



‘Good Work Plan: establishing a new Single Enforcement Body for employment rights’ Government Consultation

**Response from CORE Coalition, Amnesty International UK, Anti-Slavery International,
Business and Human Rights Resource Centre, Christian Aid, FLEX, Traidcraft Exchange and
UNISON**

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Introduction

CORE is the UK civil society coalition promoting corporate accountability. We aim to advance the protection of human rights with regards to UK companies’ global operations by advocating for higher standards of corporate conduct, a more effective regulatory framework, and improved access to remedy for people harmed by UK-linked business activities. We are grateful for the opportunity to respond to this consultation. Our response will focus primarily on Section 4.4, ‘Supply Chains’.

Overarching issues

Business practices and the landscape of the labour market have transformed dramatically over the last few decades, and it is encouraging to see the Government engaging with the challenges these changes present. We also welcome an approach from the Government focused on enforcement and accountability.

It is our view that as the organisation and structure of business evolves, the Government must ensure that gaps in legal accountability are covered. This is particularly salient with regard to employment law. All too often businesses aim to reduce costs by transferring their legal obligations to other parties, be it through umbrella companies or the global outsourcing of labour. It is essential, therefore, that law and enforcement approaches keep pace with the dynamics of modern business models.

In designing an approach to tackling these problems, thought must be given to the drivers of supply chain issues. In particular, attention should be paid to the business practices of those at the top of the supply chain and those with significant market power. For example, if a business outsources labour but refuses to pay a price that could reasonably be used to provide a minimum wage, the outsourcing company is clearly complicit in the labour rights violation. As is often the case, the market position of the buyer may give the supplier little choice but to accept the offered price.

While the two central recommendations in Section 4.4. (the introduction of joint responsibility and embargoing of hot goods) could be useful tools, in their current proposed

form neither will address these more fundamental issues. A tougher approach is needed to incentivise businesses to respect labour rights.

One step would be for the Government to reconsider the use of 'joint liability', rather than simply joint responsibility. As the Director of Labour Market Enforcement reported, joint liability would be an effective way to ensure businesses take an interest in the well-being of workers in their supply chain.¹ Relying on voluntary improvements by business is insufficient, since competitive dynamics continue to perpetuate a race to the bottom.

Going further, we recommend that the Government bring forward a proposal for a corporate duty to prevent human rights and environmental harms, modelled on the duties to prevent tax evasion and bribery found in the Criminal Finances Act 2017 and the Bribery Act 2010. This law would hold businesses liable for loss and damage caused by their failure to prevent abuses of human rights or breaches of environmental standards arising from the acts or omissions of their subsidiaries or business partners. Under the legislation, it would be a defence from liability for damages for businesses to prove that they had reasonable and appropriate due diligence procedures in place. This would likely entail, for instance, identifying and mitigating the impacts their own practices had on human rights and environmental risks in the supply chain.

It is also important to stress that these recommendations do not depend on the creation of a Single Enforcement Body. In our view, many of the issues underlying the discussion in the consultation document could be solved through improved resourcing of enforcement and new legal requirements on businesses that reflect the current labour market landscape rather than a shift from a plural to singular system.

In the absence of these proposals, however, we suggest that the Government carefully consider how new powers invested in the Single Enforcement Body could effectively tackle the corporate practices that drive human rights and labour rights abuses. Importantly, we consider that the current labour rights enforcement infrastructure is underfunded and that a new body would require resourcing that goes beyond the current resourcing of existing labour rights enforcement bodies that would be subsumed.

Question 26. Should a single enforcement body have a role in enforcing section 54 of the Modern Slavery Act?

No. If a new civil penalties regime is to be introduced – as many of our partners recommended in a joint response to a recent Government consultation on the Transparency in Supply Chains (TISC) provision² – this will have to be monitored and enforced effectively. However, we do not believe that this role should be assigned to the Single Enforcement Body.

The Single Enforcement Body would already have a wide remit regarding labour market inspection and enforcement in relation to businesses predominantly in their role as direct employers (or direct users of labour contractors). This body will need a different set of skills to that of a TISC regulator, whose role would predominantly be desk-based monitoring, assessing of modern slavery and human trafficking statements and imposing sanctions where a company's statement fails to meet the Modern Slavery Act's requirements. We therefore do not consider that a Single Enforcement Body's role should also cover corporate transparency provisions such as s.54.

