



Department
for Business
Innovation & Skills



Home Office

Tackling Exploitation in the Labour
Market

Government Response

JANUARY 2016

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1. Ministerial Forewords

Secretary of State for Business, Innovation and Skills



The idea of employers paying a fair day's wage in return for a fair day's work has been the basis of our economic system for generations. It has lifted millions of people out of poverty, allowed successful businesses to grow and helped make Britain the secure, prosperous nation it is today.

Of course, this system only works if everyone plays by the same rules. The vast majority of employers do just that, treating their employees well and paying them fairly. However, too many still think they can get away with ignoring the rules, breaking the law, and taking advantage of hardworking men and women who want nothing more than an honest job.

Building on responses to last year's consultation, this document sets out how a new cross-government approach to labour market enforcement, one that will leave no place to hide for those who abuse the system.

Creating a Director of Labour Market Enforcement will help us to bring much needed coordination to the enforcement of labour market legislation, and an evidence-based annual labour market enforcement strategy will ensure that enforcement efforts are targeted where the risk of non-compliance is greatest. And it's not just workers who will benefit – if they're not being undercut by unfair, illegal competition, responsible businesses will be able to grow faster and create more jobs.

The worst type of exploitation – repeated breaches of the law by unscrupulous employers with no regard for the rights of workers – will be tackled with a new undertaking and enforcement order regime, with an associated criminal offence. The new Gangmasters and Labour Abuse Authority will be able to use its expertise to tackle these criminals, wherever they are operating.

It is likely that rogue businesses prepared to break one part of labour market law are also prepared to break other laws that protect workers. The Director's Intelligence Hub will draw in information from all parts of government involved in the labour market and use this to develop a much richer picture of the nature of non-compliance. This means that future interventions – whether they be guidance, education or enforcement – can be better targeted at those employers who need them most.

Meanwhile, the vast majority of honest, upstanding employers can be left alone to get on with doing business, creating jobs and paying a fair day's wage for a fair day's work.

A handwritten signature in black ink, appearing to read 'S. Javid'.

Sajid Javid

Secretary of State for Business, Innovation and Skills

Home Secretary

In 2015 the House of Commons passed historic legislation in the Modern Slavery Act, sending out a powerful signal about our determination to be at the forefront of eradicating the horrors of this terrible crime. Among the measures in the Government's new Act are steps to ensure we can tackle the organised criminals and opportunistic individuals behind the modern day slave trade, and increased support and protection for victims.



But now we need to build on that good work. We must deal with those who commit all forms of labour exploitation, and so profit from the misery of others and undermine responsible businesses.

Our consultation on tackling exploitation in the labour market sought the views of interested parties on our proposals to address serious abuses of employment law. This document sets out the Government's response and demonstrates our commitment to taking action.

I welcome the many responses we received and the strength of opinion they convey. It is clear that all of us, Government, businesses, worker representative groups and social enterprise bodies, want more to be done to stop those who are willing to exploit victims for their own criminal ends.

The proposed role of the Director of Labour Market Enforcement, included within the Immigration Bill and currently before Parliament, will bring a new focus on coordinated, intelligence-led work across all our enforcement agencies. We now want to complete the reforms that will enable those agencies to take firm and effective action against exploitation.

We will also transform the Gangmasters Licensing Authority into the Gangmasters and Labour Abuse Authority, and strengthen its remit with new investigatory powers, enabling it to tackle serious cases of labour market exploitation wherever they occur.

The majority of businesses in this country are law-abiding. These measures will ensure that we come down firmly on the side of those businesses that want to do the right thing, and that there are tough penalties for those who persistently seek to break employment law.

I am confident that our measures will build on the work we have begun through the Modern Slavery Act. It is only by working together, taking responsibility and fighting criminality that we can stop the misery of exploitation and enable everyone in society to work without fear.

A handwritten signature in black ink, appearing to read 'Theresa May'.

Theresa May

Secretary of State for the Home Department

2. Executive Summary

1. The Government has made clear its commitment to tackle illegal working and crack down on worker exploitation across all labour sectors. Where employers are exploiting their workers by non-compliance with employment law, the Government steps in to enforce legislation in some circumstances, for example where it is believed that there is a higher risk of exploitation or vulnerability.
2. The Government ran a consultation from 13 October to 7 December 2015 to seek views on four proposals to build on the effectiveness of the current regime. These were:
 - to establish a statutory Director of Labour Market Enforcement, who will set priorities for the enforcement bodies across the spectrum of non-compliance, from criminally-minded exploitation to payroll errors;
 - to create a new offence of aggravated breach of labour market legislation;
 - to increase intelligence and data sharing between the existing enforcement bodies and also other bodies to strengthen the targeting of enforcement; and
 - to widen the remit, strengthen the powers and change the name of the Gangmasters Licensing Authority to enable it to tackle serious worker exploitation more effectively.
3. We received 93 responses from a range of trade bodies, charities, labour providers, individuals and statutory organisations. The list of those who responded is at pages 31-34.
4. The Government welcomes the views put forward by respondents and has carefully considered the responses. The majority of respondents agreed with the Government's position that more needed to be done to tackle the more serious cases of labour market exploitation. In view of this, the Government has decided to reform our approach to labour market enforcement in the following ways.

Create a new Director of Labour Market Enforcement

5. There was broad support for the creation of the role of a Director of Labour Market Enforcement to bring together the work of existing enforcement agencies and to provide a more joined up response.
6. We have already included a provision in legislation to create a statutory position of Director of Labour Market Enforcement in the Immigration Bill, which was introduced in Parliament on 17 September 2015. The Director will produce an annual labour market enforcement strategy and set priorities for the enforcement bodies across the whole of the labour market – including direct employment and labour providers – and across the whole spectrum of non-compliance. As the Bill continues its journey through Parliament we intend to make amendments to ensure the role is clearly defined in legislation, including the necessary remit and powers for the Director to be effective.

7. We will also ensure that other stakeholders are properly involved in the preparation of the Director's labour market enforcement strategy.

