to?

No comment.

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

- Yes
 No
 Not sure

Please give your reasons

The 'ask and task' suggested by section 130 does not take account of individual departmental functions, priorities or possible conflicts of interest. There needs to be coherence of policy and co-ordination of intelligence and activity, but without overloading the new Authority and blurring boundaries of roles and responsibilities.

Licensing

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

- Yes
 No
 Not sure

Please give your reasons

The licensing model operated by the GLA was introduced in order to ensure a level playing field between labour providers. This system and the monitoring of gangmaster compliance with the GLA's eight licensing standards ensures parity between providers and reduces the risk of exploitation of workers.

It is imperative that any regulatory approach targets law breakers effectively but also protects victims. The risk of forced labour within the current sectors covered by the GLA continues to justify the licensing of business within those sectors.

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

The regime should be sufficiently flexible to expand to other sectors where new areas of risk are identified. Reform of licensing criteria should be linked to recognised indicators of forced labour, as a principle requirement of ensuring a common baseline for businesses and marginalizing unethical enterprises.

Licensing powers assume the capability to monitor and investigate compliance with licensing conditions. Such capability needs to be built in.

25. Do you agree that we should introduce a more flexible approach to licensing, based on a risk assessment, judged on a sector by sector basis and agreed by Ministers and Parliament?
- Yes
 No
 Not sure

Please give your reasons

This would end the level playing field between labour providers and increase the risk of worker exploitation.

26. Are there any sectors that you would remove from the current licensing regime?
- Yes
 No
 Not sure

Please give your reasons

The sectors in which the licensing regime operates were chosen for a reason, linking the supply chains of UK businesses. Reduction of the current remit would lead to the GLA being extremely limited in its scope.

Governance and oversight of the new Authority

27. Will the proposed governance arrangements enable the new Authority to achieve its mission under appropriate oversight?
- Yes
 No
 Not sure

Please give your reasons

The description of governance arrangements in the consultation document is insufficient and no resource or capacity enhancements are detailed.

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