Furthermore, the number of companies required to publish a modern slavery statement is estimated at 17,000³ whilst compliance levels with the Act are currently low.⁴ Crucially, any appointed body must be adequately resourced with the right infrastructure and skills to carry out the important task of enforcing the TISC provision. Depending on these conditions, we suggest that this enforcement role could sit with the Home Office, BEIS or the Independent Anti-Slavery Commissioner.

Question 27. Would introducing joint responsibility encourage the top of the supply chain to take an active role to tackle labour market breaches through the supply chain?

Yes. We support the introduction of joint responsibility and agree that it would be one useful measure. However, in our view it will be insufficient on its own. As a first step, we recommend that as well as naming the company, additional details, such as how the lead company's practices have contributed to the abuses, how it failed to take action to address the breaches or terminated the relationship with the supplier as a last resort, could be published.

Furthermore, joint responsibility is insufficient to combat poor purchasing practices that drive labour rights violations. We suggest that the Government reconsider the introduction of joint liability. In the UK labour market an estimated 3.3 million people are employed by outsourcing companies, 2 million by labour market intermediaries and a further 615,000 by franchised businesses. In this context, it is clear that the legal accountability framework should reflect the fragmented employment relationships in the labour market. Organisations must have a legal responsibility to protect workers' rights.⁵

Joint liability would allow workers to bring a claim for unpaid wages, holiday pay and sick pay against any contractor in the supply chain above them. This would encourage contractors to be more diligent in choosing their subcontractors and ensure that they take real responsibility for the people that work for them. Currently, poor purchasing practices by companies, such as ever shorter lead times and lower prices for suppliers, lead to work being sub-contracted to unsafe and/or unregulated production sites, subsequently leading to forced overtime, avoidance of paying maternity, sick pay and other entitlements and injury.⁶ Joint liability would encourage companies at the top of the supply chain to communicate in a timely manner with their suppliers, rather than adopting practices that force suppliers to reduce wages and cut corners in health and safety to satisfy buyers' demands and deliver products quickly.

This idea of joint liability is not novel. The Equality Act 2010 prohibits principal employers from discriminating against or victimizing contract workers who are not under their direct employment, while the Posted Workers (Enforcement of Employment Rights) Regulations 2016 provide that a posted worker in the construction sector can bring a claim against the contractor for failing to pay the national minimum wage. Joint liability would extend these principles already existent in UK law to all sectors and to wider workers' rights.

The UK Labour Market Enforcement Strategy 2018/19 set out that joint liability should be reconsidered if joint responsibility proves to be ineffective. Therefore, we urge the Government not to take the option off the table at this stage.

On a separate practical note, it is likely to be difficult to specify the 'top' of the supply chain in practice and is also unnecessarily exclusionary. For instance, in the global chocolate market,

mid-chain cocoa bean processors operate in a highly concentrated market resulting in considerable control over suppliers. Responsibility could be signed to commercial enterprises for business partners lower in the supply chain on an agreed basis (for instance, company size), to ensure that large mid-chain processors with significant market power would also fall within scope of the requirement.⁷

Question 28. Do you think it would be fair and proportionate to publicly name a company for failure to rectify labour market breaches in a separate entity that it has no direct relationship with?

Yes. As stated above, millions of workers in the UK are employed via labour market intermediaries or more indirectly through subcontracting and outsourcing. Often these employment practices are adopted in order to avoid the employment law and tax obligations of directly employing a workforce.