Creating a new offence of aggravated breach of labour market legislation

8. There was broad agreement amongst respondents that there is a need to create a new offence of aggravated labour law breach. Most respondents were in favour of both options: (a) creating 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 and (b) creating a new type of improvement notice.
9. Following careful consideration of the responses and further detailed discussions with enforcement bodies and the Crown Prosecution Service, we found that option (b) would be more effective than option (a) because it would be simpler to prove a breach of the order than it would be to prove a person's motivation or intention in committing the breach.
10. The Government will introduce a new type of enforcement order supported by a criminal offence for non-compliance. The labour market enforcement bodies will have the power to require a business, where there is reasonable belief that a labour market offence has been committed, to enter into an undertaking to take steps to prevent further offending. The enforcement bodies will be able to apply to a court for an enforcement order where a business had refused to give or failed to comply with an undertaking. In addition, courts sentencing for labour market offences will be able to make orders of their own volition. Breach of the order would be a criminal offence.
11. The penalty associated with committing a criminal offence will attract a maximum custodial penalty of two years, which reflects the seriousness of such offences and will deter unscrupulous employers from committing any deliberate and persistent breaches of labour law, whilst offering workers better protection from exploitation.

Strengthening Information sharing

12. There was broad support for giving the new Director and the three labour market enforcement bodies powers to share data and intelligence routinely.
13. We will retain the existing gateways between HM Revenue and Customs (HMRC) National Minimum Wage (NMW) team, the Employment Agency Standards inspectorate (EAS) and the Gangmasters Licensing Authority (GLA) to enable enforcers to continue to share information relating to specific case, particularly in time-critical situations.
14. In addition, we intend to proceed with the proposal to create gateways between the Director, the three labour market enforcement bodies, other bodies and the intelligence hub. The hub will coordinate data which will be used to develop the annual strategy plan for labour market enforcement.

Reforming the Gangmasters Licensing Authority

15. There was strong support from many respondents for the work of the GLA and the role that it plays in tackling labour exploitation. There was also broad support to

reform the organisation's role so that it can do more to tackle labour exploitation across the economy.

16. The Government will transform the GLA into the Gangmasters and Labour Abuse Authority. Its mission will be to prevent, detect and investigate worker exploitation across all labour sectors. It will be given police-style enforcement powers in England and Wales to help it tackle all forms of exploitation in all sectors. It will retain the existing licensing regime, but this will be reformed to be more flexible and capable of responding to changing risk, subject to Ministerial decisions, on the advice of the Director of Labour Market Enforcement.
17. The Government is considering resources for the new Authority as part of the Spending Review settlement. However, it believes that the new Director role will help target the enforcement resources towards the areas of greatest benefit and impact.

3. Introduction

18. The UK has a strong statutory framework in place to ensure that those in work are entitled to work in the UK, are paid at least the National Minimum Wage – and from April 2016 for over 25s, the National Living Wage – and benefit from other employment rights. This framework is underpinned by an enforcement regime, which covers the National Minimum Wage under HMRC, the regulation of employment agencies and businesses under the EAS and the licensing of labour providers in the fresh produce supply chain under the GLA. Alongside these, the Home Office is responsible for enforcing the immigration rules and the National Crime Agency is responsible for tackling serious and organised crime.
19. Most employers in the UK strive for and achieve compliance within this legal framework. However, whilst targeted, effective regulatory enforcement intervention is in place to tackle criminal non-compliance, feedback from enforcement agencies suggests that there has been a change in the nature of non-compliance with labour market regulation over time. This has seen a shift from the more general abuses of employment regulation towards increasing organised criminal activity involving serious and organised crime gangs infiltrating legitimate labour supply chains across a number of sectors to exploit workers.
20. The Government is committed to protecting vulnerable workers by ensuring that effective measures are in place to identify and tackle non-compliance with labour market regulation across the entire spectrum of exploitation.
21. The Government ran a public consultation from 13 October to 7 December 2015 and sought views on four proposals for enhancing the capability of the existing framework to deal with individuals and businesses that breach labour market regulation. These were:
 - to establish a statutory Director of Labour Market Enforcement, who will set priorities for the enforcement bodies across the spectrum of non-compliance, from criminally-minded exploitation to payroll errors;
 - to create a new offence of aggravated breach of labour market legislation;
 - to increase intelligence and data sharing between the existing enforcement bodies and also other bodies to strengthen the targeting of enforcement; and
 - to widen the remit, strengthen the powers and change the name of the Gangmasters Licensing Authority to enable it to tackle serious exploitation.
22. Alongside the consultation, the Government held two stakeholder events to listen to the views of business and non-governmental organisations about the proposals.
23. In total we received 93 responses. This document provides a summary of those responses and sets out next steps.

4. Analysis of respondents

24. The table below sets out the breakdown by respondent type.

Sector	Number of responses	%
Business representative organisation/trade body	15	16%
Labour Provider	7	8%
Charity or social enterprise	14	15%
Individual	9	10%
Police Force	2	2%
Academic	3	3%
Micro Business	4	4%
Large Business	5	5%
Local Government	1	1%
Central Government	3	3%
Legal representative	4	4%
Trade Union or staff association	10	11%
Other	16	17%
Total	93	

5. Summary of responses to the consultation

The case for more effective enforcement

Q1. Do you agree that more needs to be done to tackle organised labour market exploitation?

Yes	84	90%
No	0	0%
Not Sure	0	0%

25. The majority of respondents agreed with the assertion, for a number of different reasons. One key theme was the increase in modern slavery and human trafficking as shown by research and statistics, with respondents noting that this is a National Crime Agency high priority threat and that the current offences are difficult to prove (and may not act as a deterrent). Other responses focused on the need to remove a source of revenue for criminal gangs.

26. Another theme was the risk of the likelihood of businesses who deny workers their rights also “cutting corners” in other areas such as health and safety and paying taxes, leading to unfair business competition. Respondents felt that effectively tackling labour market exploitation was a way to create a fair playing field.

27. Some stakeholders including the Low Pay Commission and EEF highlighted the gaps in the current intelligence and understanding of the problem. Others felt strongly that while not all exploitation is by organised criminal gangs, neither is it predominantly harmless mistakes, and it is important that the government develops a better understanding of the problem.

28. Lastly, some respondents felt that more needs to be done to remove barriers to justice for exploited workers.

A new Director of Labour Market Enforcement and more flexible enforcement

Q2. 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	45	48%
No	9	10%
Not sure	28	30%

29. Those respondents who answered yes mostly did so because they felt the Director would provide a joined-up, strategic approach which would focus efforts and provide a single point of contact for other organisations involved in tackling exploitation (both nationally and internationally). There were also responses that highlighted the benefits of avoiding a costly full merger of the three enforcement bodies. The CBI said “coordinating the existing enforcement mechanisms through the Director and intelligence hub will support the delivery of more efficient enforcement at a time of limited public finances”.
30. Those who answered no were mainly concerned that the creation of the Director would divert resources and focus from the enforcement bodies’ current remits and priorities.
31. Some respondents were not certain that they had enough detail to be sure about the effectiveness of the role of the Director, pointing out that the individual’s skillset and the remit they hold are crucial. Of the other respondents who answered ‘not sure’, some were worried that the role could cause confusion between the Government’s efforts to protect vulnerable workers and those to stop illegal working. Others pointed out that there are many other agencies that will not be in the Director’s remit but work to prevent exploitation.

Q3. What other factors should we consider in developing the new Director role?

32. The most common factor stated by respondents was how the Director needed to have a real understanding of the labour market and to obtain this they will need to work closely with industry, trade unions and other stakeholders. The TUC’s response said, of the Director, “to be effective they must work closely with staff from the enforcement agencies and regularly engage with relevant stakeholders, including employers, labour providers, trade unions and NGOs”.
33. Other factors that respondents set out were:
- a. the role needs to be well defined to complement the existing roles of the heads of the enforcement bodies and the Independent Anti-Slavery Commissioner;
 - b. the role has to be credible with Ministers and other stakeholders;
 - c. the Director should have the protection of workers as a key priority and be charged with finding better ways to make workers aware of their rights, as well as having the power to review the legal framework (not just the enforcement strategy) to make sure it provides the right protections;
 - d. the need to take into account the impact of the new National Living Wage on enforcement priorities;
 - e. the need to take an evidence-based, long term approach; and
 - f. the role must not divert resources from frontline enforcement.

New offence of aggravated labour law breach

Q4. Do you agree that a new offence of aggravated labour law breach is needed to tackle the exploitation of workers?

Yes	49	53%
No	11	12%
Not sure	17	18%

34. The majority of respondents gave their reason for answering yes as the need for a more effective deterrent against exploitative employment practices. Those who responded no said that a new offence was unnecessary as existing offences were available, should attract higher penalties and be more rigorously enforced. Those who stated they were not sure cited lack of clarity over the proposals as the main reason for this.

Q5. 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	12	13%
(b) create a new type of improvement notice	21	23%
(c) both (a) and (b)	27	29%
(d) none of the options	7	8%

35. Respondents gave the following reasons for their options:

(a) Because it would be an effective deterrent and provide redress for victims. It would also allow prosecutors to target those who are indirectly involved in the employment relationship.

(b) Because it would provide an opportunity for remedial action at an early stage, backed up with the threat of prosecution if action was not taken.

(c) Because it would provide the widest range of responses to address the problem.

(d) Because the proposals were unclear or the type of behaviour the Government wanted to prevent was covered by existing offences.

Q6. What are the benefits of creating an offence involving intention to deprive a worker of their rights?

Q7. What are the benefits of creating an offence involving motivation to exploit a worker or exploiting a worker in connection with such an offence?

36. With regards to questions 6 and 7, many respondents thought that a new offence would provide a more effective deterrent than the current labour market enforcement framework. OSCE and ARC felt that the creation of a distinct offence presented an opportunity to define the crime more clearly. However, several enforcement practitioners, including Cambridgeshire Constabulary mentioned the challenges inherent in proving beyond reasonable doubt the motivation behind an offence.

Q8. What are the benefits of creating a new type of improvement notice to tackle exploitation of workers?

37. Many respondents, including the TUC, FLEX, CBI, BRC, the International Labour Organisation and Anti-Slavery International felt that an improvement notice was an effective, sensible and practical method of ensuring that a business takes steps to remedy non-compliance without the need to go to court.

38. Several respondents including UNITE felt that the Health and Safety Executive's regime of undertakings backed up with effective monitoring and the threat of prosecution was a good model to follow.

39. CORE coalition and Amnesty International commented that an improvement notice would provide better protection for workers, send a strong signal of the Government's intention to stamp out abuse and provide an opportunity to collect intelligence to support prevention. They also said that undertakings could only work in conjunction with other measures and that ongoing monitoring was necessary in order to incentivise continued compliance.

40. The Institute of Human Rights in Business felt that an improvement notice would prevent businesses from treating fines as an acceptable overhead of an exploitative business model. The Crown Prosecution Service pointed out that it would not be necessary for an employee to give evidence where a business was prosecuted for non-compliance with an improvement notice.

Information sharing

Q9. Do you agree on the need for powers to share data and intelligence across the enforcement bodies and with other organisations?

Yes	68	73%
No	1	1%
Not sure	11	12%

41. The majority of respondents agreed that there is a need to share data and intelligence across enforcement bodies and some respondents acknowledged that there are already some good bilateral data sharing arrangements in place. CBI said that the proposal to increase intelligence sharing was a positive step towards ensuring that enforcement action is effectively targeted across the entire labour market. The Association of Labour Providers stated that the absence of effective information sharing gateways was a barrier to co-ordination of activity and therefore they supported a review of the current arrangements.

42. Some respondents, whilst supportive of information sharing gateways between labour market enforcement bodies, expressed concern about creating information sharing gateways with other bodies, particularly Immigration Enforcement. There were concerns that such a gateway would deter some vulnerable workers from raising complaints. The Immigration Law Practitioners' Association felt that forwarding intelligence on individual cases to Immigration Enforcement would undermine the role of the Director of Labour Market Enforcement and those bodies tasked with preventing labour exploitation.

Reforming the Gangmasters Licensing Authority

Q10. Do you agree with the proposal to expand the role of the Authority or should we retain the current model?