Moreover, evidence clearly shows that it is frequently the practices of lead companies that ultimately causes labour rights abuses. The impact of problematic purchasing practices on labour rights has been set out in the answer to question 27 (above). An ILO survey of suppliers to international brands and retailers showed that a lack of systemic written contracts, vague and frequently changing technical specifications, insufficient order placement and lead times, and the market power of buyers, led directly to labour rights abuses.⁸

The survey showed that in all sectors 54% of suppliers have a high dependency risk on a single buyer. In some sectors such as garment and agriculture sectors, this number is as high as 75%. This allows buyers a disproportionate say over conditions of sale. Only 17% of suppliers considered their orders to have enough lead time and 39% reported accepting orders whose price did not allow them to cover their production costs due to extreme buyer pressure. Only 25% of suppliers reported that their buyers were willing to accommodate minimum wage increases in their prices. Other research has similarly shown that purchasing practices of lead companies often dump labour rights risks onto suppliers.⁹

Pressure on time and cost leads to pressure on capacity, working hours and labour costs, which inevitably filters down the supply chain. Wages are suppressed, working hours are irregular and excessive, and unrealistic performance targets are met with lack of breaks and poor health and safety. This has a negative impact on the labour market overall. Poor employment conditions lead to high worker turnover, reduced productivity, unauthorised subcontracting, in-work poverty, and in the most extreme conditions child and forced labour.¹⁰

At a minimum, therefore, lead companies should be named for failure to rectify labour market breaches as they are partly responsible for employment conditions in their supply chain. However, we recommend that introducing joint liability would change the balance of incentives and would drive the improvement of purchasing practices more systemically.

Question 29. Should joint responsibility apply to all labour market breaches enforced by the state?

Yes. The practices of the firm at the head of the chain can impact on all aspects of the suppliers' actions, and there seems to be no good reason to suggest that some labour market breaches can be attributed to the lead firm while others cannot.

Question 31. Do you think there should be a threshold for the head of supply chain having a responsibility for breaches at the top of the chain?

As per our answer to Question 27, it seems unnecessary to only assign responsibility to the 'head' of a supply chain. It may prove difficult in practice to ascertain what constitutes the head of a supply chain in different sectors and it would also not properly reflect the realities of power and responsibility in supply chains. In which case, it may be necessary to develop a threshold to determine which commercial actors along a supply chain can be considered responsible.

However, if this approach is not adopted and a method for determining the head of a supply chain is developed, we would caution against also applying a threshold to assign responsibility. This risks creating a two-tier system rather than a level playing field. We recommend that the question of whether to set a threshold for responsibility is answered in a process of thorough consultation with trade unions, businesses and other stakeholders.

Question 32. Do you think embargoing of hot goods would act as an effective deterrent for labour market breaches?

Yes. The potential for goods to be embargoed would create a significant deterrent and the mechanism should be used. The U.S. experience demonstrates that the embargoing of hot goods is an effective way to address labour market breaches quickly. In many instances, the mere threat of embargo has been sufficient to prompt payment of workers. In addition, as the responsibility lies with those holding goods, this leads buyers to be more cautious and police their suppliers.

As with the joint responsibility provision, thought would have to be given to avoiding a situation in which lead companies' problematic practices continued, while at the same time creating more compliance requirements for suppliers. Consideration should be given to avoiding inadvertent negative consequences on workers while implementing this measure.

We regret that this measure is not intended to be applied to goods produced outside the UK. As is well known, supply chain issues are extraterritorial. The seizure of imported goods would be an appropriate way for the UK Government to enforce respect for fundamental labour rights. Seizure of improper goods produced outside the UK would not be novel: there are already provisions in place to prevent unsafe items being placed onto the UK market. Furthermore, applying such a measure on imported as well as UK-produced products would help ensure a level playing field for businesses.

Our view is that protecting UK residents from consuming goods produced with serious labour rights abuses, irrespective of where they occur, would not be a disproportionate step.

Question 33. Would it be effective in all sectors? If no, which, if any sectors would they be effective in?

Yes, although in practice some sectors will be more amenable. For instance, the policy will be more effective when used against businesses with high turnaround and goods to be seized. Moreover, in such business environments labour market violations are often more prevalent. Example sectors include garments, agriculture and retail.

Arguments against embargoing perishable goods are flawed as the purpose of embargoing hot goods is to gain leverage over companies violating employment law. That leverage evidently increases when the goods are perishable, making the policy more effective. Moreover, in instances where workers have been underpaid it is obviously essential for them to obtain remedy quickly. In the US embargoing perishable goods has proved to be a good way to do this.

In order for the hot goods provision to be effective, it is crucial that the relevant enforcement body clearly states the adequate evidence required in order to seize goods and is sufficiently resourced. The UK already has the law enforcement infrastructure in place to be able to equip officials to act quickly.