Yes	62	67%
No	7	8%
Not sure	9	10%

43. The majority of respondents agreed that the role of the Authority should be expanded. There was wide acknowledgement of the current work of the GLA being internationally recognised as a model of best practice in preventing, detecting and investigating worker exploitation. However, many respondents, including the BRC and the Independent Anti-Slavery Commissioner (IASC), felt that the GLA's expertise was limited to a small number of industries and that broadening its role would allow it

to use this expertise to focus on preventing and tackling worker exploitation across other areas of the labour market where this has been identified.

44. The issue of most concern raised by respondents, including the BRC, FLEX, CORE Coalition and ILPA, was about resources. It was felt that the expansion of the Authority’s role would be more effective if it was matched by greater resources to enable it to make a greater impact across labour sectors. Others felt that appropriate training and powers would also be necessary for the Authority to perform an expanded role effectively.

The objectives and remit of the new Authority

Q11. 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	57	61%
No	10	11%
Not sure	11	12%

45. Most respondents agreed that the Authority’s mission should be to prevent, detect and investigate worker exploitation. However, there was a notable reluctance amongst some respondents about reflecting the Director’s plan in the new Authority’s mission. In summary this was seen as potentially being a drawback, particularly if the new Authority had to stick rigidly to a fixed annual plan. Striking the right balance between strategic objectives and the ability to respond swiftly to any new tactics being carried out in order to protect vulnerable workers would ensure the new Authority could deliver its mission.
46. Some respondents, including FLEX and CORE Coalition, felt that a change from the GLA’s already well established and recognised current mission, which is to ‘work in partnership to protect vulnerable and exploited workers’, might prove to be damaging. Others, including the BRC and the ALP, recognised the importance of the new Authority’s mission retaining the reference to ‘working in partnership’.
47. Having sufficient resources attached to ensure that the new Authority had the ability to match its mission was a recurring theme.

Q12. Should the new Authority work with business to provide training, and develop codes of conduct and voluntary accreditation schemes?

Yes	38	41%
No	13	14%
Not sure	14	15%

Q13. Should the new Authority be able to charge for such services?

Yes	17	18%
No	22	24%
Not sure	22	24%

48. The majority of respondents felt that using the GLA's expertise to work together with other businesses would help to maximise the effectiveness of the new Authority. This approach would complement the IASC's strategic plan. Respondents agreed that the provision of training and the development of codes of conduct were seen to be desired by businesses as part of a collaborative working model which would allow them to better understand what was required of them by law.

49. However, concerns were raised about any move towards the creation of and reliance on voluntary accreditation schemes. One respondent felt that this would create a significant amount of work and would need to be administered properly to maintain stakeholder confidence. Other respondents felt that it would effectively be returning to the situation which existed prior to the establishment of the GLA, and demonstrated that sole reliance on industry sectors to manage and police themselves was not a successful approach in eradicating worker exploitation.

50. There were mixed views about whether these services should be charged for by the new Authority. Some respondents, like the ALP and CORE Coalition, felt that this might distort the focus of the new Authority, whilst others felt that it would generate income to help the Authority boost its remit.

Q14. What other tasks might the new Authority perform?

51. Some respondents felt that the new Authority would already be stretched and therefore would not have the capacity to take on more work beyond its day to day remit. Others made a number of suggestions, including:

- a. greater awareness raising;
- b. sharing examples of best practice;
- c. providing information on an easy to navigate website, free leaflets to download, and access to information videos;
- d. publishing regular reports that analyse where and how worker exploitation manifests itself in the UK economy, and a report on enforcement action and outcomes; and
- e. operating with partners across the EU and internationally.

Powers of the New Authority

Q15. 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	66	71%
No	6	6%
Not sure	8	9%

52. A majority of respondents agreed that the Authority should be able to investigate the offences that fell under the remit of the Director. Some, such as FLEX and BRC, welcomed the strengthening of the GLA's remit and the ability for the GLA to investigate exploitation where they encountered it. In supporting this, the point was made about the need for sufficient resource to be provided to make sure this additional capability was matched by capacity. The need for the Authority to work with other agencies to ensure the most appropriate action was raised by several respondents, including the TUC, who noted that in some instances HMRC's NMW team might be the most appropriate agency. Others commented that the Authority should have appropriately trained staff, particularly if they were to exercise 'police style powers'.

53. Views were split on whether the GLA should be able to investigate Modern Slavery offences. In some cases the NCA was seen as the more effective and appropriate body to investigate modern slavery, as it would have the necessary investigative tools to deal with complex cases. FLEX noted that any involvement in modern slavery should involve taking immediate action to protect workers or secure evidence, rather than the investigation of such cases. Several respondents, including FLEX and CORE Coalition, expressed concern about the possible transformation of the GLA into a law enforcement agency. However, respondents did see a role for the Authority in terms of taking action when it uncovered cases of possible modern slavery, but in a way that linked effectively with existing agencies such as the NCA, the police and the IASC.

Q16. Do you agree that the new Authority should have the power to investigate these offences across all sectors of the labour market?

Yes	65	70%
No	10	11%
Not sure	3	3%

54. Respondents gave their reason for answering ‘yes’ as the need to ensure all workers are protected equally, recognising that exploitation occurs across many sectors of the labour market, that all sectors should be subject to effective supervision and that exploited workers can benefit from a central body from which to seek assistance.
55. Respondents highlighted in particular the need for a more comprehensive and consistent regulatory approach across all sectors to ensure that effective regulation in one sector does not simply cause a displacement effect and drive those who seek to systematically exploit workers to move into other sectors. It was felt that the knowledge, experience, skills and successes of the GLA meant it was well-placed to extend its remit to allow investigation into other sectors of the labour market.
56. Numerous respondents noted that their response was, however, dependent on any extension to the Authority’s remit, powers and responsibilities being adequately resourced.
57. Where respondents did not agree the reasons given for this varied. One respondent commented that the new Authority should only be allowed to investigate some offences across all sectors of the labour market; another felt that it should remain focused on its current scope, given that this was the area originally identified as the area of need.
58. Some respondents were unsure if the new Authority should have power to investigate offences across all sectors of the labour market. One reason given for this was that some sectors are likely to require additional measures, for example those where minors are deemed to be at increased risk of exploitation.

Q17. Are the investigative powers proposed appropriate given the new Authority’s functions? (note, these powers apply to England and Wales)

- 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); and
- The power to use reasonable force in exercise of PACE powers, (section 117 PACE); and
- The ability to seize evidence and then sift through it under section 50 of the Criminal Justice and Police Act.

Yes	59	63%
No	8	9%

59. Those who responded 'yes' were of the view that the new Authority should have new investigative powers in order to be effective in tackling labour market offences, otherwise it may not be able to access and obtain valuable evidence as quickly as required for a successful prosecution. One respondent noted that, whilst often working in close coordination with the NCA and local police forces, it was critical that the Authority also had respective powers and a remit to act independently of these bodies in exploitation cases identified during the course of wider compliance-related activities such as workplace inspections.

60. Those who responded 'no' or 'not sure' raised concerns that the GLA lacked experience in dealing with these sorts of investigations. They felt that the police or the NCA should retain responsibility for the most serious matters and investigation of criminal offences or that additional powers should only be used where absolutely necessary and in conjunction with the police.

61. One respondent felt that the powers proposed were appropriate provided their use was carefully controlled. This included: only using the powers in limited circumstances where the Authority had identified a risk of very serious worker exploitation; only being granted to limited and appropriate members of the new Authority's staff; their use being subject to ongoing monitoring and review to ensure appropriate and proportionate use; that staff granted the powers are subject to thorough police-style training before being allowed to use the powers; and that staff granted the powers are supervised both internally and also by the Independent Police Complaints Commission.

62. Concerns were raised specifically over the designation of the power of arrest and power to use reasonable force due to training needed and potential repercussions if powers were used injudiciously.

Q18. Are there any additional powers the new Authority should have? Please describe and give your reasons.

63. Where additional powers were suggested these largely centred on powers to: introduce administrative fines and penalties for low-level and technical minor offences; ensure appropriate mechanisms and effective access to remedies for workers; and ensure that adequate evidence can be secured quickly.

64. Additional detail of some of those powers suggested is set out below:

- a. Powers to introduce administrative fines and penalties for low-level and technical minor offences, including issuing improvement notices and repayment orders.
- b. Powers to investigate under Proceeds of Crime Act, although this would require accredited financial investigators.

- c. Power to seize and retain anything for which a search has been authorised (i.e. full powers of entry, search and seizure as laid out in Section 8 of PACE). Power to enter premises for the purposes of ‘saving life or limb or preventing serious damage to property’ (PACE Section 17(1)(e)).
- d. Power to make recommendations and representations to Immigration Enforcement to ensure that regular workers who have been subject to exploitation are able to remain in the UK while investigation against their employer is ongoing and to enable it to recover any unpaid wages and seek compensation for damages.
- e. Powers to seize and restrain the assets of offenders in line with money laundering regulations.
- f. Power to inform principal contractors of violations found downwards in their supply chains and to require them to take remedial actions.

65. One respondent stressed the importance of ensuring that the Director should have no powers relating to immigration issues and that there should be a clear boundary between the role of the new Authority and any immigration agencies and powers.

Q19. Do you agree that the new Authority should be able to use Proceeds of Crime Act powers to recover criminal assets?

Yes	64	69%
No	5	5%
Not sure	3	3%

66. There was broad support for the use of the Proceeds of Crime Act to recover criminal assets. One respondent noted that it would send out clear messages about the seriousness of the offence ‘which would help to raise awareness of labour exploitation and the consequences of being involved’. Others saw recovering criminal assets as an important means of redress for exploited workers and an essential part of the Authority’s toolkit in delivering its mission.

Q20. What are the benefits of the new Authority having a formal power to ask for assistance from relevant organisations?

Q21. Which organisations should this new power apply to?

Q22. Should other enforcement organisations be given the ‘right to ask’ the new Authority to offer operational support?

Yes	49	53%
No	7	8%
Not sure	7	8%

67. The responses to these three questions were very similar, with respondents linking their answers.

68. Most respondents welcomed the opportunity to co-ordinate intelligence and operational activity and acknowledged that the 'right to ask' offered an opportunity to improve co-operation. Links with immigration enforcement were seen as a risk by some, such as FLEX and the ETI, who were concerned about the potential loss of trust from vulnerable workers and the impact that this would have on tackling exploitation.

69. The Police and National Crime Agency were mentioned most frequently as the bodies that the Authority should have the 'right to ask'. Some, including the Institute for Human Rights and Business, noted that this right to ask should stop short of the 'right to task' held by the National Crime Agency and that it should not override the operational policing priorities identified by Police and Crime Commissioners.

70. Several respondents noted that the Authority should have the final say in how its own resources were used and that the 'right to ask' of the Authority should remain just that. However, many respondents recognised that the Authority had expertise to offer other agencies, which could be supported by the 'right to ask'.

Licensing

Q23. Do you agree that the current licensing criteria should be reformed?

Yes	30	32%
No	25	27%
Not sure	12	13%

Q24. What reforms do you think would improve the current licensing regime?

Q25. 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	18	19%
No	32	34%
Not sure	11	12%

Q26. Are there any sectors that you would remove from the current licensing regime?

Yes	9	10%
No	37	40%
Not sure	17	18%

71. Whilst respondents highlighted the effectiveness of the GLA's current licensing regime, the majority of respondents agreed that the current licensing criteria should be reformed. Reasons for this included the fact that the current regime was too narrow, and that licensing could be focused on new and emerging markets whilst businesses that demonstrate consistent compliance could be subject to a reduced regulatory burden.
72. Some respondents, including the ETI and FLEX, felt that the current regime worked well and there was no need to change it as it could result in the dilution of the current GLA licensing role. However, FLEX also suggested that the removal of licence standard 7.2 'Right to Work' would mean that the GLA could make greater inroads in gaining the trust of vulnerable workers, as it would be seen to be independent of immigration enforcement.
73. Other respondents, including the CBI, would only support an extension of licensing to other sectors where there was evidence that licensing was appropriate and proportionate to address the problem. A point raised was that licensing standards would need to be applied across the board, as those seeking to exploit workers have proved to be adept at identifying opportunities and weaknesses of labour market systems. It was felt that if those standards were applied selectively or based on a subjective assessment of risk, they would fail to create a fair and level playing field.
74. The majority of respondents were clear that no sectors should be removed from the current the licensing regime as this would place vulnerable workers at risk of exploitation. The construction, hospitality and care sectors were cited as areas that should be added to the criteria.
75. Overall, respondents were clear that any reforms would need to be sufficiently resourced and enforced.