Question 34. Should embargoing of hot goods apply to all labour market breaches enforced by the state?

Yes. This would ensure clarity for business, one of the central aims of the establishment of the Single Enforcement Body.

Question 35. Are there other measures that the state could take to encourage heads of the supply chain to take a more active role in tackling labour market breaches?

Yes. As stated above, we strongly recommend that the Government legislate for a corporate duty to take steps to prevent human rights abuses and environmental harms. This law would go further than existing provisions. For example, the Modern Slavery Act 2015 only requires the disclosure of measures the company takes to prevent slavery and human trafficking. It does not require businesses to actually take any action other than disclosure.

By contrast with the Modern Slavery Act, the proposed law would mandate companies to take active steps to identify and prevent actual or potential negative impacts that their operations, products, services, investments and supply chains may have on individuals and communities. These steps would likely include: identifying actual and potential impacts on international human rights and the environment; taking appropriate measures to prevent the violation of international human rights and environmental standards; ceasing existing abuses and breaches; and accounting for the actions taken. Such a law should not be limited to modern slavery but should cover risks of all corporate human rights and environmental abuses across all industries and sectors.

The proposed corporate duty would hold commercial organisations liable for loss and damage caused by their failure to prevent abuses of international human rights or breaches of environmental standards across their operations and supply chains. It would be a defence from liability for damage for business organisations to prove that they had reasonable and appropriate due diligence procedures in place.

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/705495/labour-market-enforcement-strategy-2018-2019-executive-summary.pdf
- ² CORE Coalition, Anti-Slavery International, Amnesty International, Business and Human Rights Resource Centre, Christian Aid, Environmental Justice Foundation, Fairtrade Foundation, FLEX, Freedom Fund, Freedom United, Traidcraft Exchange, TUC, UNICEF and UNISON (2019) *Transparency in Supply Chains Consultation Submission* https://corporate-responsibility.org/wp-content/uploads/2019/09/TISC-Consultation-Response_FINAL_160919.pdf
- ³ Home Office (2019) *Transparency in Supply Chains Consultation*
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/816348/Transparency_in_supply_chains_consultation.pdf
- ⁴ See, for instance, FLEX and ICAR (2019) *Full Disclosure: Towards Better Modern Slavery Reporting* <https://www.labourexploitation.org/publications/full-disclosure-towards-better-modern-slavery-reporting>; Business and Human Rights Resource Centre (2018) *FTSE 100 & the UK Modern Slavery Act: From Disclosure to Action* <https://www.business-humanrights.org/sites/default/files/FTSE%20100%20Briefing%202018.pdf>; CORE Coalition (2017) *Risk averse? Company reporting on raw material and sector-specific risks under the Transparency in Supply Chains clause in the UK Modern Slavery Act 2015*
- ⁵ TUC (2018) *Shifting the Risk* <https://www.tuc.org.uk/sites/default/files/Shiftingtherisk.pdf>
- ⁶ For instance, following on from the Rana Plaza building collapse in Bangladesh which killed more than 1,000 people, only a handful of brands provide their Bangladeshi suppliers with the long-term commitments needed to undertake capital expenditure to make their buildings safe. See Mahmood Hussain & Wamiq Umaira (2017) *Pains and Gains – Report on the progress made, impediments and what lays ahead*: <http://www.bu.edu.bd/wp-content/uploads/2017/02/Pains-and-Gains-Final.pdf>
- ⁷ Oxfam International (2009) *Towards a Sustainable Cocoa Chain: Power and possibilities within the cocoa and chocolate sector*
<https://www.icco.org/sites/www.roundtablecocoa.org/documents/RSCE2%20Abidjan%20-%20presentation%20by%20Oxfam%20International.pdf>
- ⁸ International Labour Organisation (2016) *INWORK Issue Brief No.10: Purchasing practices and working conditions in global supply chains: Global Survey results*
https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms_556336.pdf
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- ¹⁰ Ethical Trading Initiative (2017) *Guide to buying responsibly*
<https://www.ethicaltrade.org/resources/guide-to-buying-responsibly>