Governance and oversight of the new Authority

Q27. Will the proposed governance arrangements enable the new Authority to achieve its mission under appropriate oversight?

Yes	23	25%
No	12	13%
Not sure	27	29%

76. The majority of respondents supported the proposed governance arrangements, although several felt that insufficient detail was provided for them to comment.

77. Some respondents were concerned about the potential for duplication and confusion and possible conflicting political priorities. Some questioned the role of the GLA Board and highlighted the possible danger in GLA multiyear targets and strategy being overridden by the Director's priorities. The ETI and others drew attention to the risk that possible failures in accountability may risk cases of labour exploitation falling through the cracks.

78. However, overall, respondents agreed that the GLA should remain as an NDPB, with its own Board, as long as the different roles of the Board and Director were clear. Others were supportive of it remaining accountable to the Home Secretary because of the proposed use of police-style powers.

6. Government response and next steps

79. The Government welcomes the range of views put forward by respondents to this consultation and has carefully considered the responses. Overall, the majority of respondents agreed with the Government's position that more needed to be done to tackle organised labour market exploitation. Therefore the Government has decided to proceed with making policy and operational changes to the way we enforce labour market legislation.

A new Director of Labour Market Enforcement

80. Our existing enforcement bodies bring a range of vital specialist skills to deal with day to day non-compliance issues and serious criminality. However, we concluded that overarching leadership and co-ordination of the efforts of HMRC's NMW team, EAS and the GLA would be underpinned best by the creation of a new Director of Labour Market Enforcement. This structure would allow for a more targeted, joined-up approach to tackle exploitation and ensure compliance and also provide greater flexibility to pool resources.

81. There was broad support for the creation of the role of a new Director of Labour Market Enforcement to bring together the work of the existing enforcement agencies and help to provide a more joined-up and cohesive response across the whole labour market enforcement field. However, there were also clear messages about the operational function of the Director's role, with the need to work with other stakeholders and partners being of particular concern.

82. As a first step, the Government included legislation to create a statutory position of Director of Labour Market Enforcement in the Immigration Bill, which was introduced into Parliament on 17 September 2015. The Bill continues its journey through Parliament and we intend to make amendments to ensure the role is properly defined in legislation with the necessary remit and powers to be effective.

Director's role

83. The Director's remit will stretch across the whole of the labour market – including direct employment as well as labour providers – and the whole of the spectrum of non-compliance, from accidental infringement to serious criminality. As set out in the Immigration Bill, the Director will produce an annual labour market enforcement strategy which will set the annual priorities for the work of the three enforcement bodies. This will bring greater coherence to their efforts and allow for a more targeted approach to enforcement.

84. The labour market enforcement strategy must be approved by Ministers and laid before Parliament. We have concluded that it is necessary for Ministers to have this oversight as they remain accountable to Parliament for the budgets and success of the enforcement bodies. While the strategy must be deliverable within the overall budget envelope that the BIS Secretary of State and the Home Secretary make available, the Director will be able to state at the end of the year in their annual report how the available budget affected the success of the enforcement bodies in tackling exploitation.

85. The scope of the labour market enforcement strategy is the work of the three enforcement bodies, which are provided for in the Employment Agencies Act 1973, the National Minimum Wage Act 1998 and the Gangmasters (Licensing) Act 2004. We have concluded that this is most appropriate as this is the labour market legislation that protects the most vulnerable workers from exploitation. However, we realise that the nature of exploitation may change over time and so will give the BIS Secretary of State and the Home Secretary the power to add to this scope by regulations.
86. We do not intend that preventing illegal working should be a focus of the Director or the labour market enforcement strategy. Where illegal workers are the victims of exploitation, we will still take action against the rogue businesses that are committing these crimes, and will continue to increase our efforts to support victims of modern slavery. However, the Government has concluded that it is still appropriate for labour market enforcement agencies to work with Immigration Enforcement (as they do now) to share information about illegal working.
87. To respond to concerns about the role being properly defined, we will legislate to make clear the relationship between the Director and the Board of the GLA, as well as legislating for EAS and HMRC's NMW team to have regard to the labour market enforcement strategy. We will also consider how to make sure that other stakeholders are properly involved in the preparation of the labour market enforcement strategy.
88. In addition to the legislative framework for the Director's role, we have concluded that it is crucial to appoint a person with the right skillset to be effective. Subject to the Immigration Bill receiving Royal Assent, the Government will set out in a job description the skills that we will look for in making the appointment.

A new offence of aggravated breach of labour market

89. We want to make it easier for law enforcement to be able to deal with employers who subject their workers to more serious forms of exploitation by deliberately, persistently and brazenly committing breaches of labour law and failing to take remedial action. Whilst existing legislation provides enforcement bodies with powers to impose civil penalties for minor breaches and whilst criminal penalties for more serious offences also exist, such as repeated and deliberate underpayment of NMW or Modern Slavery Offences, this exploitative pattern of behaviour falls within a gap.
90. We proposed to fill the gap by introducing a new offence of aggravated labour law breach under which the court can impose tougher penalties on offenders. We set out two potential options.
91. The first option would have created an offence which would be committed where:
- a. An employer had committed an existing offence under a range of state-enforced employment law within the Director's remit (many such offences are only punishable by a fine); and

- b. The motivation for the offence (wholly or partly) was the deprivation of a person's rights as a worker (e.g. their right not to have unlawful deductions made from their pay); or
 - c. The employer had exploited the worker in connection with the commission of the offence (e.g. threatening a worker in order to make them work for less than NMW).
92. The second option would have created a new type of improvement notice to complement or replace the first option. This would be issued by the court as part of civil proceedings after a breach of employment law had occurred, and would order the business to take remedial steps within a specified period to fix the problems identified. A breach of the notice would be a criminal offence.
93. There was broad support for the need of a new offence of aggravated labour law breach to tackle exploitation of workers. The majority of respondents were in favour of both options being used.
94. However, after careful consideration of the responses and further detailed discussions with enforcement bodies and the Crown Prosecution Service we found that whilst there was appetite for the first option, the behaviours that were identified as gaps could be remedied under existing legislation. There was also concern that it may be difficult to prove motivation for the offence, which could lead to a low number of prosecutions.
95. The Government therefore intends to introduce a new type of enforcement order supported by a criminal offence for non-compliance. Under the proposals, the existing enforcement bodies would have the power to request a business, where there is reasonable belief that a labour market offence has been committed, to enter into an undertaking to take steps to prevent further offending. The enforcement bodies would be able to apply to a court for an enforcement order where a business had refused to give or failed to comply with an undertaking. The order would require the business to take steps necessary to avoid the commission of further labour market offences. An order would also be available as a sentencing option where a labour market offence had been committed. Breach of the order would be an offence, triable either way and punishable by imprisonment for up to 12 months following summary conviction or two years following conviction on indictment. This will require primary legislation and we plan to take this provision forward through the current Immigration Bill.
96. This type of penalty will reflect the seriousness of this level of offending and act as a deterrent to stop and prevent any deliberate and persistent breaches of labour law and will better protect workers from exploitation.

Information sharing: Creating an Intelligence Hub

97. While there is already a great deal of co-operation and information sharing between the three enforcement bodies, the Government has concluded that the Director will only be able to set an effective labour market enforcement strategy if it is evidence-based, and that there is greater benefit to joint working between enforcement bodies if they share a coherent view of the nature and extent of exploitation and non-compliance in the labour market. Giving the new Director and the three enforcement

bodies the powers to routinely share data and intelligence would establish a more formal basis to improve current information sharing practice. We intend to implement a structured mechanism to do this, through the creation of an Intelligence Hub. This will provide central co-ordination for information and data to help the Director to identify trends and patterns in areas of the economy where workers are at risk of exploitation, and thus enable the Director to develop the annual labour market enforcement strategy.

98. To enable the Intelligence Hub to work, the Government intends to legislate to create the necessary data sharing gateways. The most important set will be between the Director and the Intelligence Hub and the three enforcement bodies (EAS, HMRC's NMW team and the GLA). This will allow the Director to access much of the information needed for the strategy. We envisage this would cover, for example, details of complaints and intelligence that led to enforcement action being taken, and the outcomes of investigations. To ensure the gateway is used appropriately, we will require the Director to set out in the annual labour market enforcement strategy what data sets the three bodies should be required to share in the coming year. The strategy is approved jointly by the Secretary of State for Business, Innovation and Skills and the Home Secretary, who will consider whether the proposals are reasonable and necessary.
99. In addition there may be unexpected incidents or factors that result in the Director requiring additional information sets from the enforcement bodies that have not been set out in the annual strategy. Therefore we propose that the Director will be able to request additional information from the three enforcement bodies during the course of each year, and the enforcement bodies will have a duty to respond in a reasonable time frame.
100. In addition to the three enforcement bodies there are other bodies engaged in tackling labour market exploitation that hold information that will enable the single evidence base on which the Director's plan will be based to be more rigorous, and which will ensure that the view of risk is accurate and complete. For example, it is likely that rogue businesses that are prepared to breach some labour market legislation might be breaching other parts of the law. Therefore, we intend to create proportionate information sharing gateways between the Director and certain other bodies to enable this information to feed into the intelligence hub and the Director's annual plan. These bodies are: HMRC's other functions, the National Crime Agency, UK police forces, the Independent Anti-Slavery Commissioner, the Health and Safety Executive, Local Authorities, and Home Office's Immigration Enforcement. We will work with these bodies to ensure these gateways are proportionate such that only specific information relating to labour market non-compliance that will be relevant to the Director's evidence base will be shared. We intend to legislate to create a statutory framework for this sharing to happen.
101. The Director and the Intelligence Hub will be subject to the normal Data Protection Act 1998 rules on sharing information.
102. There was broad support for this approach from respondents. However, a number of respondents raised concerns about the proposal to share information with other bodies, particularly immigration enforcement. As covered in paragraph 86 above, we do not intend that the prevention of illegal working will be a focus for the

Director, but the Government believes that it is still appropriate for labour market enforcement agencies to work with Immigration Enforcement to share information where illegal working is identified.

103. The Government intends to retain existing gateways between HMRC NMW, EAS and GLA to enable enforcers to continue to share information relating to specific cases, particularly in time-critical situations. It does not make operational sense for this type of co-operation to have to go via the Intelligence Hub each time.
104. Subject to Parliamentary approval of the legislation, the Government will identify the most appropriate resources to enable the new Intelligence Hub to be effective.

Reforming the Gangmasters Licensing Authority

105. We welcomed the strong support voiced by many respondents for the effective work of the GLA and the role that many saw it playing already in tackling labour exploitation. In strengthening the role of the GLA and extending its remit, we want to build on what it does best and use its experience across wider labour sectors. Through expansion of its powers, we will ensure that the GLA can play the type of role in tackling exploitation that many people believe will support effective enforcement.
106. There was broad support to reform the role of the GLA to enable it to tackle labour exploitation. We will reform its mission, functions and powers to ensure that the GLA can prevent, detect and investigate worker exploitation across all labour sectors, not only those in which it operates currently. Although concerns were expressed about the risk that this may affect the current GLA functions, we believe that the new enforcement role will complement the current licensing role to provide a more coherent response to exploitation, wherever it is found. By giving the GLA this mission and role, we establish it as a strong component of the Government's broader work to tackle labour exploitation. In recognition of this, we will change the name of the GLA to the Gangmasters and Labour Abuse Authority. We believe that this reflects the new focus of its remit, while retaining the links with its previous role.
107. It is important to clarify the relationship between the GLA Board and the Director. To support this, we want to be clear about the way in which the Board and the Director work together to deliver the agreed strategy, whilst retaining the GLA's operational independence. Ministers have concluded that the GLA should remain an NDPB, but we will legislate to set out the relationship between the Board and the Director clearly. This will provide a strong framework of accountability to ensure that the functions of the GLA can support the Director's strategy effectively.

Powers of the new Authority

108. It is important to extend the powers of the new Authority for it to be effective in tackling labour market offences, otherwise it may not be able to access and obtain valuable evidence quickly and as required for a successful prosecution. While there were some concerns about the level of resources available to make this new remit truly effective, there was support for the use of new powers to tackle exploitation. We have concluded that the use of police style powers in England and Wales would be

invaluable in terms of extending the reach of the new Authority. In enabling the Authority to use these police style powers, we will ensure that the staff exercising them in the new Authority will have the appropriate training and oversight that will ensure those powers are used properly. The new Authority will also have the ability to use the Proceeds of Crime Act 2002 to investigate money laundering offences and to use the provisions for cash forfeiture and confiscation to remove assets from those who benefit from offences.

109. The ability of the new Authority to address Modern Slavery offences will be an important component of the broader fight against labour exploitation. However, we are clear that we expect the Authority to take action when it uncovers cases of possible modern slavery, but in a way that links effectively with existing agencies such as the NCA, the police and the IASC.

Joint work by law enforcement to stop serious labour exploitation

110. We will provide the foundation for the new Authority to work in partnership with other law enforcement agencies to deal with criminal offences, as the GLA does currently. This will help improve co-operation through the co-ordination of intelligence and operational activity. To achieve this, we will introduce formal memoranda of understanding and a formal 'right to ask' for assistance. To respond to concerns raised about operational independence police forces and Police and Crime Commissioners, we are clear that, where the 'right to ask' is exercised, this should not override their operational priorities.

Licensing

111. We recognise that licensing can be a valuable tool in tackling non-compliance and labour exploitation and that an effective licensing regime is one that can respond to, and pre-empt the risks of, exploitation. Many respondents agreed with this, although we know that others are concerned about the need to balance this with reducing burdens on compliant businesses. To do this, we will legislate to reform the licensing regime to ensure that it is flexible enough to respond to those changing risks in existing or new labour sectors, if the evidence supports its use. The Director will be given a critical role in recommending changes to the licensing regime to the Secretaries of State, as part of their overall strategy to tackle exploitation. We believe that this approach will provide a balanced, proportionate approach to the use of licensing.

Territorial extent of proposed reforms

112. All of the reforms will apply to England and Wales. The Director will have a remit that covers Scotland because employment law, the basis of his/her role, is a reserved matter. The Director's role in Northern Ireland will only apply to the National Minimum Wage, as employment is a transferred matter in Northern Ireland. While the GLA operates in Northern Ireland, it works on behalf of the Department of Agriculture and Rural Development. The GLA will continue to exercise its current functions within Northern Ireland.
113. Employment is reserved to the UK Government in respect of Scotland, although modern slavery offences and policing are devolved. We will only be providing the

new police style powers in England and Wales. We do not believe this will significantly impair the ability of the GLA or other enforcement bodies to operate in Scotland and it will continue to work in close liaison with Police Scotland and other agencies.

Annex A: List of respondents

2 Sisters Food Group

Amnesty International

Anti-Slavery International

Anti-Trafficking and Labour Exploitation Unit

Association of Labour Providers

Association of Recruitment Consultancies

British Hospitality Association

British Poultry Council

British Retail Consortium

Bulgarian National Commission for Combating Trafficking in Human Beings.

Bureau UK Recruitment Limited

Cambridgeshire Constabulary

CBI

Chartered Institute of Procurement and Supply

Coalition of Latin Americans in the UK

Communication Workers Union

CORE Coalition

Council of Europe

Crown Prosecution Service

EEF, The Manufacturers' Organisation

Employment Lawyers Association

Ethical Trading Initiative (ETI)

Extraman Ltd (Recruitment business)

Flair Rugs

FLEX (Focus on Labour Exploitation)

Food and Drink Federation

Forced Labour Monitoring Group

Fresh Produce Consortium

GMB

Heads Recruitment Ltd

HOPS Labour Solutions Ltd

Icelandic Seachill

Immigration Law Practitioners' Association

Independent Anti-Slavery Commissioner (IASC)

Institution of Occupational Safety and Health

International Centre for Migration Policy Development

International Labour Organization (ILO)

International Tourism Partnership

John Lewis Partnership

Joseph Rowntree Foundation

Kalayaan

Kent Police

KHS Personnel Ltd

Kingfisher

Labour Inspection, Romania

Labour Inspectorate of Slovenia

Latin American Women's Rights Service

Law Society

London Fire and Emergency Planning Authority

Low Incomes Tax Reform Group

Low Pay Commission

Manor Fresh Ltd

Marks and Spencer PLC

Ministry of Social Policy and Employment, Netherlands

Montague Consult Ltd

National Crime Agency

National Farmers Union

National Labour Inspectorate Slovakia

National Labour Inspectorate, Poland

Northern Ireland Strategic Migration Partnership

Nottinghamshire Police

Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings

Peninsula Business Services Ltd

Recruitment and Consulting Services Association Australia

Recruitment and Employment Confederation

Sainsbury's

Sapere Aude associates

Staffline Group plc

State Labour Office of the Czech Republic

TEAM

The Chartered Institute of Building

The Institute for Human Rights and Business

Thompsons

TUC

UCATT

UK Race and Europe Network

UK Recruitment Ltd

UNISON

UNITE

University College London

University of Greenwich

UNSEEN

Plus 9 individual and 2 anonymous responses

Annex B: Consultation principles

The principles that Government departments and other public bodies should adopt for engaging stakeholders when developing policy and legislation are set out in the consultation principles.

<http://www.cabinetoffice.gov.uk/sites/default/files/resources/Consultation-Principles.pdf>

Comments or complaints on the conduct of this consultation

If you wish to comment on the conduct of this consultation or make a complaint about the way this consultation has been conducted, please write to:

Angela Rabess
BIS Consultation Co-ordinator,
1 Victoria Street,
London
SW1H 0ET

Telephone Angela on 020 7215 1661
or e-mail to: angela.rabess@bis.gsi.gov.uk



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Department for Business, Innovation and Skills
1 Victoria Street
London SW1H 0ET
Tel: 020 7215 5000
Email: enquiries@bis.gsi.gov.uk

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